

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR MEETING

Taken at the David Trask Building, Conference Room 207, Maui, Hawaii, commencing at 9:00 a.m. on April 26, 2001 pursuant to Notice.

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

ATTENDANCE - Board of Water Supply Meeting, April 26, 2001

Members present:

Peter Rice, Chair
Clark Hashimoto
Mike Nobriga
Jonathan Starr
Adolf Helm
Howard Nakamura
Elmer Cravalho
Kent Hiranaga

Staff present:

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

Others present:

Jim Smith
Adrian Chang
Megan Wells
Susan Kokos
Albert Sikirdji
Sally Raisbeck
Michael Clapper
Terry Holter

Kadar St. John
Jean Blum
Kelly Arber
Debra Mapel
Blaine Kobayashi

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CHAIRMAN CRAVALHO: The regular meeting of the Board of Water Supply will come to order. Ms. Nago, please check the roll to see if we have a quorum.

MS. NAGO: Board members in attendance are Chair Elmer Cravalho, Clark Hashimoto, Michael Nobriga, Peter Rice, Jonathan Starr, Adolf Helm, Kent Hiranaga, and Howard Nakamura.

CHAIRMAN CRAVALHO: There is a quorum present. To the matter of attendance is that we do have a sufficient number to conduct business. The approval of minutes is the next item on the agenda. What's the pleasure of the board?

MR. NOBRIGA: I would move special meeting minutes of March 12th and 20th be accepted and filed subject to a 30-day review.

CHAIRMAN CRAVALHO: Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN CRAVALHO: You heard the motion duly made and seconded. Made by Mr. Nobriga and seconded by Mr. Hashimoto for the acceptance of the minutes to be placed on file for the next 30 days. If there are no amendments or changes during that period of time, it shall be accepted and filed. Any questions? All in favor say "aye."

(A chorus of ayes.)

Contrary?

(No response.)

Carried.

Before proceeding to the testimony of the public,

the chair would like to request the approval of the board for a slight change in the agenda. Under Other Business of Section 9A, discussion and possible action regarding the Central Maui Source Joint Venture Settlement Agreement, the chair would like to have it moved up to consideration at the present time for this specific purpose to receive a motion to file the same.

MR. NOBRIGA: No objection.

CHAIRMAN CRAVALHO: Is there any objection? Hearing none, the chair would entertain a motion to file the matter. Mr. Starr?

MR. STARR: I move that this report be filed.

MR. RICE: Second.

CHAIRMAN CRAVALHO: You heard the motion duly made and seconded for this to be filed. Any discussion? Hearing none, ready for the question? All in favor signify by saying "aye."

(A chorus of ayes.)

Contrary?

(No response.)

Carried. (Applause.)

MR. NAKAMURA: I would recuse myself.

CHAIRMAN CRAVALHO: May the record reflect Mr. Nakamura's recusal of the matter.

MS. NAGO: I'm sorry, folks, you need to keep quiet.

CHAIRMAN CRAVALHO: The chair appreciates the enthusiasm of all parties who are here today, but the chair would like to request -- this is the last meeting that the chair will be sitting in this chair, and we'll proceed in the continuous orderly manner where everybody can be heard if we follow the necessary procedures. No objection? I'm sure we will receive your cooperation.

Testimony from the public of any matter that is on the agenda or any other matter whether it's on the agenda or not? Ms. Nago, you have a list of people who have indicated

their desire to testify; is that correct?

MS. NAGO: Yes, I do.

CHAIRMAN CRAVALHO: Prior to that, the chair, if the members have no objection, the chair would like to proceed to the election of the new chairman and vice-chairman, so I'm off the hot seat. The chair would receive a motion for the election of a new chair and vice-chair. Is there any motion?

MR. HASHIMOTO: On the nominating committee, I guess last week Bob Takitani -- or the last meeting Bob Takitani had the nominating committee for Chairman Peter Rice and Vice-chairman Howard Nakamura.

CHAIRMAN CRAVALHO: Is there a second?

MR. NOBRIGA: Second the motion.

CHAIRMAN CRAVALHO: You heard the motion duly made and seconded for the election of Mr. Rice as chair and Mr. Nakamura as vice-chair. Are there any questions? Mr. Starr?

MR. STARR: Mr. Chair, I was hoping we could have an opportunity for a little bit of an open discourse, and I was especially hoping that the candidates for chair and vice-chair might just give us a couple of minutes of their ideas and how they wish to proceed in office, if elected, so we'll know what we have to look forward to.

I know that both gentlemen are of the highest respect; they certainly gained my respect. But I would just like to see what they have planned as far as how they would run the board and agendas and open meetings and so on, and then have an opportunity to ask a question or two after that. If that's all right with you, I would like to request it.

CHAIRMAN CRAVALHO: The request has been received by the chair. The chair is very anxious to vacate the seat, and so the chair would like to suggest that your particular request be handled at the end of this meeting.

MR. STARR: Mr. Chair, I don't think it's fair to

ask board members to vote without having heard what they are voting on. It's like buying fish without getting to smell it first. The public is here, I think that we should have an opportunity to interview the candidates. This is a free and open election, and you certainly have experienced elections and had your chance to provide your rhetoric before and not after.

CHAIRMAN CRAVALHO: Depends on the case.

MR. STARR: Please, sir.

CHAIRMAN CRAVALHO: It depends on the case. The chair would entertain a motion.

MR. NOBRIGA: Mr. Chairman?

CHAIRMAN CRAVALHO: Yes, Mr. Nobriga.

MR. NOBRIGA: Call for the question.

CHAIRMAN CRAVALHO: The question has been called for. Any questions on that?

MR. HASHIMOTO: Second.

