

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR MEETING

Taken at the HGEA Conference Room, David Trask Building, Wailuku, Maui, Hawaii, commencing at 9:00 a.m. on June 8, 2000.

Reported By: Rachelle Primeaux, CSR #370
Iwado Court Reporters, Inc.

ATTENDANCE:

Members Present:

Elmer Cravalho, Chair
Peter Rice
Bob Takitani
Orlando Tagorda
Mike Nobriga
Clark Hashimoto

Staff Present:

David Craddick, Director
Howard Fukushima, Corporation Counsel
Fran Nago, Secretary
George Tengan
Mike Quinn

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REGULAR MEETING

CHAIR CRAVALHO: Shall we proceed to call the meeting to order. Today is June the 8th, and this is the Board of Water Supply meeting. Members who are

present, myself as Chairperson, Mr. Tagorda as Vice Chair, Mr. Hashimoto, Mr. Rice, Mr. Nobriga. There is a quorum present. We reserve the right later to have Ms. Nago introduce members of the audience as well as others who may wish to participate on any item that is on the agenda this morning.

The Chair, unless there is any great objection, would want to move the agenda, one item on the agenda to a primary position which will be the first we will consider after introductions made by Ms. Nago. That would be the movement of the communication and the matter of Mr. Jackson. That's under communications on Page 3 I believe, Communication Number 00-24, request from Glenn Jackson which we would want to handle first thing after the introduction by Ms. Nago. Proceed, please. Staff and members of the audience.

MS. NAGO: Okay. We have David Craddick, the Director; Mike Quinn, Fiscal Officer; George Tengan is our Deputy Director. We have Harry Eager, Glenn Jackson, David Niehaus, John Rapacz, Charles Freitas, Teryl Vincyl, Donald O'Connor, Marty Ostalan, Hugh Starr. We have Soloma Hoopai, Jr. We have Harold Silva, Edwin Young, Donna Ting, Linda Broadway, Karen Regan, Joseph Viliarimo and Joni Kawano.

CHAIR CRAVALHO: Thank you very much. Shall we proceed to consideration then of Communication 00-24, a request for Mr. Glenn Jackson for installation of a water meter. Are members familiar with that particular request? Mr. Jackson, you wish to address the Board? Proceed, please.

MR. JACKSON: Yes, good morning, Mr. Chairman, David, Members of the Board, good morning, staff. Mr. Chairman, would you please proceed in the most direct manner. Thank you.

CHAIR CRAVALHO: The direct manner is for the approval of your request. My understanding is you wish to have this taken on a priority basis and the decision made forthwith. In case you wish to have

anything to add or a statement to make, it's all in your hands right now.

MR. JACKSON: Mr. Chairman, could you issue me a water meter today.

CHAIR CRAVALHO: That's the decision for the Board to make, and this is a pending matter. If there's anything you wish to add to convince the Board and to explain the essential nature of your request, this is the time to do so, and we are prepared -- the Chair is prepared to act on the request.

MR. JACKSON: Okay. The only addition I would have to make would be that as of June 1st, my loan has gone up to 95 percent of its maximum, and I believe you have all the other statements in your file.

CHAIR CRAVALHO: Thank you very much. It is the opinion of the Chair, if the Chair may, that based on the presentations that have been made and the essential nature of the request before us that the request be -- the Chair's recommendation is that the request be granted for the installation of the meter. Mr. Nobriga.

MR. NOBRIGA: So approve, Mr. Chairman.

CHAIR CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIR CRAVALHO: You've heard the motion duly made and seconded for the approval for the installation of the meter for Mr. Jackson. Any discussion?

(No response.)

CHAIR CRAVALHO: Hearing none, all in favor say "Aye."

VOICES: Aye.

MR. TAGORDA: I'm voting no.

CHAIR CRAVALHO: We haven't gotten to that yet. We're just calling the roll. Let's observe parliamentary procedure. All in favor signify by saying "Aye."

VOICES: Aye.

CHAIR CRAVALHO: Those opposed.

MR. TAGORDA: No.

CHAIR CRAVALHO: May the record reflect one no. Proceed. Shall we go back to the usual then agenda.

MR. CRADDICK: That doesn't pass.

CHAIR CRAVALHO: Mr. Craddick.

MR. CRADDICK: I just --

CHAIR CRAVALHO: Mr. Craddick, as the Chair has advised you in the past, you are not the tenth member of the Board. The Chair is well aware of the decisions and well aware of the vote. Should the Chair desire any assistance from you, the Chair wishes to assure you that you will be requested.

MR. CRADDICK: Okay.

CHAIR CRAVALHO: And it would be very helpful as the Chair has said in the past if you would adhere to these processes. The system that we had at some times where the Director was able to unceremoniously interfere, those days are gone. I want you to know that.

Shall we then proceed with the agenda that's before us. First item is old business. We have the director's reports, one, two, three, testimony from the public. Public testimony comes up when there is a

scheduled matter as noted, okay.

Director's reports, we have, one, Request for approval to write off \$24,461.92 of uncollected accounts. The Chair wishes to express its concern not about the write-off proposal, which may be quite adequate. The Chair is extremely concerned of the listing of names of individuals which could very well be a violation of the rights of privacy. And the Chair would like to respectfully request that that particular portion dealing with the listing of names be withdrawn and that the subject matter contained in the letter be referred to the Finance Committee for appropriate review and appropriate action.

The Chair wishes to reemphasize again the very grave importance that the Chair attaches to the protection of the rights of privacy of people and members and our constituents of this particular Board of Water Supply. And if inadvertently an error is made, let us then correct it so that we do not become liable for the potential infraction.

