

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
NEGOTIATIONS COMMITTEE MEETING

Taken at the David Trask Building, Conference Room 207,
Wailuku, Maui, Hawaii, commencing at 10:30 a.m. on
September 28, 1999 pursuant to Notice.

REPORTED BY: GLORIA T. TAVARES, RPR/CSR #262

A P P E A R A N C E S

Members present:

Bob Takitani, Chair

Jonathan Starr

Howard Nakamura

Peter Rice

Staff present:

David Craddick, Director

Fran Nago, Board Secretary

Shirley Falcon, Clerk Typist

IWADO COURT REPORTERS, INC.

CHAIRMAN TAKITANI: Good morning, I would like to
call the Negotiating Committee meeting to order. It's 10:30
a.m. September 28, 2000. The meeting is being held in the HGEA
conference room 205. We have present negotiating committee
members Mr. Nakamura, Mr. Rice, Mr. Hashimoto is absent, myself
Bob Takitani, and Mr. Cravalho is a departing member.

MR. TAGORDA: I will excuse myself.

CHAIRMAN TAKITANI: I want to report that the
committee is working diligently. We had a very critical
negotiations with Maui Land & Pine and the Central Maui Source
Joint Venture. We come down to the nitty-gritty in both areas,

and I think we'll be able to make some progress. But it will require a lot of hard work and some accommodation on both sides.

What I would like to request is authorization for the Chair to continue to pursue opportunities to settle the Central Maui Source Joint Venture and Maui Land & Pine matters and convene the interested parties when there is sufficient common ground to resolve the disputes.

MR. RICE: So moved.

MR. NAKAMURA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Rice and seconded by Mr. Nakamura. Since those are the only members present, I think that's the consensus.

Basically we're just saying that we need to be able to discuss matters with these people. And when there's sufficient common ground, then we can call a meeting and try to come to a conclusion on the matters. Beyond that, because of the very sensitive negotiations, Mr. Starr, do you have anything -- I think we have to go into executive session if we want to go further into some of these matters.

MR. STARR: Haven't there been meetings taking place?

CHAIRMAN TAKITANI: There had been two meetings with the Central Maui Source Joint Venture. The meeting was conducted to, first of all, to decide whether mediation was the best course of action. And it was jointly decided that it would probably be more productive if we did not do it in mediation mode and decided it among the parties directly. That was one meeting.

The second meeting on June 24th, we just kind of tried to review where we stood from previous meetings to try to decide what areas we commonly agreed upon and what areas we did not. And we still have disagreements on one principal matter, which I think you are --

MR. STARR: What were the dates of those two meetings?

CHAIRMAN TAKITANI: June 9th and June 24th.

MR. CRADDICK: Bob, were those meetings or just discussions?

CHAIRMAN TAKITANI: Discussions.

MR. STARR: Who was present at those meetings?

CHAIRMAN TAKITANI: Roy Figueroa, Marilyn Ching (phonetic), I believe Clark, Peter Rice, and myself.

MR. STARR: Were those held in accordance with the Sunshine Law?

CHAIRMAN TAKITANI: Well, these negotiations have been conducted especially with the mediation, as you know, Jonathan.

MR. STARR: Were these meetings noticed?

CHAIRMAN TAKITANI: Why would they be noticed when they are meetings between the parties?

MR. STARR: Well, I can quote from the Sunshine Law and ask whether it was held in accordance with the Sunshine Law. We have counsel present. If committee members of the Board hold a committee meeting, what needs to be done for those meetings to be legal?

MR. FUKUSHIMA: This committee meeting -- this committee was formed by the Board with the expressed purpose of investigating and negotiating with the joint source venture.

MR. STARR: When was that done? What board meeting? I'd like to see that.

MR. FUKUSHIMA: I'm presuming --

MR. STARR: Well, don't presume.

MR. FUKUSHIMA: I would have to know under what circumstances this committee was formed.

MR. STARR: That's what I'm asking. I know there was a negotiating committee formed, and I have no problem with that. I certainly want to see it do its job. I just want to

be sure that the meeting that it has held in the past and meetings that it will hold in the future are done in accordance with the Sunshine Law.

Now, to my understanding, the only way the meeting is legal is if the committee is specifically authorized to act for a specific matter and the venue where and when it's going to do that is told to the Board. Do you have the Sunshine Law book with you?

MR. FUKUSHIMA: Not necessarily.

MR. STARR: Do you have the Sunshine Law?