CHAIRMAN CRAVALHO: We have a motion for the acceptance and the question is being called for. There's no need for a second, the question has been called for. The pending motion is for the election of the chair and the vice-chair.

MR. STARR: Mr. Chair, am I clear that you are not allowing any discussion by board members on the candidates?

CHAIRMAN CRAVALHO: The chair has indicated what the pending motion is. It would be tremendously helpful, Mr. Starr, tremendously, if we would adhere to proper parliamentary procedure and the proper mechanism and the proper actions for this body. The chair may disagree with procedures as contrasted to disagreement on content.

The request, Mr. Starr, that you have made has been presented to this party. It was presented not in the form of a motion but in the form of a request, which was recognized and

not denied. This was followed, Mr. Starr, by a request for the calling for the question. So that is the matter before this body.

If in your wisdom you wish to ask for or to make a motion that prospective chair and the prospective vice-chair address this body before their election, the chair will entertain that motion. But let us stick to what the facts are and let us stick to what the motions are before this body so we do not mislead anyone.

You are at perfect liberty to make a motion if you wish to hear from the nominated candidates, and the chair will recognize your motion.

MR. STARR: Mr. Chair?

CHAIRMAN CRAVALHO: Yes, Mr. Starr.

MR. STARR: I move that we hear from the nominated candidates and have the opportunity to ask them questions.

CHAIRMAN CRAVALHO: You heard the motion made by Mr. Starr -- wait. I know there's a motion on the floor, but yield to my peculiarities. Mr. Starr has moved that he wishes to hear from the nominee and the -- both nominees. Is there a second to that request?

(No response.)

Hearing none, the request dies for lack of a second and is supportive of the chair's statement. The pending motion before this body is for the adoption and the election of the chair and the vice-chair, and that question has been asked for. That's the matter before this body. Ready for the question? All in favor say "aye."

(A chorus of ayes.)

Contrary?

MR. STARR: Nay.

CHAIRMAN CRAVALHO: Carried. May the record reflect that Mr. Starr has cast a negative vote on the matter.

Mr. Rice, it's all your baby now. The chair would like to ask the members of the body to pardon in the haste in vacating the chair to Mr. Rice.

CHAIRMAN RICE: Is there congratulations in order?

MR. NOBRIGA: Yay. (Applause.)

CHAIRMAN RICE: Good morning, everyone. I did prepare some words, and I was -- I think at this point, Jonathan, I would be happy to share those with you. I want to thank my fellow board members for their confidence in me, and I beg your indulgence and patience as I get familiar with this new position. And I'm probably not the parliamentarian that our former chair is, but I will work very hard to assure that we'll get things on the straight and narrow.

In the anticipation of this position, someone asked me what my agenda was going to be and I thought it was kind of a peculiar question because I think the answer is the one that there is no personal agenda.

The agenda for the Board of Water Supply is outlined in the charter, and I would refer my fellow board members to the goals and objectives that we approved previously and that we're subject to public hearing and public review. This is our agenda. There are no personal agendas here. And it's my intention to follow those goals and objectives as the chairman.

So with that, I won't make a lot of speeches. You won't find me making a lot of speeches. That's probably the longest one you'll hear.

MR. STARR: Mr. Chairman, may I ask a question on kind of an informal note?

CHAIRMAN RICE: Sure.

MR. STARR: I have had a problem with free and open debate being stifled over the past year, and this has many times occurred in the agenda process.

At the agenda for this meeting, there were several items that I wished to get on the agenda and I had shown them to the acting chair and he said they would be on the agenda, and then they were not. And when I asked the board why not, she said the acting chair said he decided he didn't want them on the agenda.

So I would just like to understand from the get-go how the agenda is going to be handled and how members, you

know, if they want to get something placed on the agenda, can do so.

CHAIRMAN RICE: It's my feeling that the chair sets the agenda. I think that's pretty clear in most organizations. And what I would ask is that once the agenda is circulated by the secretary, that if you have any additions to the agenda, that you contact me personally.

MR. STARR: I believe once it's circulated it's too late.

CHAIRMAN RICE: No, I think we need to have a procedure whereby the board members are aware of what's on the agenda and they have a chance to give me some input if they have input.

MR. STARR: Thank you.

CHAIRMAN RICE: There being no other questions or information, let's proceed on the agenda. We can pass the testimony of the public section -- is there any testimony from the public at this time?

MS. NAGO: I do have people who have signed up, if you want to take it that way, or I don't know how you want to proceed.

CHAIRMAN RICE: We can do it either way. Members of the public can testify now on issues that will come up later or you can wait and testify as the issue comes up on the agenda. Those who want to testify now, Fran, in order of having signed up, please.

MS. NAGO: First one is Jim Smith.

CHAIRMAN RICE: Jim, could you tell us what issue you are testifying on?

JIM SMITH: Mr. Chair, yes, I will. My name is Jim Smith. I'm a citizen who resides in Haiku. In terms of telling you --

A VOICE: Please speak up a little louder.

JIM SMITH: Certainly. I will tell you the items I intend to speak to, but two of those items have been taken up and acted upon already, but they are listed on the agenda. The first one was, I guess it was item No. 5, which was the election of the chair. I don't know who the vice-chair is.

CHAIRMAN RICE: Mr. Nakamura. Howard Nakamura.

JIM SMITH: Congratulations.

My testimony was to the effect that I have enjoyed the civility and wit of the chair who proceeded you. And in light of the introduction of the memorandum regarding the joint venture, I was hoping that you would continue as chair because of the rancor and his experience of dealing with the rancor in a civil way.

And in addition, the possibility that his intelligence may have been increased by a medical procedure and that is something that I would like to see and in action, but I have been denied that.

