

County of Maui Water  
Supply

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
COMMITTEE OF THE WHOLE MEETING

Taken at the County Building, 200 South High Street,  
7th Floor, Wailuku, Maui, Hawaii, commencing at 1:00  
p.m. on March 6th, 2001.

Reported By: Rachelle Primeaux, CSR #370

ATTENDANCE:

Members Present:

Orlando Tagorda, Chair  
Howard Nakamura  
Clark Hashimoto  
Jonathan Starr  
Mike Nobriga

Staff Present:

Herbert Chang, Engineering  
Herbert Kogasaka, Engineering  
David Craddick, Director  
Howard Fukushima, Corporation Counsel  
Fran Nago, Secretary  
George Tengan, Deputy Director

Others Present:

Paul Horikawa  
James and Antoinette Amaral  
Sheila Fujikawa  
Peter Stolle  
Mr. And Mrs. Cabrinha  
Ms. Robello  
Trish Fernandez  
Phil Christopher  
Gerald Hokoana

IWADO COURT REPORTERS, INC.

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CHAIR TAGORDA: Maui County Board of Water Supply Committee of the Whole Meeting, may we please come to order. It's Tuesday, March 6th, 2001. It's 1:03, and the meeting place is at Committee Conference Room, County Building, 7th Floor, 200 South High Street, Wailuku, Maui, Hawaii. Ms. Nago, would you please call attendance.

MS. NAGO: We have Chair Orlando Tagorda, Clark Hashimoto, Michael Nobriga, Jonathan Starr, Howard Nakamura. We have staff member David Craddick. We have James and Antoinette Amaral, Paul Horikawa, Sheila Fujikawa, Trish Fernandez, Peter Stolle, Mr. and Mrs. Cabrinha and Ms. Robello.

CHAIR TAGORDA: Thank you. We have minutes of August 9th, 2000.

MR. NOBRIGA: Mr. Chairman, I move that we receive the minutes pursuant to 30 days review in which case if there are no corrections, the minutes shall be filed.

MR. STARR: Mr. Chair, I second the motion.

CHAIR TAGORDA: You heard the motion. It's been seconded. The minutes will be filed subject to 30 days review. The Chair is now ready to receive oral testimony from the public, but those persons who have request for action will be permitted to testify when that request is taken up. Any members of the public who wants to give oral testimony? Seeing none, agenda on Roman Numeral 5, Committee Discussion Recommendation Item A, Communication 00-38, Request from Paul Horikawa on behalf of Mr. and Mrs. James Amaral for a water meter for Lilikoi Farm Lots in

exchange for water meter under service number 934-01000.

MR. HORIKAWA: Hi, good morning, Chairman Tagorda. My name is Paul Horikawa and also present today is Mr. and Mrs. Amaral. Do you mind if we sit at the table?

CHAIR TAGORDA: Go ahead.

MR. HORIKAWA: My voice is often times not as loud as I would like it to be. If I'm closer to the mike, I understand that the court reporter has some assistance by being able to hear me, which I think would greatly help our request.

We've appeared -- we submitted our letter in early August requesting there be an exchange of the water meters. My clients -- by way of history, my clients are in the process of subdividing a piece of land out in Haiku. It's designated as TMK 2-7-022-005. It's approximately 6.87 acres.

And what they plan to do is create three lots on the subdivision and for the purpose of conveying the land to their children after the subdivision is completed. We have the report that was filed with the Rules Committee back in October of last year when we met before the Rules Committee. And I haven't seen any other report that has been circulated, so basically, what I'm going to do is just comment from what I understand to be the last submittal to the Board as well as to the Committee.

And on page, I believe it was Page 3 of the report, there are, you know, numerous requirements that were imposed by, you know, various entities as a result of the subdivision. You know, one of the things that my clients had to do is install fire protection along Lilikoi. Road that's approximately a thousand linear feet. They're going to upgrade the line from an existing 4-inch line to a 6-inch line. They're going to also install some improvements along the private driveway along Lot 004 of the proposed subdivision.

The construction plans have been approved. They were submitted to the County, to the Water Department. They were approved, and they indicate they anticipate spending approximately \$200,000 for these improvements. So there is one structure on the property right now, and what they would like to do by way of reviewing that with the request before the Board is give up a meter on another parcel of land and have another water meter issued so that it could be assigned to one of the lots that would result from the subdivision.

In their own minds, you know, the Amarals applied for water meters back in 1997 for this, and they've pretty much gone up and down on the list. Whenever they've checked the numbers, they've advanced, or for whatever reasons, they go back. Nevertheless, they've been waiting for the water meters, and it's a little difficult for them to commit to spending what I would consider a significant amount of money, \$200,000, without any assurances that they will get the water meters in the future.

So this is one of the things that we had proposed so they could proceed with at least some assurances that they would be -- their sons would be able to develop their property. They have two sons, Craig and Sean, and Craig is in the process of getting married next month. So maybe it's fortuitous, but one of the things that they would like to do is to have -- well, they're not going to kick Craig out of the house, but they would like Craig to have his own place so they could -- they would give Craig the property and he is anticipating on building his own home.

One of the things that by way of history is the Amarals, they have leased a property right by the Marine Base Camp for approximately 40 years now. And this came up during the last Committee meeting. I think Jonathan and Mr. Nakamura were there, and there was a letter submitted from A&B, and they've raised cattle on the property. And as the report indicates, when the Marine Park was built, the meters were inadvertently removed.

The Amarals have continued to go pay the fees associated with the meter for the past few years and

one of the -- what they would like to do, and there's a letter from A&B in which A&B went along with the request, is to basically just give up the meter that serves the other parcel on the lot with service number -- I don't have the service number. But it is TMK 2-7-02-04. And as I mentioned earlier, they have a meter issued to the other property.