Shall we proceed to old business. Item A, revised committee report 99-31. From the Oversight Committee, the Chair recognizes Mr. Nobriga.

MR. NOBRIGA: Mr. Chairman, a report is included in the packet. Move that we approve -- move that we waive the fire restrictions and approve amendments to the Hoekstra family.

MR. HASHIMOTO: Second.

CHAIR CRAVALHO: You've heard the motion duly made and seconded for the adoption of the committee report and thereby waive the requirements of the fire protection as requested by attorney and by the client. Any discussion? Mr. Rapacz.

MR. RAPACZ: Thank you, Mr. Chairman. John Rapacz on behalf of the Hoekstra family. I would just like the record to be clear we are permitted to use

the one-and-a-half-inch meter for domestic service on the three lots as well as fire protection.

CHAIR CRAVALHO: Is that the consensus of the committee?

MR. NOBRIGA: Yes.

CHAIR CRAVALHO: If that is the understanding of the committee, are we ready for the question. All in favor say "Aye."

VOICES: Aye.

CHAIR CRAVALHO: Contrary?

MR. TAGORDA: No.

CHAIR CRAVALHO: One no. The committee report stands as adopted. The action recommended, the Chair is well aware of the statutory requirements for the passage of any proposal, and, therefore, it shall be applied, which is you don't have five.

It is the opinion -- it is the position of the Chair and the ruling of the Chair that this particular matter may be considered at an appropriate -- at a subsequent time when there is a meeting called and perhaps a larger membership participation and presence.

Shall we go on to the next item then. From the request of David Niehaus, waiver of the fire protection requirements. Mr. Nobriga.

MR. NOBRIGA: Mr. Chairman, the committee report is attached. We move that the Board waive fire protection for Mr. David Niehaus.

CHAIR CRAVALHO: Is there a second?

MR. HASHIMOTO: Second.

CHAIR CRAVALHO: You've heard the motion duly made and seconded. Any discussion?

MR. HASHIMOTO: I have one question on that.

CHAIR CRAVALHO: Mr. Hashimoto.

MR. HASHIMOTO: I guess in the agreement on September 1st, 1993, I guess he was given final approval of a subdivision and there were subject to certain conditions in that the subdivider shall comply with the requirements of the rules and regulations of the Department in effect at this time if and when any lot within the subdivision is further subdivided or developed. So I'm just wondering if this fire protection is part of that.

MR. CRADDICK: I'll leave that up to the attorney there.

CHAIR CRAVALHO: Is there a question being directed to the attorney?

MR. HASHIMOTO: Whoever can answer it.

MR. FUKUSHIMA: Just for clarification, the question is does that particular provision that was by the member apply to this subdivision?

MR. HASHIMOTO: That's my question because he's adding another building.

MR. FUKUSHIMA: Well, it would apply to this subdivision. The presumption being that the additional work and the facilities that Mr. Niehaus has installed are meeting with the Department's requirements.

MR. HASHIMOTO: Okay.

MR. TAGORDA: Mr. Chairman.

CHAIR CRAVALHO: Mr. Tagorda.

MR. TAGORDA: I think, first of all, I would like to compliment and applaud the Committee Chair of the Oversight Committee and members on doing a good job on finding factual things about this Niehaus case. This Haleakala homestead subdivision, I think I'm very familiar with it from its inception way back in '93. I've got all the facts with me. Mr. Niehaus, I think went into agreement with the Board of Water Supply way back in '92 to comply with certain requirements imposed by the Department, especially on fire protection.

And he got lucky on his third dwelling that this agreement was not pursued by the Department. So he got his third dwelling. Now, he's coming to this Board for a fourth dwelling and fifth structure, Mr. Chairman. And I don't recall any in the past --

CHAIR CRAVALHO: The Chair is going to request that your discussion be limited to the pending motion before the body, which is the approval of the recommendations and the committee report, so anyone speaking on that, if it's separate and distinct from a point of information, then the speaker is required to make reference to speaking either for or against the pending motion. Are you speaking against?

MR. TAGORDA: I'm speaking against, Mr. Chairman. Let me elaborate.

CHAIR CRAVALHO: One moment. Anytime a person speaks for or against, it's much easier if you so indicate at the very beginning and the Chair recognizes that and just proceed speaking against the pending motion. Proceed.

MR. TAGORDA: I am strongly against it, Mr. Chairman, in approving the request of Mr. Niehaus on so many grounds. First of all, this person have fourth and fifth structure in that property, and I don't recall anything in the past that this Board have waived for fire protection for that three or more

dwellings in the lot.

Again, I think we had to give our provision of fire protection a strict adherence, Mr. Chair. It was his choosing to live up there, and our inadequate transmission lines cannot go all the way to his property. And getting back to all this facts that he mentioned about that transmission line that was built way back when his first subdivision was approved, I don't think the Board should be thinking much of those because I don't think Mr. Niehaus had -- he has a valid reason to threaten us about that transmission line that cut across his property. I know that we have those easements, that the Board have right now, and if he goes to court, I think we will prevail.

And even if we don't approve his request for waiver of fire protection, we have a good agreement that was signed by Mr. Niehaus and wife in 1992 that he will comply with the Board or the Department's requirements on fire protection. And now, again, a lot of thing came up with this. He came again and trying to disprove or say that what he have there he had the right pressure. So the staff went to check all the fire requirements and they found out, the staff who is very expert in the field, that he doesn't have the required fireproof protection, Mr. Chairman.

And all of these facts I'm telling you now, it just bothers me and I sympathize with Mr. Niehaus, Mr. Chair.