MR. CRAVALHO: Mr. Chair, may I respond to my friend who speaks? It is my understanding, assured from my doctors, that the 95 percent blockage of the artery has been removed, and therefore there is a greater and better improved blood supply to the brain. Hopefully this shall be resulting in a sharper sense of observation and expression on the problems before this particular community.

So I can assure you I -- frankly, I'm moving forward to returning to where I am now so I can address some of these questions.

JIM SMITH: Sir, you will be missed from this prospective.

The second item I wanted to speak to, and I'm a little confused about this, the joint venture agreement, the taking up of a committee report which is identified as a memorandum, and there's no identification on the agenda of a committee report from any committee and I'm wondering where this leads the matter.

I, quite frankly, have considered it a committee report and in that respect, I had some questions about the factual content, the specificness (sic) of it, the generality of it, and whether or not that will become a permanent part of

the record in its vagueness.

And if that's the case, I would say that for the record the board take the position that none of the facts or none of the comments made in that report are, in fact, the position of the board or hold any substance as it relates to whatever happens.

To me, there were some questions raised in the minutes regarding a contested case concerning this joint venture issue. I believe that since it was a committee report, that it was a legislative matter, that it was not subject to proceedings as a contested case; but as it was, it was not sufficient for you to make a judgment. You filed the documents. So I don't know where that leaves it.

It has not been identified as being taken up. I didn't see it accepted at the meeting. That was the subject of the joint venture. I recall that the only things that happened was that there was public testimony taken. I didn't know the board acted officially in any way, shape or form. So I need that clarified, if you would.

CHAIRMAN RICE: Mr. Smith, I believe that the action by this body was to file it and that no -- which means no action was taken on that report and --

JIM SMITH: So you're saying it's the position of the board that the substance of the committee report is not taken into consideration.

CHAIRMAN RICE: No action has been taken by this body, other than the file.

JIM SMITH: That satisfies me and shortens my testimony. Thank you.

CHAIRMAN RICE: Thank you.

JIM SMITH: You're welcome.

The final matter that I wish to discuss is item No. 9G, which is a document, I believe, that comes to you from the corporation counsel's office. And it is in fact identified as a rule of the Board of Water Supply pertaining to a water meter issuance rule for the Upcountry water system.

From my knowledge of this rule, it's my belief that

it's simply a formalizing of an incorrect legal analysis. In that case, I refer you to Section 16, 106-4, which is water service requests. And it makes reference in this section to March 16th. There was a finding that the Upcountry water system was found to have been developed, for whatever reasons, of insufficient capacity.

You must realize that it's been the position of the county that the finding was an interoffice memorandum, and in fact, it was a declaration by the director; and in fact, it was a finding by the director that to me was not justified based on the facts. These points were at issue.

So if you are using that indirectly as a basis for your action on this rule, I think you are making an act without understanding or knowing the full impact in terms of your authority of that introduction into these rules.

It should be noted that in the response, defendant's response, the memorandum in opposition to my -- or the plaintiff's motion for partial summary judgment in the case Smith vs. Craddick, it was filed on February 2nd -- February 18, 1994. There were comments made regarding the authorities of the director, regarding the fact that this was not a rule, regarding the fact that it could end at any time.

And it would seem to me that by incorporating this you are tagging along with it those assumptions and premises.

CHAIRMAN RICE: Maybe I can help shorten your testimony again. I think the chair intends to refer that particular item on the agenda to the rules committee. So I would be -- unless the pleasure of this body is to do something other than that.

JIM SMITH: In that case, you have shortened my testimony again. I would like to, again for the record, reference a provision in it that I think could help in that analysis. I think what you need to do is you need to start with the purpose of the rule.

I think what has happened is, is the word in the original rule, which was the Kula rule, which was allowed to expire, was that it was to regulate issuance of water meters. And that idea of regulating is at the heart of the rule. So it's not arbitrary.

It's not a director's or a collection of unknown numbers of things. It's very specific. And that the arbitrary

decisions of the director or the perception of his arbitrariness is what the Kula rule addressed. And that's what is at the soul and heart, I think, of the problems Upcountry, is this perception of arbitrariness and that's where this rule misses entirely.

So with that in mind, I would ask you to be very careful. Because in addition, it says in this rule that during the period of this rule, which then implies that it's temporary, and that goes along with that whole concept and there's -- it needs to affect all people equally and this rule doesn't.

I mean, it gives a carte blanche to some people and not other people, and so it's very badly written, and I would hope the rule committee would spend a lot of time working with it. Thank you for your patience.

CHAIRMAN RICE: Thank you, Mr. Smith.
Fran, who's next?

MS. NAGO: We have Adrian Chang.

ADRIAN CHANG: Thank you, Mr. Chair and members of the water board. I'm here to testify on item 9H on Other Business, regarding fluoridation of the drinking water on Molokai. My name is Adrian Chang. I'm a retired nuclear engineer from Pearl Harbor Naval Shipyard who drank fluoridated water for over 25 years. I thought it was a great thing for the teeth and found out I was wrong.

I would like to briefly discuss from an engineering perspective about safety and effectiveness of the fluoridation chemicals. Hopefully, then there can be some insight on why I was wrong.

First of all, I would like to make it very clear that I am not an anti-fluoride proponent. I am a pure water proponent, if anything. If you were going to be putting Tylenol in the water, I probably would be here today talking about stopping putting Tylenol in the water for headaches; but if you are going to put vitamin C, well, I might stay home and watch television and be a couch potato.

This is a very serious matter because it really affects everybody in the state. It's so important to understand the basics of fluoridation and what we're getting into. So what I did was -- I had an overhead slide show but

unfortunately you folks don't have that facility here, so I will have to make due very briefly with what I got.

