

County of Maui Water  
Supply

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
SPECIAL COMMITTEE MEETING

Taken at the David Trask Building, Wailuku, Maui,  
Hawaii, commencing at 9:00 a.m. on March 12, 2001.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

ATTENDANCE:

Members Present:

Elmer Cravalho, Chair  
Bob Takitani  
Mike Nobriga  
Peter Rice  
Clark Hashimoto  
Jonathan Starr

Staff Present:

Herb Kogasaka, Engineering  
Miles Fujinaka, Engineering.  
David Craddick, Director  
Howard Fukushima, Corporation Counsel  
Fran Nago, Secretary  
Mike Quinn, Fiscal

Others Present:

Isaac Hall  
Mark Sheehan  
Daniel Grantham  
Tracy Rico  
Robert Parsons  
Mark Gowan  
Jeffery Parker  
Masaka Westcott

\* \* \*

CHAIR CRAVALHO: The Special Meeting of the Board of Water Supply County of Maui is called to order. Ms. Nago, will you check the roll to see if we have a quorum.

MS. NAGO: We have, Chair Elmer Cravalho, Board Members Clark Hashimoto, Peter Rice, Michael Nobriga, Jonathan Starr, and I'm sorry, Robert Takitani.

MR. TAKITANI: I'm almost out the door.

CHAIR CRAVALHO: The meeting has been called for the request of the Chairman of the Negotiating Committee. The following procedure will be followed. The purpose of this meeting is to receive. A special meeting will be called on the 20th of March so that there is a period of at least 8 days in between to invite the public and others to make reference to the proposal to testify. They can do it today or testify on the 20th with their findings and their recommendations, so today is primarily a procedural thing to receive the report of the Committee. It does not obviate, neither is it intended to prevent anyone from having anything to say at the moment and without precluding your opportunity to be heard or anyone else's opportunity to be heard on the 20th of March. Are there any questions? If not, we are ready for the -- yes, sir.

MR. SHEEHAN: Will this report be made public?

CHAIR CRAVALHO: Absolutely.

MR. SHEEHAN: When?

CHAIR CRAVALHO: Today as far as I'm concerned.

MR. HALL: Where is it?

CHAIR CRAVALHO: As soon as we go through it, it will be here.

MR. STARR: Mr. Chair.

CHAIR CRAVALHO: One moment, please. Ms. Nago, do you have copies of the report?

MS. NAGO: Yes, I do.

CHAIR CRAVALHO: Will you make them available to the interested parties, and if we don't have enough copies, we will make sure we Xerox them and get them out today.

MR. STARR: Mr. Chair.

CHAIR CRAVALHO: Mr. Starr.

MR. STARR: Before we distribute the report, I would like to bring a matter up before the Board which I think has quite a bit of bearing on this matter, and that is that I believe that it was negotiated in clear violation of the Sunshine Law. And, in fact, I'm quite certain that there were meetings held by a committee of this Board that did not fit into the criteria of Section 92 of the Sunshine Law and which any special negotiations of three or more members of a board or commission have to be noticed to the Board, and the duties and responsibilities of each member and the time and place of meeting, et cetera, has to be brought before the Board.

Now, I requested very, very strongly on a number of occasions that if any meetings on this matter were to be held, that we Board Members be informed ahead of time. And so far, I've not as a Board Member received any information that such meetings were taking place.

However, I did hear from certain private sources that a committee of three members of the Board had

been meeting in private with the Central Maui Joint Venture, and what was especially disturbing is that I understand that at least one of those meetings one of the Board's participants was none other than the president of one of the corporations which make up the Central Maui Source Joint Venture. Now, I don't think I need to remind Board Members of the seriousness --

CHAIR CRAVALHO: Brother Starr, Brother Starr, the Chair has extended the greatness amount of privilege to express your concern. I believe all Members of the Board and members of the public, there is an official complaint to me provided for. Please reduce it to writing, present it to the Board and present it to the appropriate Ethics Committee of the County of Maui. The point has been raised, so then we come back to the limitation of what the purpose of this particular meeting is, to receive the report and to hear comments on the report if necessary and to take action a week from or 8 days from today when there will be another special meeting.

It is also the understanding of the Chair and the wish of the Chair that copies of the report be made able to all interested members of the public, to Members of the Board and whoever else is interested. The point is well taken. It is on the record.

MR. STARR: Mr. Chair.

CHAIR CRAVALHO: One moment, please. Yes, sir.

MR. SHEEHAN: I wonder if the Chair could explain --

MS. NAGO: This is Mark Sheehan. If you folks could please identify yourselves.

MR. SHEEHAN: Mark Sheehan is my name, and I'm curious to know if there's some rationale for considering this understanding with the Central Maui Joint Venture that puts it in perspective to any past agreements that have existed?