You know, conceptually, this is not a totally new idea. In previous instances, what the Board has done is people have come up with water saving devices where they retrofit, you know, areas, and as a result of the water savings of the system, what the Board has done is given water meters to the various individuals. And we would submit that giving up the meter that serves the property by the Marine Camp, which is now a park or actually adjacent to the park, there is this potential water savings to the Board.

And we would like in turn for giving up that meter is to have a new meter issued to the subdivision the Amarals are going through. With respect to the -- to the report, I just have a few comments that I would like to make only because when I spoke to Mr. Amaral, he wanted to clarify matters relating to -- there are two reports, one dated October 16th and another report that was dated February 3rd, 1998.

The Amarals have previously requested it, and I guess they being new to the system, they were kind of intimidated by the whole process and eventually they withdrew their request, and I got retained. But what they wanted to clarify is that, one, there's a suggestion in the report that Mr. Amaral was going to truck water from his home over to where his cattle are grazing by the Marine Park. That is not a correct statement. One of the reasons why the Department recommended denial in the past was that there was going to be this violation of trucking water from one location to the another, but that is not going to be the case.

Mr. Amaral has made arrangements with an adjoining land owner to have -- to use the stream that runs to the property for the purpose of water for his cows. There is a suggestion in the report that the request is based upon the finding of the shortage that

went into effect in March, March 16, 1993, in which water meters were denied because of the shortage of water source capacity in the Upcountry areas.

Well, as the Board knows, that that particular, let's call it legislation or rule or whatever you want to call that, was ruled unlawful by Judge McConnell and affirmed by the Hawai'i Supreme Court. We would note that in its earlier report in 1998, this is approximately three years ago, the staff had recommended under option one, it stated that the -- what the Amarals are requesting may not comply with the water system development fee rule. It kind of expanded on that during the last meeting. It said that well -- at first it was May, and then it turned into the water system development rule does not allow for the relocation of the water meters.

I went through the rules yesterday as well as today, and I can't find in the prohibition that the Department is suggesting exists. You know, I just can't find what they're suggesting, and, you know, because the basis for the -- their justification for denial is nonexistent. We would suggest that the Board adopt option two, which is to grant the water meters on certain conditions that are set forth in the staff report.

And I've gone over the conditions with my client, and they're agreeable to those conditions. Mr. and Mrs. Amaral are present. They're available to answer any questions you may have regarding this.

CHAIR TAGORDA: The presence of Corporation Counsel Howard Fukushima is noted. Any discussion, Members, questions?

MR. STARR: I have a couple of questions. As I understand it, how many lots are being subdivided?

MR. HORIKAWA: Three. Actually, 4 lots, but one is a roadway lot.

MR. STARR: And one water meter exists on the property?

MR. HORIKAWA: Yes.

MR. STARR: And what they're looking to do is to give up a water meter that used to exist but doesn't currently exist on another property and gain a new meter, a new five-eighths meter on one of the new subdivided parcels?

MR. HORIKAWA: Yes, that's correct.

MR. STARR: What's the use of the land from where the water meter is being taken, is that a very large lot?

MR. AMARAL: It's a lot that I lease from A&B and I graze cattle. It has a stream underneath it.

MR. STARR: Is there any other water meter on that lot?

MR. AMARAL: No. I have a letter from A&B saying that it's okay for me to do that.

MR. STARR: It would be A&B giving up a water meter for you to get one actually?

MR. AMARAL: Actually, no. That water meter was put there by her father who has since died.

MR. STARR: Whose name is that water meter under?

MR. CRADDICK: It's theirs, but it serves A&B's property. Now, they have a letter also from A&B saying, "Hey, we don't care if you take the meter away," so maybe that issue is moot.

MR. NOBRIGA: What about the other subdivided lots?

MR. HORIKAWA: Well, we're just going to have to

wait until the meters are issued. They did attend the meeting chaired by Mr. Starr a few weeks ago, and under these circumstances, that's all they can do. They would like the meter, but they signed an agreement.

CHAIR TAGORDA: Excuse me, go ahead, Mr. Nakamura.

MR. NAKAMURA: Just to clarify, so the meter is in Mr. Amaral's name and Mr. Amaral is the person who has been paying water bills as well as the meter fees or whatever else?

MR. HORIKAWA: The old meter.

MR. NAKAMURA: The old meter?

MR. HORIKAWA: Yes.

MR. NAKAMURA: And secondly, I believe that the -- at one point, the Amarals had come in for approval of the subdivision based on a deferral of the improvements.

MR. HORIKAWA: Yes.

MR. NAKAMURA: And at this point, the Amarals are prepared to proceed with the construction of those improvements as required by the Department; is that correct?

MR. HORIKAWA: Yes.

MR. NAKAMURA: Okay, thank you, Mr. Chairman.

CHAIR TAGORDA: Thank you. Anymore questions?

MR. CRADDICK: Wait, wait, are you sure about that? Because that's what you're saying you don't want to do here.

MR. NAKAMURA: No, I don't think so, not at all.

CHAIR TAGORDA: Anymore questions?

MR. HASHIMOTO: So the six acres will be what, ag zoned?

MR. AMARAL: Yes.

MR. HASHIMOTO: So it will be three lots plus yours?

MR. AMARAL: Three lots plus the roadway.

MR. NOBRIGA: Move to approve.

MR. STARR: I second. I think we move to recommend approval.

MR. NAKAMURA: With the conditions.

MR. NOBRIGA: With the conditions.

CHAIR TAGORDA: It's been moved to approve with the conditions.

MR. STARR: To recommend approval.

CHAIR TAGORDA: Further discussion, Members?

MR. NAKAMURA: You know, when this request first came in, I was very skeptical and actually was prepared to vote to deny it; however, subsequently, the information that they're willing to put in the improvements as required and the fact that there is an existing meter in their name, I believe is, in my mind, now justifies the approval of the request.

CHAIR TAGORDA: Okay.