I gave you folks, in a handout, a benefits versus risks sheet; so it made it very clear what are the benefits, what are the risks. This is what engineers do, we assess benefits versus risks.

The first item we talk about is reduction of cavities; but the most recent report that came out from the University of York from Britain that said fluoridation was safe, in the newspaper, that was really not -- it was embellished and exaggerated. The actual report was clarified y -- this is in your handout -- by the letter of a chair of the advisory group to say that their review did not show that water fluoridation is safe.

In fact, they had very serious concerns about dental fluorosis and they said you had a 15 percent benefit on reduction and caries; but on the other hand, on the risks side, you have 48 percent dental fluorosis. I will pass this around; I only have one copy, unfortunately. I guess you folks don't operate like Kinkos and make Xerox copies for testifiers.

I will pass this around and you can see what dental fluorosis really is and how bad it could be. What is scary -- I got data from the General American Association article and I plotted it to see water concentration versus parts per million and parts per million versus percentage of dental fluorosis. What is really scary is that it follows an exponential relationship.

In other words, it's very difficult to control fluorosis because of the exponential relationship, and at two parts per million, you could get a hundred percent dental fluorosis based on -- there's different -- this is comprised of several studies that were collected, put on the table, and I just plotted it out, and here it is. Exponential relationship. That is what really makes it scary.

The other thing, when they say fluoridation is safe, I have a report here from the Center for Disease Control, who is also promoting fluoridation. This is an unpublished report. You only could obtain it under the Freedom of Information Act request. When I asked for it they said, well, who are you? What do you need it for? Blah, blah, blah. And I said I'm an independent engineer doing research. And only under the Freedom of Information Act -- they said it's an internal report.

But this report has shown that there's at least six deaths that are attributed to water fluoridation from equipment failure, operator errors, and these are things they are not telling you about. Over a thousand people, including young children, got sick. This is the liability that comes with water fluoridation. And this is an informal, voluntary report; so not necessarily all overfeed problems are documented and reported, unless people got sick.

And we even had an overfeed problem or a back feed problem in Kekaha, Kauai, where there were 16 people that got exposed; 9 people had to go to the hospital and get checked out. But they say, oh, it's not a problem because they just vomit it out and it's okay, they get cured. What happens, though, when you get a big slug of this fluoride chemical in your stomach, it turns into hydrogen fluoride and that's the danger.

Moving on, there's also what they call the at risk population, people that have weak immune systems. And this was brought up by the EPA in response to this congressional investigation that's ongoing right now, where they say, okay, Congressman Kent Calbert (phonetic) asked the EPA: Who are the people that would be at risk?

The EPA replied: We have the elderly, the cardiovascular problems, kidney problems, people with vitamin C deficiencies, magnesium deficiencies, calcium deficiencies. And they're in the millions. Not all of them will be affected, but it depends on each individual. Would you like to be one of those individuals that get affected by fluoridation?

And this list here does not even include all the other people that have autoimmune disorders, multiple sclerosis, arthritis, cancers, allergies, chemical sensitivities. I mean this is really scary because if you are putting -- introducing a toxin into the water, people with stress immune systems will be affected. That's common sense. It's not going to help them. I would rather put vitamin C, then it builds up the immune system.

Then we talk about, well, does it have any correlation with health effects like cancer? This is a report, a peer review report issued in the Journal of Epidemiology of a study that was done in Okinawa, where Okinawa was under U.S. administrative control from 1945, after the war, to 1972. And after that they turned it back over to Japan.

When they turned it back over to Japan, they stopped

the fluoridation, they found that there was a significant positive correlation of a reduction in uterine cervical cancer when the fluoridation was stopped. And when they use words like "significant positive correlation" in a peer review study, that's a very, very strong correlation. Now, these are the things that have to be pointed out to people to make them look at benefits versus risks.

So moving on, there's also information from manufacturers called "material safety data sheet information." Many of you who deal with OSHA requirements and stuff, you know that, hey, the manufacturers have to come out and put down all the health effects and chronic and acute health effects and have to tell the truth by law. If not, they become liable.

So when they put all the health effects in here, when you fluoridate with their chemicals and they tell you it causes fluorosis, now anyone who comes up with fluorosis problems after that, you become liable because you are the user. The manufacturer says, hey, I put it down here, I washed my hands.

But what is interesting is that here is a material safety data sheet from this company called Chemtech (phonetic), and they have listed down -- by the way, it is industrial grade, it is a poison. There's no question about it, there's no such thing as food grade. It's either technical grade or pharmaceutical grade. And this is an industrial grade chemical. Much higher levels of purities like arsenic, led, and things like that.

But what this company has listed down are the applications of the sodium fluoride. Listen really good to the list and you draw your own conclusion. Other industrial uses are aluminum fluxes, fungicides, glass frosting, gluing adhesive, insecticides, magnesium fluxes, pesticides, stainless steel -- toothpaste, enamels, and wood preservatives.

Which one sounded like it should not be in that group? Toothpaste. It's the only human consumption application of all these industrial processes. That should wave the flag. We don't need any more studies; we don't need any more discussions. This should wave the flag. Something is wrong here.

Then we go back to the standards. This is the standards that engineers looked at. It's developed by people at engineering from the American Waterworks Association. These standards are the ones that control the quality of the

chemical, in addition to the National Sanitation Foundation.

These standards allow the heavy metal impurities.

And the people who are listed in these standards -- this is the American Waterworks Association, and correct me if I'm wrong, Mr. Craddick, they're a nonprofit organization of -- like trade professionals, all the people interested in water. And I think it costs \$90 to join and anyone could join. I was asked to join but I did not have \$90 to spend.