CHAIR CRAVALHO: The Chair would again like to request that all discussions be limited to the pending motion. The Chair fully understands the great sympathy and that members of the Board may have on any particular that's a matter I think of public record and public acceptance. However, it would be very nice if we did restrict ourselves to the pending motion before us. Pau? One moment, please.

Again, the Chair would like to prevail and ask all parties to follow parliamentary procedure and

every single person who wishes to express himself and herself will be given that opportunity. There will be no denials, okay, but let us proceed in a very orderly manner. The Chair wishes to recognize the presence of Mr. Takitani, so the total number present has been increased by one, and we have six. The pending motion before us deals with a particular committee report.

If anyone wishes to speak on this committee report and the pending motion, they are allowed to do so at the present time. However, in fairness and out of deference to the late arrival of Mr. Takitani, the Chair would like to recommend that this matter be deferred to the end of the calendar to enable Mr. Takitani to review the situation and develop his own position. It will be handled today, okay, unless there's a motion to the contrary, but it will be. This is merely a deferral. Any objection?

(No response.)

CHAIR CRAVALHO: If not, so ordered. Can we then proceed to the next item, a request from Mr. Charles Freitas. Mr. Nobriga.

MR. NOBRIGA: Mr. Chairman, we are still actively seeking more information and communications. 00-04 will be deferred.

CHAIR CRAVALHO: That's a request of the Committee Chairman?

MR. NOBRIGA: Yes.

CHAIR CRAVALHO: So noted. Mr. Freitas, you wish to make a comment for presentation to the Board?

MR. FREITAS: Okay. I have certain items I was going to talk about and information. I was going to even write them down per your request about, number one, being patient, number two, keeping a cool head, and number three, writing things down. After writing a bunch of items down, I found out that it was pretty

much focused on character assassination and I didn't want to go there.

But it's very clear to me that, number one, you know, after my current testimony that you folks, that the Board has -- do you not have them? Please bring your homework. You know, the whole testimony basically stated that I was in regulation with the Planning Department, and I followed that procedure at great expense. As you know, I have ten acres. It was subdivided or it was actually not subdivided. It was CPR'ed, and we allowed the other people to build their house and then I was going to build mine because we were waiting for finances. We did that. This is my second permit. The first permit went through.

The second permit is now to build a small farm dwelling for my family. The question is the legality. What is the legal -- what are the laws basically for the Water Department? The Planning Department says you can have two dwellings on ten acres and the second one has to be less than a thousand square feet. I don't understand how the Water Department can come in and say, no, no, we consider that a subdivision, but the Planning Department doesn't. So there's nonalignment here. There's incongruity, very incongruent.

That is my first question, the legality from the Water Department to go ahead and make its own rules apart and not following the Planning Department. The second thing, of course, is professionalism. I'm sure that, and again, I don't want to get into character assassinations, but I feel Mr. Craddick is probably a very competent engineer. Administratively, it's questionable, okay. And this is due to a bunch of -- and I don't want to get into hearsays, I'm not going there, but culturally insensitive and also back room discussions with other realtors, you know, I don't want to get into.

Another thing is the result of all this has created not only emotional stress, emotional abuse and

mental anguish to my family and myself. You know, I kind of question the competency of the Board in the sense of the length of time to resolve this issue. You know, if a student comes to me and asks me a question I do not know, at my next meeting, I will know that question or at least have a sufficient answer for him. I feel this length of time here has gone way beyond your ability to resolve this issue. Okay.

I asked in the very beginning that I not be a pawn in a political conflict between realtors, lawyers and the Water Board. As a family therapist, I know what triangulation is. I got pulled in it real clear. I said I don't want to play that game. It's case by case. There's no reason in my mind looking at everything that has been said and done that I don't have a permit to -- a signature on my permit from the Water Board. None. And, in fact, sometimes I get kind of a little ashamed at what are you guys doing here. This is a clear, simple issue.

It's about a family. It's not about water. It's not about a permit. What is it about? It's about the Water Board and the realtors. It's a real estate issue, not a water issue. I don't want to get pulled into it. So I'm going to be very firm.

CHAIR CRAVALHO: Mr. Freitas, the Chair --

MR. FREITAS: The final --

CHAIR CRAVALHO: Mr. Freitas, when the Chair addresses you, the Chair would like to have the proper respect and recognition and allow the Chair to say what he wishes to say and that would be very helpful. In the discussions you had with me, and as far as I'm concerned, everything is out in the open, I did ask you to be highly professional. And I believe that any aspersion that hits on the character of this Board as distinct or separated from any other element of Government, such an allegation is highly improper and lacks the professionalism I believe that I'm entitled

to expect from you.

The Chair would request that you extend to the members of this Board the highest possible regard for its professionalism and its objectivity because I believe to this date and to this time, this Board has functioned in that manner. Maybe not to your complete satisfaction, the Chair recognizes that, but the objectives and the quality and the character of this Board individually and collectively is a very high one and I would like to have your cooperation if possible. Thank you.

MR. FREITAS: And following that statement, I do agree that they're very competent people here. And in saying so, then I know that you will make a final decision that will be firm, absolute and that you could go home and sit on your toilet and wash your dishes in a sink and have the conscience that of your decision of today. This decision will be today. Any deferment I will consider that a negative results.

I believe that the time has come to stop passing the buck and deferring this issue. I believe that this issue should be, at this point in time, it's sufficient enough time for you folks to make a reasonable decision on this issue, and, you know, that's just about it, guys, I mean clear and simple, you know.