MR. FUKUSHIMA: I have the Sunshine Law. I don't have the amendment which permits -- which speaks to permitted interaction which does not fall under the requirements of the Sunshine Law.

MR. STARR: Could you get it for us so we can read it? I think that's what -- do you have your folder, David?

MR. CRADDICK: For what?

MR. STARR: What the Sunshine Law is.

MR. CRADDICK: I don't.

MR. STARR: I'd like to actually hear what the law states because I just want to be sure that however it proceeds is done with --

MR. FUKUSHIMA: Can we get one next door, the volume II?

MR. NAKAMURA: Mr. Chairman, I think Mr. Starr raises potentially some interesting points, but I think that those are issues that perhaps need to be raised with the full Board in terms of the procedure for, quote, negotiations in the scope of authority of the negotiating committee and how the Sunshine Law is applicable to negotiations. I don't see any -- I don't think we'll resolve anything in this particular committee. I think that perhaps the corporation counsel needs to review it and report back to the full board in terms of an overall policy and overall procedure.

MR. FUKUSHIMA: I can inform the Board what it can do under the law, and what exception to the Sunshine Law is applicable, and how those exceptions to the Sunshine Law should be applied in this situation.

MR. STARR: I'll be very clear. I believe that the June 9th and June 24th meetings were held illegally according to the Hawaii Revised Statutes. And I -- I don't intend to pursue that or to cause anyone any harm. But I just want to be sure that we proceed in a manner that is legal, so that whatever comes out of it is defensible. And I don't want any action that comes out of a meeting that's not legally held to be something that we're asked to stand behind. Because I certainly will not stand behind it myself as a board member.

CHAIRMAN TAKITANI: We share the same concern. We want to be doing everything legally.

MR. STARR: Let's hear the wording of --

MR. FUKUSHIMA: Two or more members of the Board, but less than a number of members to constitute a quorum for the Board, may be assigned to investigate a matter relating to official business of their board, provided that the scope of the investigation, the scope of each member's authority are defined at a meeting of the board. All resulting findings and recommendations are presented to the Board at a meeting of the Board and deliberation and decision making on the matter investigated, if any occurs, at a duly noticed meeting of the Board held subsequent to the meeting in which the findings and recommendations of the investigation are presented to the Board.

Now, if those particular circumstances exist, then there is an exception to the Sunshine Law. No agenda, no open meetings necessary. These are permitted interactions between board members when --

MR. STARR: The last discussion at a board meeting that I remember, and I'm sorry but I don't have the dates, but I do have them in my file, at a meeting where I asked whether any negotiations had taken place, or were taking place, or were contemplated. And I was told that, no, no negotiations were at

that time contemplated, and that I would be informed and the Board would be informed in accordance with the Sunshine Law before they occurred.

And I believe that there's not been any further discussion at a board meeting since then. So I think we should go on the basis of whatever has happened until now has not happened. If it did happen, then it is certainly open for questioning.

MR. RICE: Mr. Chairman, I don't recall any such conversation at a meeting. In fact, if you were to ask me -- and I only attended one meeting not two -- if you were to ask me if I, as a board member, knew there were negotiations going on, I would say, yes. I think everybody on the Board was aware of the fact that the negotiations were going on.

MR. STARR: How?

MR. RICE: How? I don't know how. The negotiations went on before I was on the committee and everybody was aware of it.

MR. STARR: Because they were discussed at a board meeting.

MR. RICE: I don't think so.

CHAIRMAN TAKITANI: Part of the MOU -- the EMI, MOU called for reinstatement of the Central Maui Source Joint Venture negotiations and to be completed within one month. That's what triggered the action.

MR. FUKUSHIMA: If I'm not mistaken, I believe there was a charge placed by the Board to continue these negotiations and just parenthetically investigate when an investigative committee is formed. I think the word "investigative committee" has a pretty broad connotation. And negotiations, in my mind, are easily fit within the broad definition of what an investigation could entail.

Now, that aside, I believe there was authority placed on the Negotiating Committee to do these types of negotiations. And for want of a better word, this type of investigation. And I don't believe, based upon that, that there has been any violation of Chapter 92 because of the

exceptions that's contained in Chapter 92.

MR. STARR: Well, I differ with your reading of that. I feel that it's very clear that the scope of the negotiations must be authorized by a vote of the Board, and I don't recall that having taken place. If it has taken place, I don't remember it, then I would be happy to apologize. But since --

MR. RICE: You were part of the committee.