But the people who are listed here as the people that reviewed and proved the standard at the time of the approval, the chair was Mr. Thomas Reeves (phonetic), who is from the Center of Disease Control, the national fluoridation engineer. The vice-chair was Mr. McKinsey (phonetic), who was from Lousier (phonetic) Chemical Industry, who is one of the biggest sellers of fluoridation chemicals. Mr. Paul Mason, the secretary, who is from Kaiser Aluminum and Chemical Corporation, another big producer of these fluoridation chemicals.

You draw your own conclusion that these are the people that are controlling the quality of the fluoridation chemicals that are going into our drinking water. These are all documents. I'm just a messenger. I am a researcher. I have done the research and it becomes very clear, we don't need to hear any more about studies and things like that. Just look at the basic facts. The basic chemicals.

We talked about Maunaloa, Molokai. Great experiment. That was done back in 1961 to 1973. Everybody jumped on the band wagon, thought it was a great thing. Using that as a great example. What they have not told you, which this is included in the handout to you people, what they have not told you is just by chance and by luck, I was doing research for my daughter in the library for her master's and came across this report. It's a preliminary report of the Maunaloa, Molokai experiment.

In this preliminary report, they had data for 9, 10 and 11-year-olds and they showed some reduction of cavities. But what this report also showed at the 12-year-old level, the caries increased by 9.9 percent. If you look in the final reports of all information that I obtained under the Freedom of Information Act, that request from the state health department, they did not provide this information. So this is the other thing.

I have no axe to grind; but as a taxpayer, I expect

my elected officials and the government workers that are paid by my tax dollars to be forthright, honest, and truthful in presenting information in an objective manner so that we can all make good decisions. But you cannot make good decisions if they don't tell you the whole story.

Another incident in a report that came from the research and statistics office from the health department, now this is not really conclusive because this only talks about birth defects and fetal deaths throughout Hawaii.

When the manufacturers in their material safety data sheets says, Warning: This product contains detectable amounts -- not trace amounts -- but detectable amounts of a chemical known to the State of California to cause cancer, birth defects, or other reproductive harm. That made me go, look, hey, let's find out what happened at Maunaloa, Molokai.

Is there any data? The best I could come up with is the whole Island of Molokai, they had data from the periods of 1968 to 1982, and I'm not saying this is from fluoridation; it could be from pesticides or a combination of both. However, it does raise a question: Why was there a significant drop, when fluoridation was stopped in 1973, significant drop of fetal deaths and birth defects?

We need to go back and talk to people that live in Maunaloa, Molokai and find out what are some of the health issues, look at their records. Are a lot of these fetal deaths and birth defects tied to Maunaloa, Molokai? Then we'll see.

Because, hey, who determined it was safe in Maunaloa, Molokai? It was a dentist who went there that was promoting this project and assisting the private landowner there. How did he do any studies after, to determine the health defects? Probably went to the neighborhood doctor and said, hey, any health problems? No, everything seems okay. Nothing unusual. So we have a few birth defects here or fetal deaths. But if you don't see it collectively, you can't see the big picture.

To expedite things, we talked about water fluoridation and it's all in the water anyway and all we're doing is adding to raise it from here to here. Never believe that. It's not true. I got water report data from all the islands, on Maui, Molokai, Lanai. You folks are less than the detectable. In other words, essentially whatever the equipment can detect, you folks don't have any.

In Kauai, there was only 1 well in 47 that had

fluoride in it detectable, so it's obviously not scattered throughout the island in natural form.

In Honolulu, this is the really scary part because what I did was plotted it by the different areas from the Board of Water Supply data, and the areas that had the highest are in the agricultural areas and the central and leeward Oahu area. And the highest readings were in the Kunia area where Village Park is, for those of you who are not familiar with the location.

And that is where they have been getting these class action lawsuits because of high illnesses, birth defects, and things like that. That's going on there. I think they hired the Erin Brockovich firm. And it's really sad, it makes me feel sad that people are not looking at these things and making the connection, especially if you have access to all the data. The data is there.

What is scary, you can see, though, the green indicates less than the detectable amount; in other words, no fluoride. And the orange indicates where it's high above level of 0.2 parts per million. And that is the level which I personally feel is where dental fluorosis starts getting bad.

So you are going to have -- if it affects your teeth, it will affect the inside of your body. There's a strong correlation. I mean, your teeth is not separate from your body. We need to send people back to school if they think the teeth is a separate entity from the body. It's connected as one entity.

But you see what is scary, from the highest area it tapers out. I'm going to wrap it up right now.

CHAIRMAN RICE: Please, there's a lot of people here.

ADRIAN CHANG: Yes. But as an engineer, it's easy to knock people down on their suggestions, but how do you fix the problem? And the problem to fix is there are many alternatives, here's one alternative. This is bottled water from a spring; it has fluoride inside. We could buy it at probably wholesale, a dollar a bottle, and give it to the people that want it. And you have control, you have consistency, and if there's allergic sensitivities, you can stop.

And the other thing is preventative education. What is happening now, think about all the dental hygienists that

used to go to school all the time, and they are trying to abolish all these dental hygienists. That's wrong. They are the ones that can help solve the problem.

Instead of only going to school still, we need to fix the problem before it starts. We need to train the gynecologists and the pediatricians to help the dental hygienists educate and prevent baby bottle teeth decay. Then we can do it economically and cost effective without having to hire 500 dental hygienists.

And that is why when I think about if this is typical in Hawaii what is throughout the country, that they don't want to spend money on dental hygienists who go out and count decayed, missing and few teeth and -- in schools, and you know, they are not preventing cavities. The dental education before birth and right after birth, those are the critical times and that will solve the problem.

Thank you very much for allowing me to testify.

MS. NAGO: Megan Wells (phonetic).

CHAIRMAN RICE: Members of the public, we don't normally have this many people here, so in the interest of getting everyone to testify who wants to testify, in the issue of time, try to keep it brief.