I'm within the parameter of the law, you know. I need to -- it's caused me great, great problems. My bonding agent lost my papers which took three months because of the time issue. I've lost contractors because of the time issue, you know. I've been patient with the Board, you know. I respect the Board. And it is my opinion that and also through my perspective that a reasonable decision can be made now at this time.

CHAIR CRAVALHO: The Chair appreciates your comments and the Chair would like to have the appropriate board member and appropriate chairperson

take this into consideration; however, the pending matter is for the deferral, and the Chair would like to suggest to you that we review this.

MR. FREITAS: Then if that's the case, I am protesting, and I'm going to have to be arrested and taken out of here. I want the decision, and I want it now. I've been very patient with the Board.

CHAIR CRAVALHO: The Chair will make a ruling. The motion that has come before us --

MR. FREITAS: I will go to any lengths.

CHAIR CRAVALHO: One moment. If it is your wish to enter into a discussion subsequently, be my guest. No problem. That will not defer or deter the Chair from making a ruling. I want you to understand that. The ruling of the Chair, the matter is deferred. The ruling of the Chair can be overcome and can be appealed. In order to appeal the ruling of the Chair, the appeal needs to be made by a member of the board, seconded by a member of the board. The Chair has ruled it is deferred. Proceed to the next item.

MR. FREITAS: I need a yes or no.

CHAIR CRAVALHO: It has been deferred. Your request is recognized.

MR. FREITAS: I need a question or no. I will accept that as a no.

CHAIR CRAVALHO: That's my pleasure and yours as well.

MR. FREITAS: Okay, fine.

CHAIR CRAVALHO: Shall we proceed to the next item. It has been suggested we have a sort recess, and I have no problem with that. If there's no objection, we have a short recess with the understanding the ruling of the Chair is not going to

be changed.

MR. FREITAS: Fine.

(Recess taken.)

CHAIR CRAVALHO: The meeting will be reconvened. Shall we proceed then to Item D on old business. Mr. Freitas, the Chair recognizes you.

MR. FREITAS: We I want to apologize for disrupting the meeting and follow the procedure of the deferral. And I do want to mention that it is because of my family and I will go to any extent to try and get that permit and I will continue to follow the procedure of the Water Board.

CHAIR CRAVALHO: The Chair wishes to extend its appreciation and thanks to you and to all of the other people who participated officially and unofficially in discussions with you that has resulted in this finalization. The Chair also wish to assure you that every possible consideration will be given to you.

MR. FREITAS: Thank you, sir.

CHAIR CRAVALHO: Thank you. Shall we then proceed to Item D under old business. Mr. Nobriga.

MR. NOBRIGA: Mr. Chairman, the committee wishes to defer action on Director's Report 00-15 to obtain additional information from the Director.

CHAIR CRAVALHO: Is there a second to the motion?

MR. HASHIMOTO: Second.

CHAIR CRAVALHO: You heard the motion duly made and seconded for the deferral of that particular committee report for the purpose of receiving additional information from the Director. The Chair would like to express the thought that whatever

information will be additional new information, not a repetition of the past. So ordered. No objection, so ordered.

Item E, discussion of possible action regarding the issuing of water meters. Along this area, there may be others of the audience and members of the public who would want to participate in the discussion, Donna Ting for one and Linda Broadway, so shall we proceed to get a motion made to get the matter before the body.

MR. HASHIMOTO: Mr. Chairman, the Legislative Committee Report was made on June 2nd and the report has been passed out. Therefore, the committee recommends and I move that the Board give the Director approval to prohibit the installation of any new meters or new service until December 31st, 2000, with the evaluation of the drought situation after the 12/31 date and retroactive to when the drought was declared on March 15, 2000.

MR. NOBRIGA: Second.

CHAIR CRAVALHO: Present motion duly made and seconded. The motion is for the adoption of the committee report and the recommendations contained therein for the enforcement of no meters being issued and granted retroactive to the declaration of the drought in March and up, effective up through 31st of December, the year 2000, this year. Is there any discussion on this particular motion or the subject matter? Ms. Ting, did you wish to participate?

MS. TING: Yes, I did.

CHAIR CRAVALHO: Please do. When you come in, it would be nice or if you indicate whether you are supporting in favor or against the motion or halfway in between.

MS. TING: I'm sitting on the fence, okay.

CHAIR CRAVALHO: Okay, fine.

MS. TING: Mr. Chairman, ladies and gentlemen, my name is Donna Ting, and I've been a realtor for 30 years on Maui. One of the reasons I'm here today is Harmon -- Harmon Spencer bought a property in Pukalani Terrace. This is the old section of the Terrace that was done by Frank Munoz and Donald Toganaka in the early sixties.

Taxes have been paid on this property for 40 years. He's ready to retire. He's paid for his water meter. He can't build because there's no issuance of a water meter. All these years taxes have been paid on that property. Water was allocated for that subdivision. It's hardship for him. It's a hardship for a lot of people. I mean I'm not only speaking about him. There are other people who have paid, it's also been a hardship. In essence, we're asking him to keep paying taxes and not being able to use his land.

And, you know, you guys are in a very difficult position because, as a realtor, we know prices are based on supply and demand. And essentially, what you're doing today is anyone who doesn't have a water meter now, their lots are fairly worthless. You can't do anything until meters will be issued, hopefully December or January of next year. Every year we've had a drought. May was the most -- the driest month in over 50 years. I know that. I live in Kula. I'm appreciative of what your situation is, but there's still a lot of people that are building and getting water meters and getting construction meters, so some way you need to formulate a more equitable situation where people who have been paying property taxes for more than 40 years have the right to use their land.

I mean essentially his land is worthless because no one can build on it. I don't have the answer. I'm just putting it out there for you. Meanwhile, any lot that does have a water meter, guaranteed \$20,000 more. It's worth that because people can build. They can use their land. Thank you.