MR. HORIKAWA: Just by clarification, the conditions would be the conditions set forth in Page 4 of Exhibit 7 attached to the staff report to the Rules Committee dated October, 16th, 2000?

CHAIR TAGORDA: Where are you at now?

MR. HORIKAWA: This one here, Page 4.

CHAIR TAGORDA: Page 4.

MR. HORIKAWA: I don't have mine numbered.

CHAIR TAGORDA: I got the agreement on Page 4.

MR. HORIKAWA: Exhibit 7, 25, number 25.

CHAIR TAGORDA: Okay.

MR. HORIKAWA: One more.

CHAIR TAGORDA: There you go. The question I have is for the Corporation Counsel, that meter that was inadvertently taken from that Marine Park, it sits under his name, but this is assigned to the tax map key, that plot, can you relocate that one to another tax map key?

MR. FUKUSHIMA: Well, the Board has done it in the past is one response I can give. We don't particularly see any prohibition against it. Generally, meters do run with the land. But in this case where the land owner has consented to the removal of the meter and if the Board believes that the giving up the right to a meter, even though that meter isn't there now, sufficiently or is sufficient to allow them to install an operating meter, that's, you know, that's a question that has to be answered by the Board, whether they believe the trade-off is a fair trade-off.

And again, not wishing to comment on the

fairness of it, if the Board believes it's fair and it satisfies the purpose of relieving the system of some water use to be replaced by other water use, I don't see a problem.

CHAIR TAGORDA: Anymore discussion? Seeing none, ready for the vote?

VOICES: Uh-huh.

CHAIR TAGORDA: Those in favor of approving this request, say aye.

VOICES: Aye.

MR. FUKUSHIMA: It's recommended.

CHAIR TAGORDA: Recommending approval, I'm sorry, say aye.

VOICES: Aye.

CHAIR TAGORDA: Opposed?

(No response.)

MR. HORIKAWA: Thank you, Mr. Chairman and Members of the Committee.

MRS. AMARAL: Thank you.

CHAIR TAGORDA: Item B, the same agenda, Communication 00-44 request for Mr. Edward T. Esty for approval to temporarily use an existing water meter to fill a tank to be used as the domestic water supply, TMK 2-3-03:171, Omaopio Homesteads Subdivision.

MS. NAGO: Mr. Christopher, could you sit right here next to the court steno. She would appreciate it. Thank you.

MR. CHRISTOPHER: Especially with my soft voice. Good afternoon, gentlemen. I'm Phil Christopher. I represent Mr. and Mrs. Esty, the subdividers. It's been since October since we met with you originally on the Rules Committee agenda and now transferred to the Committee of the Whole. I understand that there has been some misunderstanding in what we're trying to do. I would like to give you a brief overview of what this is all about.

The Estys are in the process of subdividing 71 acres of land into 9 large lots. This is under 3 LUCA. They're in the process of close to being approved. It's currently being processed as a private water system. There is no water line. This is on Omaopio Road. There's no water line on Omaopio Road fronting the property. It ends about 3,100 feet above the road, and, of course, there are no meters available, so they opted to put in a private water system.

But the system is designed so it can be connected to County water should a water line become available on Omaopio Road. They've extended a six-inch ductal line to Omaopio Road and internal piping so it can be operated, if the owners so choose, as a dual system. Right now the private water system will take care of domestic fire flow and irrigation needs.

It's designed that if the six-inch line is connected to the County, that would take care of domestic and fire flow. And then the well would then be used only for irrigation water, which I think is kind of the best of both worlds.

When we went to get approval to begin construction, we needed the signature of the State Department of Health. We discovered at that time that we were the first ones to come under a new federally mandated law that requires that any subdivision that serves at least 25 people be considered a public water system by the definition of the State, and we have gone through a long process of approval before we could even begin construction. So the subdividers agreed to operate not as a public water system, an

unregulated private water system. And we have a covenant that says that the population can't be more than 24 people, so, you know, in nine lots, this is going to greatly limit the use of the property. And the subdivider was planning on a second phase of six more lots.

So we're looking at two things. One is to proceed after subdivision approval to become a public water system in the eyes of the State, go through that process, and then have these restrictions removed. Or in the alternative, to say to offer to the County to improve the water system, extend the water line 3,100 feet down the road at the subdivider's expense. And if someday we could get the eight additional meters we're waiting for now, because we have one meter, and operate as a dual system on County water for the homes and hydrants and well water for the irrigation system.

And if this is acceptable to you folks, what we're proposing is that we be allowed to use the existing meter to fill one of the tanks. There's a two-tank system. We can split those two tanks. And if we can fill the one tank with the existing meter and start operating right from the beginning as a dual system, County water for the homes and well water for the irrigation.

My understanding talking to Mr. Craddick is that -- we have two lines in the road now, one that supplies water to the tank and one from the tank, and those two lines are a foot apart. If it's a dual system, he would want those two lines to be three feet apart because it's potable and nonpotable water. We would agree to continue to chlorinate the irrigation of this so it would be potable water. This is within one foot of the potable line.

So this is our request today. And I did submit a second, like additional request. Two of our lots front Omaopio Road, and it's our understanding that there are a couple of small lines running right down in front of the property, an inch-and-a-half line that Mr. Cravalho mentioned, and someone told me there's a four-inch line there.

And if we could be allowed to at least connect the two lots in the front right directly to Omaopio

Road, it would take those two lines off the system for now. And this restriction of 24 people would become a lot less onerous as an alternative. You didn't allow us to fill the tank and put them all on with County water.

Let's at least get two of them on County water, and now we have only six lots, four people per lot. It kind of makes sense if they have 24 people.

CHAIR TAGORDA: Are you done, sir?

MR. CHRISTOPHER: Yeah. I would like to add one more thing. I read recently where a developer in South Maui was given special consideration by the Planning Department because he showed sensitivity to the will of the community in doing something. And I really want to tell you that these folks are that kind of people.