MR. STARR: What?

MR. RICE: You were doing the negotiating.

MR. STARR: Yes, I was voted in as part of the committee, and I was never removed as part of the committee either. But the last time the committee came before the Board, the Board voted not to proceed any further with any action until the Board -- something changed and the board was ready to proceed. That was how it was left.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: Actually, the negotiations that went on were no committee. There was a negotiating team of yourself and Dorvin. Once Dorvin went off the board, it was just you. And eventually Jonathan came on there. And I don't think -- Dorvin was allowed to remain on there, but no longer as a board member, for a little while until he was signed off. But it never was a committee of the Board. It was a negotiating team to report back to the Board.

Now when -- my understanding of what happened is when the Board formed these various committees, that negotiating team dissolved. And the negotiating team then became the chairman of the negotiating committee. And beyond there, I guess if they are going to set up new negotiating teams and things like that, or however it's going to be done, the chair --

MR. RICE: In fact, didn't we have a motion at a meeting or some confirmation that Bob is going to continue? I think that was the discussion at the meeting.

MR. CRADDICK: Yeah, I believe so.

MR. RICE: And since then, I don't know that we have had any discussion at the board level. We don't have anything to report.

CHAIRMAN TAKITANI: Yes. I believe once the committee structure was adopted by the Board, and all the committee chairs were appointed by the Chair, the Chair then was empowered to seek members for the various committees. And subsequent to that, that's how the EMI, MOU was conducted and subsequently we have gone on to other negotiations which were part of that --

MR. STARR: I would think that anyone desirous could get those negotiations ruled illegal too with a simple application to a court of law. Because the only permitted interaction of members is to investigate a matter relating to the official business of their board, provided that the scope of the investigation and the scope of each member's authority are defined at a meeting of the board. Now, if that never happened, then I think it's pretty clear that it is not --

MR. RICE: I think that's absolutely incorrect. It did happen at a meeting of the board in which Bob was asked, because we discussed Dorvin Leis's position not being a board member. It was very clear at that time that Bob was going to continue heading that negotiating committee. So that was at a board meeting.

MR. STARR: I would like to see the minutes of that where it defines the scope of the investigation, the scope of each member's authority. If they are defined at a meeting of the board, I don't remember it. Perhaps I missed it.

MR. CRADDICK: Excuse me, I think that was -- I don't think it was a committee. It was just a negotiating team, if you will. It was not a committee. That's why there's only two members on the board involved in there.

MR. RICE: Whatever you want to call it, we're

dancing around semantics here.

MR. STARR: We have a three-member committee doing this.

MR. CRADDICK: Yeah, I think that's why they noticed the meeting here.

MR. STARR: Well, yes, but they did not notice those meetings, and that's what concerns me.

MR. CRADDICK: But there were three people at the meeting.

CHAIRMAN TAKITANI: Well, he attended one.

MR. RICE: I attended one.

CHAIRMAN TAKITANI: The June 24th meeting was the meeting where there were three people involved. But the clear intent of the Negotiating Committee is to resolve any kind of matters that are in dispute. That's all that the investigative committee or the negotiating team has been attempting to do.

MR. STARR: I have no problem with that. I would like it to be able to continue. I'm not fighting that, Bob. All I'm saying is I want to be sure that it is done in accordance with the law. And I don't think, in my opinion, it is not. And I suggest that it's to start fresh in a fashion that is in accordance. Because it would be a lot easier than me having to go through the process of ascertaining whether it is or not. I think you can understand my drift.

CHAIRMAN TAKITANI: I disagree. I think we have, but it would be -- at this point, it's best that we insure that we are proceeding --

MR. STARR: You are welcome to show me the minutes of a board meeting and prove me wrong. If it's in the minutes of a board meeting, then I'm happy to say that I made a mistake. And I do want to be sure that we do have minutes of this meeting made available to us.

CHAIRMAN TAKITANI: Okay. So we'll leave it with corporation counsel to be sure --

MR. FUKUSHIMA: Well, I think it's a matter of if you are going to reaffirm or affirm whatever charge the committee or members of that committee have, what authority they have, we should probably put it on the next agenda to be discussed as an action taken to --

MR. STARR: Well, bring it to the chair.

MR. FUKUSHIMA: -- to clarify the record if that's all that's necessary.

CHAIRMAN TAKITANI: Yeah. Okay. If not, the meeting is adjourned.

(The deposition concluded at 10:55 a.m.)

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