CHAIR CRAVALHO: This is what we will be discussing, we will take a look at, and the proper explanations at the time will be made by the Chairman of the Committee. The point is well taken.

MR. SHEEHAN: And which committee is this?

CHAIR CRAVALHO: The Negotiating Committee, Mr. Takitani and other members of the committee. If there's no objection, shall we then proceed.

MR. STARR: Mr. Chair.

CHAIR CRAVALHO: State your purpose.

MR. STARR: Can we know the members of this committee who have been meeting?

CHAIR CRAVALHO: The Chair is going to rule that question out of order. The Chair is ruling it out of order. If you wish to appeal the ruling of the Chair, proceed and do so.

MR. STARR: I appeal the ruling of the Chair.

CHAIR CRAVALHO: You've heard the motion appealing the ruling of the Chair. Is there a second to the motion? Hearing none, the motion dies.

The present matter before the body then is for the consideration of the committee report. Mr. Hall.

MR. HALL: Could I ask who the members of the Negotiating Committee are?

CHAIR CRAVALHO: Yes, you can.

MR. HALL: Who are the members of the Negotiating Committee?

CHAIR CRAVALHO: Mr. Takitani, will you advise him of the members of the Negotiating Committee.

MR. TAKITANI: The members of the Negotiating Committee are Peter Rice, Clark Hashimoto and myself, Bob Takitani.

MR. HALL: And who appointed you?

MR. TAKITANI: We were appointed by the Board in the committee structure that was approved April --

CHAIR CRAVALHO: April of last year.

MR. HALL: Did the Board as a whole take any action to authorize you to negotiate with the joint venture, the Board as a whole?

MR. TAKITANI: The Board as a whole had appointed I believe 8 years ago a committee which started well before my time to negotiate with the Central Maui Source Joint Venture. That committee continued in existence and negotiated. I was brought on board a couple of years before the end, which was probably about 1998 or so. And that board has -- that Negotiating Committee has continued, the Negotiating Committee of the Board at that time, April 2000.

MR. STARR: Mr. Chair.

CHAIR CRAVALHO: Mr. Starr.

MR. STARR: I would like to ask who was present at the negotiating meetings on February 27th?

CHAIR CRAVALHO: The Chairman will rule that question out of order. It's not a matter before this body. You may raise that question at any subsequent time when the discussion is being held on the merits of the procedures of the document. At the present time, this meeting is for the receipt of that report, so kindly limit your comments and questions to that particular question.

MR. STARR: Once again, I question the call of the Chair.

MR. HALL: Can I ask who was present on April 27th?

CHAIR CRAVALHO: I beg your pardon. We'll take care of Mr. Starr first. Did I understand you to appeal the ruling of the Chair?

MR. STARR: Yes, sir, I do again.

CHAIR CRAVALHO: Okay, we go through the same process. Is there a second to the ruling -- to the motion? Hearing none, the motion is defeated. The ruling of the Chair stands. Mr. Hall.

MR. HALL: Can I ask who was present on April 27th during the negotiating session?

CHAIR CRAVALHO: You may ask it. It doesn't necessarily mean you're going to have an answer at this time. May the record reflect the question has been asked and the proper answer will be provided for you in the immediate future within the next two days or thereabouts, no later than.

MR. HALL: Can I ask another question?

CHAIR CRAVALHO: Up to you.

MR. HALL: Doesn't Mr. Nakamura have a conflict of interest?

CHAIR CRAVALHO: I don't know what the conflict of interest reference you're making to. Inasmuch as there has been no determination and no groundwork laid as to what would be under consideration at the present time and what would constitute a conflict at that time.

MR. HALL: Well, a conflict is that he's

negotiating on behalf of the --

CHAIR CRAVALHO: One moment, Mr. Hall. The question of those who were at present at the meeting or were not present is not before the body at this time. Your particular question could be quite appropriate at a subsequent meeting, to wit the 20th. We're not trying to outrule you. We just want to see that we follow a proper, logical, sequential approach. That's all. No more and no less.

MR. HALL: The conflict of interest you can answer now though.

CHAIR CRAVALHO: The Chair didn't say that at all. Do not lead the Chair.

MR. HALL: I'm not -- I couldn't lead the Chair anywhere.

CHAIR CRAVALHO: Other times you may, but not this time.

MR. HALL: That would be impossible. The Chair wouldn't go anywhere the Chair didn't want to go.

CHAIR CRAVALHO: Right you are.

MR. HALL: So isn't it true that Mr. Takitani has got -- not Mr. Takitani -- Mr. Nakamura has got a conflict of interest?

CHAIR CRAVALHO: The Chair is going to rule your question or your statement which is made facetiously completely out of order at this time.

MR. HALL: Why?

CHAIR CRAVALHO: Because it's the prerogative of the Chair. The Chair has ruled. The matter before the body is for the receipt of the report.