MEGAN WELLS: Mine is brief. I actually wanted to just address the liability issue for the water board and approving fluoridation. I have just a couple of things that I'll read.

The EPA finally admitted on September 5th, the year 2000, that fluoridation puts the elderly, cardiovascular, kidney, vitamin C, magnesium and calcium, puts these citizens at risk. In addition, the EPA has made a requirement for public water systems to provide their clients with health effects information on contaminants in the water supply, including fluoride.

Now, the other part of this that's pertinent for you is that this is the first time that the EPA has been willing to admit that fluoride and water fluoridation pose serious health risks and it may be the first indication by the EPA that local government officials can be held liable for failure to disclose to the public all the health effects of fluoride.

The other part of this is that there's now Alan

Segal (phonetic), one of the attorneys involved in the now famous Erin Brockovich case, has upped the ante as making history again through a class action lawsuit that is sure to change the face of dentistry in America. Details of this class action lawsuit will be released that will shake the foundation of the American dental establishment.

At issue is the patient's right to informed consent and the right of the patient to know if a well-known toxic substance is being put into his mouth. Similar actions are being aggressively pursued that will reach the manufacturers, associations, and dental licensing boards with experts predicting claims in the many hundreds of billions of dollars.

I think that this investigation is going to uncover other things about what the American Dental Association is promoting; namely, fluoride and fluorosis -- fluoridation. So what I would like to ask the water board to do is to place a moratorium on fluoridation and any related decisions until such a time that the following conditions are met.

The current ongoing investigation by congress is completed and the results are published or litigated in the U.S. Supreme Court and it is decided by the Supreme Court that fluoridation is safe and effective; and two, that fluoride chemicals to be used have been tested and approved by the FDA for safety and effectiveness.

I think this would allow the water board to not have this continually presented every month, which is probably what is going to happen, unless you can make some kind of decision like this to put a moratorium on it until at least the government -- the congress has made a decision on its safety and to protect the liability of the water board.

Thank you.

CHAIRMAN RICE: Thank you.

MS. NAGO: Susan Kokos, K-O-K-O-S.

SUSAN KOKOS: I know you have seen this before on the water board. This is the actual canister that fluoride is delivered in, and you can see it has the skull and crossbones; it's marked as a toxic substance.

Four weeks ago I thought, like the rest of you, that fluoride helps somehow to prevent tooth decay, and I thought I knew as a registered nurse that there was some problem with

heart and kidneys, but I was very vague about it. As I became aware of imminent fluoridation of our waters, I began to study this and these are the results that I found in my research.

Fluoride is a toxic industrial waste from making aluminum and commercial fertilizers. Fluoride contains trace amounts of aluminum, arsenic, and lead. You cannot -- for doctors who do -- therapy to get heavy metals and poisonous substances out of their bodies, out of your body, you can't get fluoride out because those other poisons, arsenic, lead, and mercury have a positive ion; fluoride has a negative ion, and you can't get it out of your body.

You cannot filter fluoride out of your water. At the present time we do not have the technology to have a water filter that can get it out; so that even if you choose to not have it, if you know you have a health risk and you don't want it, you can't get it out of your water.

Fluoride has crossbones on them because it's so poisonous. Fluoride does not now and never has had FDA approval. Fluoride does damage to the young, the malnourished and the elderly. Fluoride crosses the placenta, as we heard, and does genetic damage to the unborn. Fluoride brings a 41 percent increase in hip fractures in the elderly.

Since 1996, these 11 national organizations will not endorse fluoridation: The American Heart Association, the American Academy of Allergy and Immunology, the American Cancer Society, The Chronic Fatigue Syndrome Activation Network, The American Diabetes Association, The National Institute of Municipal Law Officers, The American Chiropractic Association, The American Civil Liberties Union, The National Kidney Foundation, The American Psychiatric Association. And it's been proven to cause hyperactivity attention deficit hyperactivity. The Society of Toxicology.

Most Western European nations, Japan and other Asian nations, have banned the use of fluoride. And they all have two reasons for that: one, there's no scientific backup for this, there's no medical reason to do this; and two, they consider it immoral and unethical to medicate an entire population, not knowing how much you are going to receive and what condition you are in to receive medication.

There have been 14 Noble prize winners in the areas of medicine and chemistry who have strong objections for or oppose the use of fluoride. You get fluoride from the plants where it's industrial waste. The Environmental Protection

Agency has stringent rules on how it's packaged, how it can be transported. And those are all in effect.

In fact, the Environmental Protection Agency has rules that if its people go into an area that is fluoridated, that they are given unfluoridated bottled water for their use. Poison. Toxic. Bad. Good when you put it in the municipal water for the children's sake? What changed? What changed? This is the container that goes to your water supply. Where did it change from being a toxic waste to being good?

It works on the enzyme level which is where we get life from. That's what is working in our little cells, and then the cells work together and we're healthy and strong and keep living. It's not allowed to be put in the rivers because it will destroy wildlife and plant life because it hurts the enzymes. Thank you.

MS. NAGO: Albert Sikirdji.

ALBERT SIKIRDJI: Aloha, good morning. I never spoke before a board before. I'm having a drink of water; hopefully, good, clean water. Most of what I wanted to say people have already said. So I'll just say a few things.

Mainly this fact here, I thought it was interesting about the EPA, that they don't even want to drink the water. They want to have -- The National Federal Union of the U.S. Department Protection Agency composes scientists, biologists, toxicologists, chemists, and engineers and they all voted a hundred percent to take a stand against fluoridating drinking water. And they also demanded unfluoridated bottled water for all EPA workers.