CHAIR CRAVALHO: Any questions of Ms. Ting?

MR. RICE: Mr. Chairman. Ms. Ting, this gentleman that owned the land for 40 years, he hasn't been waiting for a meter for 40 years?

MS. TING: No, he has not been waiting for a meter for 40 years. He applied for a meter the end of March, early part of April. Taxes have been paid on this lot.

MR. RICE: He's decided to purchase the lot. He subsequently then has to pay taxes and chose not to build on it for 40 years.

MS. TING: Right.

CHAIR CRAVALHO: Any other discussion or question?

MR. HASHIMOTO: Why wouldn't they want to put a meter on there on the property?

MS. TING: Why didn't they?

MR. HASHIMOTO: Why wouldn't they want to put a meter, you know, before if they know they're going to use -- either they're going to sell the land or they're going to build on it, so why wouldn't they put a meter on there? I'm just asking the question.

MS. TING: He lives in Honolulu. In Honolulu, they don't have the situation that we do on Maui where water upcountry is mostly surface water. They don't have that situation. They have aquifers over there, so he did not realize the situation. Had he realized, he would have applied for a meter a long time ago. Thank you.

CHAIR CRAVALHO: Any further discussion? It is the understanding of the Chair that the motion is for the adoption of the committee report, which does carry

the December 31st deadline of the year 2000. I believe -- the Chair believes also that if in the wisdom or the lack of wisdom, the date is changed, any time the date changes, the date will be effective.

Yes, there's another person wishes to testify.

Yes, ma'am.

MS. BROADWAY: I'm Linda Broadway. Anyway, I'm Harmon's friend and I would like to I guess appeal to you guys, you know, maybe and to other people that have the same situation that it could be decided on on a basis of the type of property it is versus, you know, like if it's a subdivision that's been there for years, that maybe you guys could allot meters to certain individual people on the basis of how many years that subdivision has been approved. And I feel like the charity lion here talking in the Wizard of Oz here, but I'm not a speaker. I just want to appeal to you guys to do it maybe on a one-on-one basis as you see fit. I know you guys know your business, and I'm in awe of the way you handle it. I appreciate -- I do live upcountry. I follow the rules as much as I can. My daughter helps me. And I just want to appeal to you guys to give this a second thought on Harmon's water meter.

CHAIR CRAVALHO: The Chair would like to bear the indulgence of the members of the board. If in retrospect we take a look at what has been done within a relative short time, it has brought a certain degree of stability. The question of the granting of meters has been before this Board for many, many times. The question of the utilization of existing lists or nonexisting lists and the alleged propriety or impropriety of granting meters has been before this Board to my knowledge for almost a year and this Board has been working on it.

This particular decision of the Board is in response to requests that have come in, and it is implicitly understood that the other questions raised along the line with respect to the setting up of a

priority listing, a system of applications will be worked on by the respective committee. And the deadline or the time frame of December 31st has not been plucked from up in the heavens. That has been a very definitive request that came to this Board by way of the Farm Bureau in the past that did make these recommendations that as we moved in a number of areas and as we did provide for additional services and water to the farmers up there in particular, that we also be aware of the impact, real or potential, of the granting of additional meters.

And keeping in mind at all times that the farmers only source of income is through the continuation of their farming enterprises. And while we do understand that there may be a slight waiting period during this traumatic era where the rainfall being so small statewide and nationwide that the period of an additional six months, while it may be painful, it is not necessarily of a major catastrophe, this unknown. So if we bear with the Board and give the cooperation to the Board that the Board is needing, I'm sure we're going to resolve a lot of these questions.

Parenthetically, the Chair wishes to point out that we have reached the agreement with the East Maui area, the right of withdrawal and if we keep the pumping going as we're supposed to and Mr. Craddick, the Director, can testify that I'm on the phone with him almost every day to make that and to questioning the amount of storage that's in there and why there has been any dip or increase. So we are, this Board is on top of the situation. And if we do absolutely nothing after December 31st, early January, then you take us to the pillar and give us our punishment, but we are working.

And in this particular manner, the Chair would like to point out that at the present time, the Finance Committee headed by Mr. Rice is working on the operating budget which will go into effect on 1 July. Mr. Nakamura, who is not with us today, and his

Committee will be meeting today on capital improvements -- tomorrow rather. And in addition to that on today's agenda, change my hat slightly right now, our credit union has assured or made advances to the Board of Water Supply coming up on the agenda of providing a million dollars to work on this problem upcountry to continue a continuation of water availability.

So there are very positive elements. And if we can beg on your patience and understanding for the next several months, then I think we could all be working in a very positive manner and I would like to be able to count on that. And I don't hear you saying no, so I'm assuming it's a yes.

MS. BROADWAY: Well, my other thing is a building process takes at least six months, right, so why can't we install a water meter knowing that it's not going to be even in use for six months; is that kind of an odd request?

CHAIR CRAVALHO: What's the purpose? Well, I know what the purpose is. Sell lots, commissions, whatever, which is okay. That's legitimate. But what we are saying is perhaps for the next six months we just have to think about a moratorium on this particular question. This Board and these committees have always acted in a positive manner when there have been bona fide emergencies present and this Board will continue to do so, I'm absolutely sure. So kokua a little bit. Thank you.