They got a subdivision with a preliminary approval in '97 before the current ag zoning ordinance took effect, so they could have put in a bunch of two-acre lots. But they knew that that was not what the will of the people in the community was at that time, and they felt sensitive to that and agreed to just bring in -- let's just make this a few, nice, big lots and consistent with what ultimately is going to -- it turns out it's actually one lot below the density that's now allowed by the sliding scale on ag zoning, so I really think these folks deserve some kind of special consideration.

CHAIR TAGORDA: Members, questions?

MR. NOBRIGA: What would be the average selling price of one of the lots?

MR. CHRISTOPHER: At this point, they're thinking about building homes on them, but one lot is listed at \$420,000 for a 5.6 acre lot.

MR. NOBRIGA: Thank you.

MR. CHRISTOPHER: Just to give you an idea.

CHAIR TAGORDA: Anymore questions? Mr. Nakamura.

MR. NAKAMURA: I'm still a little confused about the request. Maybe I can take it one step at a time. So you're seeking to have the subdivision approved using a private water system that is capable of meeting domestic fire flow and irrigation needs?

MR. CHRISTOPHER: That's where we're going. That's the direction we're going in right now.

MR. NAKAMURA: So that is the first step?

MR. CHRISTOPHER: But it has a limitation of the 24 people.

MR. NAKAMURA: And presumably to do that, you would not need the approval of this Board, is that right, David?

MR. CRADDICK: I think it depends how that Richmond case comes out with the Board because they've got an existing meter that will serve one lot.

MR. NAKAMURA: An existing meter to serve one lot, okay. So then secondly, you're proposing to ultimately put in all of the required on-site and off-site improvements at the time that you can actually get meters?

MR. CHRISTOPHER: Uh-huh.

MR. NAKAMURA: And in the meantime, you want to hook up the storage system to the existing five-eighths-inch meter to serve -- to provide domestic water to all of the lots?

MR. CHRISTOPHER: Uh-huh.

MR. CRADDICK: What happened to the inch-and-a-half meter you had?

MR. CHRISTOPHER: That's the neighboring lot that they sold.

MR. CRADDICK: The goat cheese.

MR. CHRISTOPHER: The goat cheese, yeah.

CHAIR TAGORDA: Anymore discussion?

MR. CHRISTOPHER: I would like to correct one thing. The five-eighths meter, they're not trying to use that for one of the lots. We're trying to use that to irrigate the roadway lot, the plantings along the roadway lot. That won't be used for domestic.

CHAIR TAGORDA: Yes, Mr. Starr.

MR. STARR: I have a motion. I move to recommend denial.

MR. NOBRIGA: Second.

CHAIR TAGORDA: It's been moved by Mr. Starr to recommend denial and been seconded by Mr. Nobriga. Further discussion, Members?

MR. HASHIMOTO: Mr. Chair, this comes out to Pulehu Road?

MR. CHRISTOPHER: No, this is Omaopio Road.

MR. HASHIMOTO: There's another one on Pulehu Road.

CHAIR TAGORDA: Members, anymore discussion?

(No response.)

CHAIR TAGORDA: Seeing none, ready for the vote. Those who are in favor of the motion to deny -- to recommend to deny the request, say aye.

VOICES: Aye.

CHAIR TAGORDA: And opposed?

(No response.)

CHAIR TAGORDA: It's denied, sir. Recommend denial to the full Board.

MR. CHRISTOPHER: Thank you.

CHAIR TAGORDA: Next item on the agenda, Communication 00-45, Request from Andrew and Sheila Fujikawa for a water meter TMK 2-2-3-13:86, Kula Haleakala Acres.

MR. NOBRIGA: Hi, good afternoon.

MS. FUJIKAWA: My husband and I are requesting --

CHAIR TAGORDA: Please state your name for the record.

MS. FUJIKAWA: I'm sorry, Sheila Fujikawa. We're requesting a water meter for some property that my father gave to us. There is water service on the property, but there's only one water meter. There's two lots. One is owned by my sister, and one is owned by my husband and I. And we would like to separate the service or the water -- well, yeah, the water.

MS. FERNANDEZ: I'm a friend of Sheila's, Trish Fernandez, and I've been trying to help her go through the process of getting a water meter. We did some research and got a hold of Alan in the Water Department and he had said that Sheila's father had deferred the subdivision improvements because of the hardship, and he just wanted to subdivide the

properties for both daughters.

We found that out later, and so the recommendation from the Water Department was to improve the existing system, which we went to water engineers and they said it was a minimum of \$200,000. So the two options that were given; one was to go ahead and use, I guess there's a water storage on the top side of Haleakala Acres on Crater Road, and that to increase the size of the pipes that fed down to the property; and then the second option was to get a lateral in and run it from the lower part if they could find a connection.

Based on the engineer's quotations, that was a minimum of \$200,000. The other thing was, like Mrs. Fujikawa had said, there is water service on the property for both pieces that have been subdivided. The water meter is only on her sister's parcel and then there are two water pipes on her parcel. We looked even further and we found that the neighbor, the Morrisons, who live a stone's throw away, had made the same request at the time, before Mr. Morrison had passed on, that he, as my memory serves, you can correct me, had the same problem.

He had one water meter. He had children. He wanted to subdivide, and he wanted to just get water meters to separate the service because the other homes had been served by that one water meter. And I think he was selling one of them. I don't remember exactly, but I believe you have that as part of your information.

MR. NOBRIGA: I forgot to grab that when I left my office early this morning, late last night.

CHAIR TAGORDA: Questions, Members?

MR. NOBRIGA: Apparently, this was a family subdivision Under Rule 2 -- what was 18?

MR. CRADDICK: Sixteen.

MR. NOBRIGA: Sixteen. And now you guys got huhu?

MS. FUJIKAWA: You mean my sister and I?