I guess I have to ask because all this stuff is going on here, why you are even considering putting fluoride in our water. And I'm assuming as a board your goal is to provide healthy water for people. We all need water. Water is a fact of life; our body is made up of about 85 percent of water. So why with all this evidence and all these 11 organizations that are national, why would you want to put something toxic into our water? I don't understand what it's about.

This debate has been going on since the '50s. When it first came out everyone thought it was going to be really, really good. Now all the studies and all these things are coming out. So I would put to the board: What's the benefit of this? Why is this even happening? Who in our public even

asked for this? Have you asked the public? I'm assuming you are representatives of us, the public.

There's a lot of people here and who asked you to do this? How many people in this room want it? Anyone here for it? No one is even raising their hands that anyone here is for it. So I would say, wouldn't you have to put this out to the whole populace first? Wouldn't you have to ask our permission? Do we really want to drink it?

Do we want to put something in our water that there's no way we can take it out as an individual? Like I have a filter in my house, but I can't take it out. Once it's in the system, no matter where it is, it's there. So then we're all now forced to drink a poison that is known.

And I think the reason there's not more people in this room is people are not aware of what is happening. I live on the island; I've been here for 23 years, but I also travel, I have been away for a few months and I just came back a month ago. I found out this was an issue and I'm really happy to find out I could come and speak to you because I didn't know what to do and I was very concerned.

So I want to thank you for letting us come and hearing us and I really hope and I really pray that you hear us and you really hear our plea, because this is a plea, not just for the people in the room, this is a plea for all of us.

And I'm a firm believer in tradition and ancient ways. And in ancient ways and in ancient societies, before a council made any decision, they asked: How is this going to affect seven generations? So I would ask you that question, gentlemen. I would ask you to look at this, look at the research.

This gentleman here who was an engineer, he gave incredible scientific facts with all these documents. Really look at this. Look at what's really happening here. Because the decisions you make affect all of us, all of us here, and it affects all of our children and the children to come. So from the bottom of my heart, I really pray for your guidance and for you to look and for you to get the facts of what is real.

And there was a report in the consumer report, it says the survival of this fake controversy represents the major triumph of quackery over science in our time. This is from the consumer reports. You know consumer reports says things that are very much quite in alignment with reality.

I would just pray for your guidance and for you to

really look at what this choice really will do for all of us. Really ask the people. Thank you so much for your time.

MR. STARR: I just want to comment on something you said to make it clear to the public. The matter of fluoridation is not something that the board dreamed up or that came from a desire on the part of the board. We were requested by a member of the public to consider fluoridating water on Molokai. This is not about Maui island. It's about our water system on Molokai that we control.

So it's our duty to open it up for discussion and listen to it, which we have done with the hearing on Molokai. But this is not something that the board for any reason, you know, that's come out and trying to put on to the people.

ALBERT SIKIRDJI: It came from one person, one person put this forward as a suggestion?

MR. STARR: Yes. As a letter.

ALBERT SIKIRDJI: Maybe you can hear the amount of people that have come up saying no, as opposed to the one person who said yes. Thank you so much.

MS. NAGO: Sally Raisbeck.

SALLY RAISBECK: Good morning, Mr. Chairman. I want to apologize for being so enthusiastic when you filed the committee report on the Central Maui Source Joint Venture. For members of the public who might not be that familiar with how legislative bodies operate, usually filing something is equivalent to killing it. And I strongly applaud you for filing that committee report.

Just in case it ever surfaces again, I would like to say that that committee report was filled with untrue statements -- well, at least several, and should be gone over with a fine-toothed comb if you ever do decide to proceed with it in any way.

My real reason for testifying today is I am concerned for the coming summer with whether water supply will be adequate in Central and South Maui. The water that presently serves those areas is kept at 20 million gallons a day for Iao aquifer and 4 million gallons a day for the part of

the North Waihe'e aquifer that you currently have wells in. I believe that it's going to run over 24 million; those two combined will run over 24 million gallons a day this summer.

Now, since they do a yearlong average, probably you will be told that there's no problem, because the average will go down again in the winter. But I think you are going to have a serious problem this summer.

I know Mr. Craddick said at one point that the two North Waihe'e wells were pumping 24 hours a day, which is not very good for the wells or the machinery. So I would ask you to investigate whether we are facing a shortage of water in Central and South Maui this summer if we continue to have the kind of drought that we're having.

I know there's on the agenda an item for a new well at Camp Maluhia and I believe that this represents an intention on the part of the board to develop more water up in that direction. And this brings an item to mind, which is, I think the board members should be very careful about disclosing conflicts of interest.

I know that, presumably, Mr. Fukushima, your attorney, in putting in the little squib when you have executive sessions, has added a line saying see also Hui Malama Aina O Ko'olau v. Pacarro, and that's new. So I went and looked up that case to see what it had to say.

One of the things that I was struck by was that it said that board members, and I believe this is based on state law and not County of Oahu law, that board members must fully give a full written disclosure of any direct or indirect conflicts of interest when they are considering or when subjects come up in which they might have a conflict of interest.

So that as you develop up toward Kahakuloa, I think board members who have financial interests in that area should provide the board and the public with a full written disclosure about their interest in that area.

Again, I want to thank you all for hopefully seeing, based on the testimony of March 20th, that the settlement agreement proposed by the negotiation committee was very flawed and therefore not proceeding with that particular committee report.

I would repeat the question I asked at the previous board meeting: Does receiving the report of the negotiation committee imply that that committee has been dissolved? And I

believe the chairman last time said that the corp counsel could perhaps answer that question this time with that.

MR. CRAVALHO: Mr. Chair, for me to respond to that, I'm not corp counsel but --

CHAIRMAN RICE: Please.