The matter before the Board was the action on the recommendation of the legislative committee. While the language makes reference to giving approval for the Director, too, the intent, this is for the benefit of counsel, the intent of the Board is not just to give approval but also to, correct me if I'm wrong, that thou shall not issue meters, okay. That's the intent, so no one can say, well, I wasn't sure. Thou shall not, and this is in keeping with the Director's own statements made in the past with

respect to when the question came up on the adequacy of the source, and Brother Starr, who was sitting here I believe or thereabout, said, "What are you going to do about it? You're not going to do anything, right about issuing meters?" And I said, "I will not." So we're just carrying it out. Thou shall not, and none of us Board members come and say, hey, Mr. Director, please, chicken this one. All in favor say "Aye."

VOICES: Aye.

CHAIR CRAVALHO: Contrary?

(No response.)

CHAIR CRAVALHO: Carried. Not bad.
Mr. Craddick.

MR. CRADDICK: The applications that we do have with money, I guess if those people want that money back, we will reimburse that money.

CHAIR CRAVALHO: Just as an aside, to me it's massively immoral to have accepted money and kept it knowing that meters could not be given. That's beside the point, but to me, that's really immoral because when it suited the Department, and I don't want to get into that, when it suited the Department, it did make refunds to certain places. I'm aware of that. Let's have an even playing field. Okay. And leave well enough alone.

There's an old expression, if one goes into the barnyard and stirs up the manure, the only and first result you get is a greater stink. Communications request for Shawn Kajiyama for extension of a meter, refer to the Oversight Committee. So noted. Request from Mr. O'Connor, same action.

MR. NOBRIGA: So noted.

CHAIR CRAVALHO: Communication concerning credit union concerning funding, et cetera, referral to the

finance and capital improvements committee. I understand we have a representative here from Ulupalakua Ranch who may wish to comment on that particular item.

MR. DURSO: Tony Durso representing Ulupalakua Ranch. We received notice that the Kula Community Credit Union was going to make funds available for improving upcountry supply, and we just wanted to state for the record the ranch is very much appreciative of this action and is willing also to lend its support in any way, shape or form to this and please recognize the Board and the Department can rely on that cooperation and we strongly encourage you to seek it. We would delight in being able to participate in improving the system. Thank you.

CHAIR CRAVALHO: Thank you very much. Next item, request of NJM Consultants on behalf of AT&T Wireless. The Chair would like to refer this to the Committee of the Whole. The matter of Mr. Jackson has taken up and it had not been approved, however, it stays on the agenda for next meeting. Other business, copy of a letter from Isaac David Hall to Timothy Johns with respect to the lease of the water rights of the East Maui area. May this be referred to the Rules Committee because the subject matters contain pretty much an agreement which we have and which we hope to be able to collectively work and be able to implement after 1 July. Mr. Craddick, update on water issues discussed at public meetings. It's all yours now.

MR. CRADDICK: I don't believe there were any public meetings that we had.

CHAIR CRAVALHO: Mr. Craddick.

MR. CRADDICK: Just the staff report here.

CHAIR CRAVALHO: Yeah. Anything you wish to cover on it?

MR. CRADDICK: Well, the ditch flow is very

low. We did have 80 percent in Piiholo yesterday, but we are trying to fill the Olinda tank, so that came down somewhat there, but we will get that back up in a few days. Waikamoi is over 80 percent, not Waikamoi, Kahakapau is over 80 percent but the Waikamoi reservoirs are empty. The Olinda treatment plant is putting out .3 million, and the reason for that again is we're pumping water out. The demand is in the range of still between about 7 and a half to 10 million gallons during the week, so the drought conditions have not changed any.

CHAIR CRAVALHO: Question, Mr. Craddick. Are we continuing to utilize the product of the H'Poko wells, are we pumping from that?

MR. CRADDICK: Yes.

CHAIR CRAVALHO: So when we make reference to what is withdrawn from the ditch, yeah, that does include whatever contributions we may have made through the H'Poko wells?

MR. CRADDICK: Well, in the total demand, yes.

CHAIR CRAVALHO: Yes, in the total.

MR. CRADDICK: That's correct.

CHAIR CRAVALHO: So if we say the total demand is 8.1, 8.1 is not coming from the so-called EMI minus whatever we have put in?

MR. CRADDICK: Right.

CHAIR CRAVALHO: So from an impact situation on the withdrawals by the Board of Water Supply of water that's normally, yeah, A&B, it's not 8.1, it's 8.1 minus whatever we have put in from the H'Poko wells.

MR. CRADDICK: Plus minus whatever we're producing at Olinda and Piiholo.

CHAIR CRAVALHO: That's what I mean. So the total impact is not that great.

MR. CRADDICK: That's right.

CHAIR CRAVALHO: Because we are putting in and we are getting some amount of rain, so I think that needs to be clarified. And we need to also express our thanks and appreciation for the cooperation we've had from A&B and from EMI. I think they've done -- they've been very, very helpful in a positive manner on these particular questions, but we need to keep in proper perspective that it's not all from there. Part of it is coming from the public resources.

MR. CRADDICK: That's correct.

MR. HASHIMOTO: Well, I got a call from Warren Watanabe Farm Bureau. And at their board meeting, they wanted to know how -- they know that water is being pumped up to keep the reservoirs full, but they're just wondering how much longer that can be kept up or whether or not they have to cut back plantings and stuff or what's the future. For the past for summer, I guess it's hard to predict, but guess they wanted an inclination.

CHAIR CRAVALHO: I think, I'm speaking personally, it will be a cold day in hell when we have to put restrictions on the farmers. I think if we exercise prudent, yeah, management, we're going to be able to sustain. That's my gut feeling, and under the very, very, worst circumstances, that means absolutely no rain at all inside, and heaven help us all, but we haven't reached that stage yet, not by a long shot, just for the sake of discussion and nothing else, we have a certain amount that comes in from Olinda area, et cetera, whether it's 200,000, half a million, whatever, there is an amount. We have 1.5, 1.7, whatever it may be from H'Poko. We have the Dowling wells coming on board, which may be July or August.