MR. NOBRIGA: Yeah.

MS. FUJIKAWA: Well, yeah.

MR. NOBRIGA: Thanks, yeah. That's why the thing was all deferred because there is a provision in our rules that allow for a family subdivision when you've got two lots and you can borrow.

MS. FERNANDEZ: In light of the cost, there's no way.

MR. NOBRIGA: So it's \$2,000 for option one and \$2,000 for option two?

MS. FERNANDEZ: No, \$200,000 minimum.

MR. NOBRIGA: \$200,000 for option two.

MS. FERNANDEZ: Either way he said about \$200,000, and that didn't include the labor. And then they said, "Well, you know, you can go ahead and go and get a five-year reimbursement plan for the monies that you put in," but, you know, the Fujikawas aren't subdivision people, you know.

MR. NOBRIGA: You not Hawaiian, Hawaiian blood, DHHA?

MS. FUJIKAWA: No Hawaiian.

MR. HASHIMOTO: So what are they required to do to, I mean as far as another six-inch line?

MR. CRADDICK: I was looking at this thing, and again, you know, there's lots of ways to skin the cat there. But if you look on Exhibit 6, Page 84, it's the -- I don't know who made that suggestion with the dotted line, but that's one suggestion. I would venture to say it's better to keep from other people's back yards.

So I guess the other option is coming from where it says repaired water system improvements and go along the road to that lot because the line is tied into the same tank. It's just that I guess way up at the top on the three-and-a-half-inch line there.

MR. CHANG: I'm not following your direction.

MR. CRADDICK: Coming off of the pump line down below along the road over to their property.

MR. CHANG: That's actually the pump line.

MR. CRADDICK: Taking the T off the pump line and following the road to their property.

MS. FERNANDEZ: Is that the 321 or 394?

MR. HASHIMOTO: 394.

MR. CRADDICK: Well, I don't know. There are two options, and I've seen only one drawn on here.

MS. FERNANDEZ: We have it in writing, and you should have received that in your communications from us, you know.

CHAIR TAGORDA: Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, I might suggest that the Applicant might want to consider withdrawing the request and working with the Director since the Director has indicated that there may be ways of complying in some fashion. You know, very honestly, I would have a really hard time voting in favor of this. You know, you've had a situation just previously where people had exactly the same situation where they entered into family subdivisions to defer improvements, and they are spending \$200,000 to create three lots. And so, you know, for me to support that today would be just -- I mean I just would find it

extremely difficult to do that. And as I say, my suggestion is perhaps you might want to withdraw it or defer it and work with the Director to see if there's some reasonable way in which you can make the improvements to comply with the agreement that was entered into by your father.

CHAIR TAGORDA: Would you like to do that?

MS. FERNANDEZ: I guess I have a question. Well, I mean that's an option, but I guess my question is for the same situation on the same parcel of land under the same sort of water restrictions, the water meter was granted to the neighbor, you know, the Morrison tract, which is right next door to her property under the same water restrictions and under the same, you know, and they established that there were restrictions. They were going to give them the water meter, you know, for the same kind of thing.

MR. CRADDICK: Under the condominium theory that you don't use any extra water just because you have an extra meter.

CHAIR TAGORDA: Well, like I said, it's either you withdraw, or we're going to decide on your case, so you've got those options.

MS. FERNANDEZ: That's clear. I'm glad somebody kind of helped me out. What do you want to do, you want to try and --

MS. FUJIKAWA: Yeah.

MS. FERNANDEZ: Okay.

MR. NOBRIGA: You don't know what year that Morrison -- it wasn't during our tenure, huh, we was here?

MR. CRADDICK: No.

CHAIR TAGORDA: Okay.

MR. NOBRIGA: That's all right.

MS. FERNANDEZ: Okay.

MR. NOBRIGA: Try that.

CHAIR TAGORDA: Communication 00-45.

MR. NOBRIGA: Come back, and see what else we can do. Hopefully things change.

CHAIR TAGORDA: Talk with the staff. Maybe they can help you guys out.

MS. FERNANDEZ: Okay, thank you.

MR. NOBRIGA: Thanks, Mr. Tagorda.

CHAIR TAGORDA: Item D, Communication 00-47, I think there was already resolved with the staff, Fran? I gave you that letter.

MR. NOBRIGA: We have a letter.

CHAIR TAGORDA: Go on to the next Item E, Review and possible action regarding the Memorandum of Understanding with Gerald Hokoana.

MR. HOKOANA: My name is Gerald Hokoana, and I own property in Maliko, Haiku, Maliko Gulch, and I've been living there for 20 years. I have my residence there. I've been raising taro for 20 years. I have a well on my property. And back when Rae Shikuma was the Director, you guys decided that -- the Water Department decided they were going to put in the two Hamakua Poko wells, and at that time, I expressed to the Director that I had no problems with the

development of that well as long as I was not affected because -- and, you know, as far as the quality of the water that's at my property, you know, it's potable. It's adequate for use without actually any kind of filtering system.

And since then, that's how long I've been working and trying to get an agreement with the Department of Water Supply that when the Hamakua Poko wells come on line, if there's any impact to me, then the Department would look to, you know, addressing any problems as far as the quality of my water or also the ability of my well to, you know, to draw water.

And so anyway, this thing has been going on for a long time. And the Department and I have gone back and forth through numerous Memorandums of Understanding. And as I've stated from the beginning, I don't have any problems, you know, with the development of those wells, and, you know, whatever the Department decides it ultimately wants to draw.

The only thing is I'm downgradient from those two wells, and they, the Department has hired its own consultants, Nance. I've talked to Mr. Meyer who used to be the USGS Director. And, you know, there's no real way of knowing my impact until those wells come on line. And I just want to be protected. I don't want to be in a situation where all of the sudden I'm sucking up brackish water and then I've got to go and initiate some kind of a legal action to, you know, get some kind of relief as far as, you know, my domestic water situation. So what I'm trying to do is get something in place beforehand.