MR. HALL: Why would Mr. -- can I just ask a question?

CHAIR CRAVALHO: Not at the moment.

MR. HALL: Why would it be appropriate for Mr. Nakamura to serve on a Negotiating Committee with a joint venture when he is -- was or is the President of the one of the joint ventures?

CHAIR CRAVALHO: The Chair is going to respond to that in a hypothetical manner. If you are basing your most recent statement hypothetically being factually correct, the Chair can advise you that you are wrong. The Chair will advise you that you are wrong, okay, and let's leave it at that. Let's leave it for the proper time for you to raise your questions and make your statements. I don't want to see us reduced at this time to a consideration and/or a discussion of a question which is factually incorrect. So the matter before the body is for the receipt of the committee report. There are no further discussions -- Mr. Starr.

MR. STARR: Mr. Chair, I would just like to remind my fellow Board Members that willful violation of Part 92 of the Sunshine Law makes any matter that is discussed during -- surrounding that violation voidable and also it is a misdemeanor crime.

CHAIR CRAVALHO: The Chair is appreciative of the legal counsel we have. The Chair is also especially appreciative of the fact that many of us laymen like to practice law from time to time without a license. The matter before this Board -- Mr. Hall.

MR. HALL: Has any opinion been sought from the honorable, learned Mr. Fukushima on whether what occurred is a violation of Chapter 92?

CHAIR CRAVALHO: In the opinion of the Chair, and based on what the Chair knows, the Chair has not raised the question. The question which may have been raised or is being raised rather by you or anyone else

for that matter, it is the understanding of the Chair it has not been presented to corp counsel, neither has there been a request for such an opinion.

MR. HALL: Wouldn't it be wise at that point to ask --

CHAIR CRAVALHO: It could be by the Chair, but the Chair will see that corp counsel takes appropriate review of the tenure of the decisions and the tenure of the discussions of this date. And I think we can get along very, very well, so we can then devote our attention to the composition of the agreements and in necessary procedural requirements which may or may not have been met.

Now, if all of us agree that we're not going to be spending our time masturbating spiders in the corner, we'll be in very, very good shape, and we'll be able to direct our time, our attention and our energies to the matter before this body.

Because the strength and the viability and the process and the progress of this community and its utilization of all of its assets, water not excluded, is of prime importance. And the Chair looks forward to the opportunity for the participation in an active and positive manner for all sectors and segments of the community. And if we agree to cooperate, we're going to be in good shape. Okay. No objection. May the record reflect the receipt of -- I'll be right with you -- the committee report, and we can act on it. Sir, will you identify yourself.

MR. PARKER: Yeah, this is Jeffery Parker. I just don't see how doing a railroad job and moving ahead when there could be a conflict of interest serves the community. We're the community.

CHAIR CRAVALHO: For your information, the Chair appreciates the point you've taken. You are hypothetically reaching a decision which may or may not be correct.

MR. PARKER: You could just ask the attorney for

an opinion right now.

CHAIR CRAVALHO: One moment. One moment. We want to proceed in an orderly manner. The Chair has indicated that the corp counsel will be looking into the matter. The Chair has also indicated that there is a period of at least 8 days in between for people to develop the arguments, raise their questions, participate with all of us in the next meeting. The Chair is well aware of the discussions that took place with some degree, yeah, some degree of concern with respect to some other activities in the East Maui area. And the Chair is attempting to preclude that kind of a situation and to provide the necessary time in between. It is not a railroad.

MR. PARKER: Well, it has the appearance of being a railroad job.

CHAIR CRAVALHO: Many things have the appearances of being what they are not, and I appreciate your comments. The Chair has posed the question. Any discussion? If not, are you ready for the question, which is to receive the report, have a special meeting on the 20th of March where all parties who wish to participate and offer their opinions and observations will be heard. Hearing no objection.

MR. STARR: Mr. Chair, has there been a motion made to this event?

CHAIR CRAVALHO: The Chair has stated a position. Now, if you wish to again appeal that, you're free to do so.

MR. STARR: I would like to vote in the negative.

CHAIR CRAVALHO: May the -- the Chair is going to allow that. Again, the proposal of the Chair is, A, we receive the report; B, that there is a special meeting for the 20th providing a period of 8 days in between for review by the public, anyone and everyone,

to review the proposed presentation to comment and make their observations at that time. They will all be accorded the opportunity to be heard. If the Chair is correct, the Chair understands Mr. Starr's position. Mr. Starr objects to that. However, that is a procedure we're going to follow. No opposition so ordered. Next meeting 20th of March, the Year 2001. And Mr. Starr -- may the record reflect Mr. Starr opposed that process. Call to order.

(The meeting was adjourned at 9:20 a.m.)

IWADO COURT REPORTERS, INC.

*"By Water All Things Find Life"*

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[\[Back\]](#)