MR. CRADDICK: Actually today or tomorrow.

CHAIR CRAVALHO: I'm very generous. Today or tomorrow. What is the maximum we could get from there?

MR. CRADDICK: I think it's 1.6 million.

CHAIR CRAVALHO: You begin to add these numbers. Maximum H'Poko, how much?

MR. CRADDICK: I will say 1.5. I notice on some days it's 1.6.

CHAIR CRAVALHO: 1.5 plus another 1.5. That's three mil, plus whatever 200,000, 300,000 normally, so we're about four mil that we can be confident of. If for the sake of discussion and nothing else, it's necessary to get into an emergency situation on that well in the Pulehu area, we might be able to get some fast action there, fast meaning between now and the next couple of months, which may add, yeah, another mil, okay.

If we take that one mil from there and we put it into that ditch system and then we can further withdraw a larger amount on the other side, yeah, we will be all right. We will be close to about five mil, five mil plus/minus. So even if we get into a situation of a restriction of 10 percent as we did in the past, and I don't anticipate that happening, but respect to continuation for the farmers.

I think we're in a very, you know, very stable kind of a position if we don't panic, if we really don't panic. Now, it is the understanding of the Chair that sometime in the past there had been some discussion and/or negotiations or agreements bringing some of the water from the east area, Haiku area down here, Haiku well, am I right or wrong?

MR. CRADDICK: From our Haiku well?

CHAIR CRAVALHO: Yeah.

MR. CRADDICK: When you say down here, Central Maui?

CHAIR CRAVALHO: Central Maui.

MR. CRADDICK: Not that I know about.

CHAIR CRAVALHO: Yes, you look at the communication you got from Isaac Hall.

MR. CRADDICK: Well, I know he alleged that.

CHAIR CRAVALHO: I think I know Isaac fairly well. He wouldn't get himself out on a limb. My feedback tells me that discussions were held by the Department, not just with Isaac, with a potential contractor who had been led to understand that this would be granted. He's no longer on Maui. The Chair also understands or has been led to understand that equipment was brought in and stored in our base yards, so there's merit to what I'm saying and there's credence.

MR. CRADDICK: That's not exactly the story, but if you want to hear it, I can tell you.

CHAIR CRAVALHO: I've had experience of listening to your stories. The Chair would like to point out they are merely stories.

MR. CRADDICK: The contractor that has the equipment there is the contractor for the pipeline.

CHAIR CRAVALHO: Sir, sir, that's not what I'm talking about. I'm talking about the one where discussions were held with respect to bringing water from over there this away, and this particular contractor is alleged to have stored some of his equipment at the base yard, okay. That's what I'm talking about.

MR. CRADDICK: Yeah, that's what I'm talking

about, too.

CHAIR CRAVALHO: And you're saying it never happened?

MR. CRADDICK: You want to listen?

CHAIR CRAVALHO: No.

MR. CRADDICK: Okay. I won't say anything then.

CHAIR CRAVALHO: That's better. Because people where I got my information from are contractors were involved in it. Just as a matter of the course, in terms of timetable between now and June 30th, we're working on budget, yeah, some negotiations going on, budget to be all finished for implementation come July, the Chair would like to point out that the Rules Committee will start working vigorously during the month of July. And all the questions that have been coming up with respect to meters, lines, assurances, promises, real or imagined will be reviewed. Also, the authority for these decisions.

It is the opinion of the Chair that there may have been practices based on rules and regs of the Board, which independent of the Chair do not have the force and effect of the of the law. Because in order for anything to have force and effect of the law, as far as the Chair is concerned, you have to follow the process, submit it to the Mayor and to the Board to have it enacted into ordinance.

If it isn't done, the rules and regs are just that, rules and regs which have no force and effect of law. Now, if such is the case that we need to reduce them, we go reduce them into proper positions we can properly enforce. The objective is to have something positive at hand, not go on a witch hunting situation, not at all. But let's go perfect what we need to do so we move and move fast. We have a meeting this afternoon, Mr. Chairman?

MR. TAGORDA: Yes.

CHAIR CRAVALHO: One o'clock.

MR. TAGORDA: Eleven.

CHAIR CRAVALHO: Anything else to come before the Board?

MS. NAGO: It was deferred until the end of the meeting.

CHAIR CRAVALHO: Niehaus, that's correct. I should have done that the first time, too. Yes, defer to the end of the calendar the question, Mr. Niehaus. There is a motion that was made by Mr. Nobriga and seconded for granting of the request. Mr. Niehaus.

MR. NIEHAUS: May I speak.

CHAIR CRAVALHO: Absolutely.

MR. NIEHAUS: I was impressed when you said we would like to have a level playing field a little earlier, and that's really the way I feel. Mr. Tagorda came in and said he studied this extensively. He doesn't know the facts. He means well. He's a good man. I'm not arguing that. But just so you guys understand, I put \$38,000 into fire protection as per the Water Department's exact specifications.

Now, \$38,000 of my money that I just finished paying off two years ago. Then I was told by your engineer that you hired, Doug Gomes or whatever his name is, to put in your treatment plant that he was never informed about us people in between, the 11 families, and he didn't take us into consideration. And that's why we have no water pressure.

So because you didn't inform your engineer when you built the treatment plant, guys like me who put out the \$38,000 no longer had fire protection. I did

it exactly as you required. Now, Mr. Gomes testified to me to that effect. Now, he will testify to you or to a judge to that effect. Secondly, Ms. Powell, Natalie Powell, who was a member of your Board, came up to me at a meeting -- for six years I've been trying to do this.