And I've read the I guess the recommendation of the staff with regard to, you know, my request. It says here, "The Memorandum of Understanding should recognize then Hokoana will be responsible for protection of his well with provision against pumping over current averages." Now, for 20 years I've been responsible in making sure obviously that I'm not going to screw up my well. I mean so for me now just because I got one Agreement of, you know, of Understanding with the Board of Water Supply, I'm going to do something to, you know, jeopardize that? I mean that don't make sense.

And, you know, in the previous agreement, all of the sudden, in one of the provisions, there was a limitation that I cannot go over 10 percent of my current pumping average, yet I've never told the Department of Water Supply that, you know, I would want to set any kind of limitation. So, you know, I'm trying to deal in good faith here.

And what I think -- what I would like to do is get together with the staff, the Corp Counsel, myself and hammer out an agreement that is fair and equitable for everybody. Because if anybody here was in my situation, you would be doing the same thing. The County of -- the Water Department does not serve the Maliko Gulch area, so we have no alternative.

And so anyway, as far as the staff concerned that I'm going to be all of the sudden irresponsible after 20 years, I mean, I don't know where that came from, but that's really not the case. Because actually, to be quite frank, you know, I don't really want the County water. I'm just fine the way I am. But I can't stop the development of these two wells. And I can see the need for it, you know, the use of that water.

But, you know, I think, you know, you've just got to be fair in that if a situation should arise, then, you know, you guys have to address those problems. Now, David has brought up the situation with other users within that aquifer. Well, there's only three right now. There's the two wells in Hamakua Poko. The HC&S well in the gulch, which has been there since 1890's, it pumps 6.5 million gallons a day, and I've been there 20 years. And there has been no significant change in the chloride level. That's a horrendous volume of water.

MR. CRADDICK: What's the third one?

THE WITNESS: Well, the third one is myself.

MR. CRADDICK: But that guy, Blue Skylark or whatever his name is.

MR. HOKOANA: Well, he's on the other side of the gulch up on the cliff. If you're bringing up that issue, that's something not only the Department and myself have to look at, that's something we've got to take to the State Water Commission. Because I mean effective right now, he's on the other side of the gulch, and there's the Maliko Stream running down the middle. Now, I'm up what, 300 feet maybe, from the ocean, and he's on the other side. I mean, anybody that -- I live there. You know, so there's a lot of water coming off of the banks. If you go around that point, there's a lot of water that just seeps right out. And that's, quite frankly, what I'm using. I've been raising taro for 20 years.

So I mean I don't know how that can, you know, that can impact me considering that he's on the point and he's taking from something that's, you know, under the streambed and on the other side of the gulch. I mean I guess that would be possible, but I think it's unlikely. And he's like 50 feet from the ocean. He's vertical. So I mean there's no doubt, I can see the concerns about, okay, if there's other players in the area. And that's something that not only the Department has to monitor but I have to monitor as well.

But as long as we remain the, so to speak, players in that area, then I mean if -- I'm not sure initially what you guys are going to pump out of that two wells. But, you know, I cannot -- and I already know what -- well, I shouldn't say I already know, because that's what HC&S is telling the State Water Commission they're pumping. Whether they go over that, there's no way of knowing.

I know I've been there 20 years, and there's been no significant impact of chloride levels to me. And here is the other thing. I've been allowing the Department in the past to monitor my well, so they know pretty much and they've come and done measurements at high tide, low tide, every which way circumstances you can think of, and there hasn't been a significant impact.

But what I -- you know, like I said, actually, I'm kind of tired of all of this. And all I want to do is establish an agreement that's fair and equitable

with the Board, so, you know, we can put this thing to rest. And I'm not -- you know, it's not something that's going on for the next year and the next year after. I have no problems, like I said, on what you guys draw to -- I don't care what you do at Hamakua Poko as long as I'm not affected. That's the bottom line.

CHAIR TAGORDA: Any questions? Mr. Starr.

MR. STARR: You know, I'll tell you, I know about that well, that HC&S well over there, and it's a pretty big -- it's a pretty big shaft and well. And I see that it's drawing, you know, according to these documents, 6.5. I've heard that in the past it drew a lot more, and I don't know. I don't think any of us know if over time there has been a reduction in water levels or the -- a change in the transition zone over by Maliko. Where is the nearest test well, David?

MR. CRADDICK: I would say there really is none in the area. When you say test well, you're talking about something to monitor the salt water interface?

MR. STARR: Yeah, transition zone, or how about head?

MR. CRADDICK: The Hamakua Poko wells, we can measure the head in them.

MR. STARR: Has there been a tracking of the head there? They were drilled quite a while ago.

MR. CRADDICK: We have a level monitoring right now.

MR. CHANG: It's not working right now. The contractor is still installing that portion.

MR. STARR: Do we know what the heads were when they were drilled?

MR. CRADDICK: It was about 5 feet.

MR. STARR: And what are they now?

MR. CRADDICK: Five feet.

MR. STARR: So, in other words, over the last ten years or so?

MR. CRADDICK: We haven't really done any pumping in the last year.

MR. STARR: I'm not saying from us. I was curious to know if there was a general downward trend there without us.

MR. CRADDICK: I don't know about that, but I know the fifth "whereas" there, we've been sampling his well since 1991. His was one of the wells that we sampled in the area to see if there was DBCP in the area before we drilled those wells, and there wasn't.

MR. HASHIMOTO: So your property is above the old Maeda property?

MR. HOKOANA: Actually, at one time, my property was the oceanfront property. And then they built the belt highway and I came mauka of the road. Makai of the road is the roping arena and the road that goes down to the boat ramp. And I have a well. My neighbors rely on a spring that's been there also probably before the 1900's. And that spring water actually serves my neighbors. That's their drinking water.

MR. HASHIMOTO: That's Mau?

MR. HOKOANA: Godfrey Mau and the Awais and also the Mitchell family.

MR. STARR: Can we get a clarification exactly, you know, what's being asked of us. This is the first

time I've seen this matter.

MR. CRADDICK: Good question. Basically, what we're doing is we're guaranteeing him his well won't go bad. If it does go bad, we'll give him domestic service from our system. And I guess, I don't know if you're going to ask the next question, but if you don't mind, I'll say why are we doing this?

Well, I think more particularly to keep him out of the EIS process, if you will. I mean obviously, if he was a partner in that EIS case, they would definitely have some standing in the Maliko Gulch area.

MR. HOKOANA: Let me also say this. I have also been approached by those people to participate in the East Maui Coalition or whatever they have it's called, but I don't know -- in simple terms, I just want an agreement in place that should I -- and these are things that have to be monitored between the parties that have the wells in the area that in the event something, you know, there's a problem, either I can't draw any water because the water level is dropped, or the salinity level, it's never gone over 100 mg/l, that that triggers, you know, testing on a more -- I think initially, it's what, monthly? Then it goes to -- if there's a change, then it goes to weekly.

And then the process involves the Department and myself to investigate why, you know, there's this occurrence. And the Water Department, the agreement as it's written up will provide me with their pumping records. All my pumping records go to the State Water Commission, which they have access to or I can give it to them. Obviously, if I double what I'm drawing, then more than likely, I'm the guy whose probably the culprit, okay.

On the other hand, the Department is going to initially say, "Okay, we're going to pump X amount -- a million gallons or whatever." Then it goes up to 2 million, 3 million, maybe nothing happens. Then it goes to 5 million, and then all of the sudden, you know, my chloride level starts to rise.

Well, then we've got to look at that information

and say, "Okay, well, who has been drawing more water out of this aquifer?" At the same time, we've both got to look at what HC&S is drawing and come to some kind of a reasonable assumption as to what is it that is causing this problem.

CHAIR TAGORDA: Mr. Nobriga, you had something to say?

MR. NOBRIGA: Upon review of the document and listening to Mr. Hokoana, it seems a very reasonable document to enter into. I would ask, of course, that it be reviewed by Corporation Counsel to make sure that we're not doing something that we're not supposed to do just to protect the rights of the innocent, and I would tend to support this.

MR. FUKUSHIMA: If I may, Mr. Chairman. We have had the opportunity to review it. We've had conversations with the Department to make sure that the Department could comply as far as the Department's requirements under this agreement, that they could comply and fulfill all the terms of the agreement that they were responsible for, and it boiled down to a matter of policy for the Board.

We believe, and we would sign off as to legality of this document, but it remains a question for the Board as to whether, taking all the facts and circumstances into consideration, whether there was an appropriate agreement to enter into.

CHAIR TAGORDA: Mr. Craddick.

MR. CRADDICK: One other thing. We basically, when we got our well permit from the Water Commission, it basically says that if we affect anybody else's water use, their remedy is to cut back consumption of our well. And that's why I recommend this to the Board because if the Water Commission said cut back, you know, would it be simply for us to give him a service or cut back our consumption? Obviously, it would be simply for us to give him a service if that's the case. It has complicated things a little bit with

the other guy drilling the well, but his usage I think is on the order of magnitude of Mr. Hokoana's.

MR. STARR: What's the use, how much are you using?

MR. HOKOANA: What I'm using, about 15,000 gallons a month.

MR. STARR: I wouldn't have any problem with this.

MR. FUKUSHIMA: That's his irrigation needs.

MR. HOKOANA: Yeah, I mean, but, you know, that's why. I mean look at what I'm using and what you guys going to take, fifty million gallons. And see, the very first meeting that I had with Dave, he told me, you know, that, "Okay, I don't know why you're here because there is case law which says that if you are downstream and you're affected, then we have to stop pumping."

The problem with that is that I have to be affected before I can take an action. Meanwhile, I'm -- my house, we got salt water until I go get an attorney and then fight the Department and then maybe get some relief six months, a year down the road. You know, what I want is an agreement in place beforehand so that, you know, I'm not in a situation where I'm affected and then I suffer through the interim period of going through all the expense and everything else of having to fight the Department.

CHAIR TAGORDA: Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, I'm still a little confused. So this agreement, this is an agreement that was submitted by Mr. Hokoana that is asking -- and the Department does not quite agree with, or is it an agreement that is mutually agreeable to both parties?

MR. HOKOANA: This agreement actually came through many years of discussions. Then they

came to us with a Memorandum of Understanding, gave it to me. I did my stuff. I gave it back to the staff. They did their thing, went to Corp Counsel, went everywhere else and then came back to me.

MR. CRADDICK: Ten years later.

MR. NAKAMURA: So everybody, you and the Department are happy with it, and you want the Board to sign off on it?

CHAIR TAGORDA: Is that what you want? Is it okay with you, this agreement with you?

MR. HOKOANA: Yeah, I mean that's why I said if there's some fine tuning that needs to be done here, well, let's get it done. Because it's been years already in dealing with this.

CHAIR TAGORDA: Mr. Hokoana, so you also have an agreement with HC&S because I believe their well is closer to your well that it might be affected?

MR. HOKOANA: That's why it's kind of amazing, and probably, I don't know, they have Tom Nance who is hydrologist or whatever he is, he called me. He went up there and he told me when that pump comes on, it goes from fresh water to salt water almost instantaneously. That's the volume.

MR. STARR: That water is brackish.

MR. HOKOANA: Yeah. But now that's been in operation from before 1900. I've been there 20 years. They have the records on my chloride level.

CHAIR TAGORDA: My question is you monitor your chloride level and give it to the Commission of Water Resource Management?

MR. HOKOANA: Yeah, the pumpage, and I assume

HC&S does the same.