I emphasize with this man who sat in the middle of the room. It goes on and on. Mr. Cravalho, you've been a light in this respect because you seem to want to get business done. She told me all I have to do is build a 30,000-gallon water tank, that's what they've allowed this guy, John Powell in Ulupalakua and another 20 other guys to do. She told me that in your meeting. So I went ahead in good faith and put a 50,000-gallon water tank in for another \$20,000. So now I'm \$60,000 into my fire protection, and Mr. Tagorda comes in and starts talking about dwellings, has nothing to do with what's before the Board.

It doesn't matter whether I have four dwellings or 100 dwellings. It's none of his business. Secondly, I'm not having a subdivision up there. What I have is a farm. I have eight acres of protea. I have 40,000 native trees, 40,000 that I'm growing. I need some help. I'm 57 years old. I can't do it all myself. That's what the house is for. It's a tiny 20 by 30 house. It's not some subdivision I'm putting in there. I'm trying to just make my life go forward.

I'm out \$60,000 that I did in good faith because of Water Department -- in writing from the Water Department what to put in, and I have your engineer that you hired tell me specifically that he was never informed about us being there, and that's why we have no water pressure. That sounds like it's not my fault. It sounds like somebody came up short, maybe your Director, I don't know who. Somebody didn't inform your engineer.

Why should I have to pay \$60,000 for that if Ms. Natalie Powell comes over and says just build a 30,000-gallon water tank. I build a 50 because I

thought you might change your criteria by the time I've gotten years into this. Six years I've been going through this.

I built my water tank. I did it in good faith. I have nothing against you guys. You've got your water line on my property. It's a level playing field. You know, you didn't inform your engineer. That was your shortcoming. I'm not even uptight about the 40,000 as long as I can go forward. Now, if you deny me, now I'm going to be uptight because you leave me no way out. You've got your water pipe on my property. No problem. Who needs me anymore?

I'm telling you, treat me like a typical citizen. Don't treat me like I'm some kind of dirt. I'm not going to go for it one way or another. I guarantee you, and I'm not threatening you guys personally. I'm just saying you leave me no alternative to react, and I will react. I did everything asked by your board members, by your engineering department. I followed verbatim their letters putting in fire protection.

What else can I do? How can \$60,000 -- everybody just says, well, forget that guy. \$60,000 is a lot of money. I mean it took me five years to save that kind of money. I think you ought to at least consider what I'm saying and think if it was happening to you the exact same thing and you had a pipe on your property taking three acres and you had all this that you did in good faith, which I did in good faith. I never once varied from the rules.

I mean we have Ms. McKinney in '94, 94-23. I didn't subdivide in '93. I consolidated. Get the facts straight. I didn't make any new laws. How come you allowed in '93 and not for me? Where is the level playing field? You say one thing. You do another. I know I'm at your mercy. Now everybody is uptight and forget this guy, but I'm telling you, you leave me no choice. I've done everything in good faith. It cost me 60,000. It's time for you guys to do -- all I'm

asking is a waiver for fire protection. I have all my stuff in there. You've allowed plenty of people to do it before. It has nothing to do with how many houses I have. Come look at my place. I'm building a 20 by 30 for a farm worker who can help me tend my 40,000 native trees.

It's not something where I'm renting out the house and collecting money and riding high. It isn't that kind of deal. If you want to come up, please, all of you come. Look at the pipe that sticks 30 feet out of the ground that I have to live with every day, big holes along my driveway. It's got to be a level playing field. Either you do it or you don't. Get your pipe off there and I'll leave. I won't ask you for fire protection. I won't ask you for anything. You've got what you want. Give me what I want. Thank you.

MR. TAGORDA: Mr. Chairman, may I say something since my name was mentioned while Mr. Niehaus was giving his statements.

CHAIR CRAVALHO: The Chair will be very liberal. Really shouldn't, but go ahead.

MR. TAGORDA: Thank you so much, Mr. Chair. I have with me September 1, 1993, agreement with subdivision agreement signed by Mr. Niehaus and wife. In that agreement, Mr. Niehaus, I want you to listen. There's a critical provision in that agreement. It says right, whereas, a subdivider has submitted an application to consolidate and subdivide the consolidated property to four lots.

MR. NIEHAUS: That's not true.

MR. TAGORDA: I'm not done yet. The subdivider shall comply with the requirements of the rules and regulations of the Department in effect at that time if and when any lot within the subdivision is further subdivided or developed, meaning to say you're adding some dwellings there. That's what it is right here.

MR. NIEHAUS: I never subdivided.

MR. TAGORDA: It's a subdivision. Thank you.

CHAIR CRAVALHO: The pending motion before the body is the granting of the request, which is the waiver for of the fire protection requirement. I believe we've had adequate discussion for over a period of hours. Shall we then proceed with the vote. All in favor of adopting the committee report and granting the waiver signify by saying "Aye."

VOICES: Aye.

CHAIR CRAVALHO: Opposed?

MR. TAGORDA: Opposed, nay.

CHAIR CRAVALHO: Inadequate number of votes, so it's placed on the agenda for the next week.

MR. NIEHAUS: I didn't hear that, sir.

CHAIR CRAVALHO: Place on the agenda for the next week because we didn't have five votes at the present time. Thank you. Any other matter to come before the Board before we adjourn?

(No response.)

CHAIR CRAVALHO: Hearing none, the meeting is hereby adjourned.

(The meeting adjourned at 10:20 a.m.)

"By Water All Things Find Life"

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