CHAIR TAGORDA: But you don't have any question as to if you do increase your water use, the Department might --

MR. HOKOANA: Well, the Department came back in one of these drafts that they wanted to limit me to 10 percent. I said, well, I'm not limiting the Department. Why they going to limit me to 10 percent? If you both want to agree to a limitation, that's fine with me. But I'm not telling them that, "Hey, you know, you've got to pump only a certain amount and that's it." I mean, you know, I think this thing to me is fair and equitable.

MR. NOBRIGA: Mr. Chairman, I make a motion to recommend me to the Board that we accept the Memorandum of Understanding to Mr. Hokoana.

MR. STARR: Second.

CHAIR TAGORDA: It's been moved to recommend to the full Board that there is some MOU will be approved, and it's been seconded by Mr. Starr. Any further discussion, Members?

(No response.)

CHAIR TAGORDA: Seeing none --

MR. HOKOANA: Thank you very much.

CHAIR TAGORDA: We have to make a vote. Those in favor of the motion, say aye.

VOICES: Aye.

CHAIR TAGORDA: Opposed?

(No response.)

CHAIR TAGORDA: Carried.

MR. NAKAMURA: Mr. Hokoana, after this I would like to talk to you a little bit because my grandparents used to live in Maliko Gulch across from the old chicken farm.

MR. HOKOANA: Actually, your grandparents probably lived on the property that is now the Mitchell's property.

MR. NAKAMURA: They were on the Paia side of the river.

MR. HOKOANA: Spring. Because A&B, apparently they had done an exchange. This I got from my neighbor who passed away, Tony Mitchell, Anthony Mitchell. And he told me that he had acquired the fee in that by giving up some land further out in Haiku that was in alignment of one of the ditches that EMI wanted to put in.

MR. NAKAMURA: Anyway.

MR. HOKOANA: Yeah, so anyway.

CHAIR TAGORDA: Good luck.

MR. HOKOANA: Thank you.

CHAIR TAGORDA: Next item on the agenda, Item F, Board of Water Supply's Rules and Regulation for review, comment and amendments determined by the Board. What's the pleasure of the Members of the Committee?

MR. NOBRIGA: Rewrite the whole thing and putting all our little nuances involved in today's world, change family subdivision from two to three lots.

MR. CRADDICK: It is three lots right now.

MR. NOBRIGA: Family subdivision? Rule 2-12, 2-16, my daddy's one?

MR. CRADDICK: Yeah.

MR. NOBRIGA: From one to three lots? No, one to two, huh?

MR. CRADDICK: One to three.

MR. STARR: Mr. Chair, I think we do need to create a mechanism for a complete and total rewrite of the rules. And, you know, the question is whether we need to, you know, do anything immediately as it relates to the form of the present rules because I know there has been some question over whether they were initially adopted or not some years back.

And it might actually behoove us to actually adopt the current rules and just start working on a review of them because I have some information to the fact that the current rules may have never been properly adopted. So maybe a fresh start might be to make sure that the current rules are at least intact and then just start to work on a rewrite of them.

CHAIR TAGORDA: Anymore discussion on these rules?

MR. CRADDICK: Do you understand what he's --

CHAIR TAGORDA: I did understand. It's a whole revamp of all the rules and regulations that we have.

MR. CRADDICK: No. What happened was the rules were approved by the Board in 1977. It went under the County. They were approved as ordinances under the County. It went out from under the County. The County took it out of the ordinances. Are these rules that were approved in 1977 currently rules approved through the Charter approved processes of approving them?

Now, Corp Counsel has gone through this thing from the get-go. I think their recommendation to us is they are valid because it even cites our rules in the County Code, Maui County Code.

MR. STARR: Can I -- I would like to ask for a written opinion from Corporation Counsel on whether our rules are in fact intact.

MR. FUKUSHIMA: Send the request up, and I'll comply.

CHAIR TAGORDA: Anymore discussion, Members?

MR. STARR: Yeah, we need to create a mechanism to rewrite the rules. We might want to bring the next Chair into this, how to create a mechanism for -- you know, I would be willing to spend a little time, I know Mr. Nobriga has put a lot of time into it, and we should certainly piggyback on the work he's already done.

CHAIR TAGORDA: Mr. Nakamura.

MR. NAKAMURA: Perhaps the Committee should recommend to the Board, you know, that the Board review how best to undertake a review of the rules and regulations, rules and regs. Perhaps as Jonathan has suggested, have the new Chairman become involved in what that process should be.

CHAIR TAGORDA: Mr. Nobriga.

MR. NOBRIGA: I found extreme value and workability in the process that was introduced to us by Howard Nakamura on developing strategic planning. I feel a process similar to that may be the best way for us to locate this whole area of rules and regulations by formulating one workshop, first of all, understanding what we have now.

Because I think a lot of us don't really understand what we already have. There is a lot of ambiguity in place. If you can just brainstorm and

work through a process where it's not on the last part of the agenda of a long day, but start fresh.

CHAIR TAGORDA: That's good.

MR. NOBRIGA: I would appreciate it. Thanks.

CHAIR TAGORDA: Anymore discussion?

(No response.)

CHAIR TAGORDA: Okay. So recommendation of this Committee would be to do a workshop, something like that.

MR. STARR: I think it's --

CHAIR TAGORDA: And include the new Chairman.

MR. STARR: I think it would be that the Board create a process to do a complete review of the rules and that it be done with a working group's workshop-type setting and, you know, as we go through the process.

CHAIR TAGORDA: We don't need a motion for that. Okay. Anymore discussion?

(No response.)

CHAIR TAGORDA: Seeing none, this meeting is adjourned.

(The meeting concluded at 2:30 p.m.)

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Department of Water Supply  
County of Maui

P.O. Box 1109  
Wailuku, HI 96793-6109  
Telephone (808) 270-7816  
Fax (808) 270-7833

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