MR. CRAVALHO: The submittal of a report does not, by and of itself, eliminate any further consideration on any subject matter by that respective committee, unless in advance, in the establishment of a committee, it's purpose was restricted to one particular purpose only. The history of this committee, as I understand it to have been, is that it's of many years' duration, and therefore it is just like a quasi continuing operation of the committee.

Now, the submittal of a report, as you know, one follows parliamentary procedures and the requirements. The submittal of a report is an indication of what a committee has decided should come to the entire board. It in no way indicates the approval or disapproval of the contents of that particular committee. And at times it seems to be misunderstood along the way.

In the process again of due process, consideration has to be given at the appropriate time and at the appropriate place for the public to participate in.

And with respect again to the provisions of the agenda, the former chair would like to point out that in the particular sections that call for public's participation, if one looks at the provisions, this is intended for participation by the public as opposed and contrasted to participation and remarks by members of the board.

This is a limited opportunity, limited for consideration of the members of the public. Any movement away from that consideration, as I understand the agenda, would be out of order, in that it is not procedurally correct. And I think we need to keep this in mind. And I think we do need to understand and appreciate the continuity of the committee that you made reference to.

Its future will depend on the recommendations and the proposals that will be coming from the new chair, and I think if we keep these approaches in mind and if we keep in mind again the procedural kinds of requirements, that will

assure the opportunity to be heard at the appropriate time at the time of scheduling.

It has been my, Mr. Chair, my position that these things could best have been accomplished over a period of the year through the committee setup. And not denying, however, the right of the public to be heard one more time in the open Board of Water Supply meeting.

The procedure which I had hoped to follow would be providing a double opportunity for public participation rather than a diminishing of that participation; but again in that process, to be sure that we follow the appropriate procedures so that the opportunity for all parties who wanted to be heard would be heard in an ordinarily manner. And I think this is absolutely correct as to the processes and the procedures.

MR. STARR: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Starr.

MR. STARR: I would like to ask the question which had been asked at a previous meeting and for which an answer had been promised to be forthcoming from corp counsel today, whether there is a negotiating committee in existence and if so, who the members are. And at the last meeting, the public was promised an answer to this question.

I would like to get an answer from corp counsel or if you wish, if the chair could answer.

MR. FUKUSHIMA: If I may, Mr. Chair.

CHAIRMAN RICE: Sure.

MR. FUKUSHIMA: I believe it was in April of last year that the former chairman had appointed or had designated a chairman of the negotiating team and instructed -- or negotiating committee and had instructed -- and other committees at the same time, and had instructed the chairs of those committees to select members who they wish to have on their own committees.

The boards own rules provide that the chair has the authority to appoint chairs of committees. And so there is a negotiating committee properly formed, or the chair was properly appointed by the chairman of the board. And when I

say chair, the chair of the committee was properly appointed by the chairman of this board. So there is a negotiating committee properly formed under the rules of this board.

MR. STARR: But I'm led to believe that since we have a new chair and that he will be acting on it, that as of today there's no --

CHAIRMAN RICE: Not to get out of order on the agenda, we're taking public testimony, and I'll talk to the committee as soon as we finish public testimony.

SALLY RAISBECK: My question really had nothing to do with previous history last year, eight years ago or whenever I considered that the kuleana of the lawsuit that is in existence.

I was merely asking, since I believe my understanding of Roberts Rules is that when a special committee presents its report to -- and that report is received, that -- in fact, I went and checked it out in the latest version of Roberts Rules, that that essentially dissolves the committee when they have finished their task.

However, I stand corrected if that's not the way this board operates. So I take it, in that case, since Mr. Takitani is no longer with the board, it would be Mr. Rice and Mr. Hashimoto --

MR. STARR: Mr. Nakamura.

SALLY RAISBECK: -- are still in existence, the negotiating committee; is that the way the board sees it?

CHAIRMAN RICE: For now.

SALLY RAISBECK: Well, thank you very much.

CHAIRMAN RICE: Thank you, Sally. Next, Fran?

MS. NAGO: Michael Clapper.

MICHAEL CLAPPER: Good morning. Thank you, Mr. Chairman and members of the board, for allowing me to address you. My name is Dr. Michael Clapper. I'm a practicing

physician on the Island of Maui here.

I have concerns over the issue of adding fluoride compounds to our water supply. And I have a great deal of empathy for you because I too -- I grew up in the '50s and I too was told that -- in fact, I remember seeing when the issue of the public water fluoridation was broached, that this here again was science coming to the rescue of public health.

And I remember anyone who opposed water fluoridation was marginalized (sic) and they were looked at as ignorant hicks and they were called divergers (sic) and communists and Luddites and against progress and they will see how modern science comes to recognize the -- when it comes to our aid.

You too, I'm sure, are told by the dental association and other professionals that, one, fluoridation is a good, safe, reasonable technology; and two, the folks that are protesting against it are marginal, at best, in their understanding.

CHAIRMAN RICE: Doctor, I'm sorry to interrupt you. Everybody understands that the question before this body is not fluoridation of the water on Maui. It's Molokai. It's strictly and only Molokai. There's not a question of fluoridation of water on Maui.

MICHAEL CLAPPER: No one is seriously proposing adding fluoride to Maui water supply, period? That's not an issue here in any way, shape or form?

CHAIRMAN RICE: That's not an issue for this body. The question that was raised to this body was restricted to Molokai. And as such, the body considered the request and held a public hearing on Molokai.

If we look at the agenda item that I'm referring to, so we can save ourselves some possible time here, it is the reconsideration of a communication received by the board from a Deborah Maple, of the Molokai Dental Health Coalition, regarding fluoridation of the Molokai water system.

MICHAEL CLAPPER: Thank you.

CHAIRMAN RICE: That matter was filed by the board and this is just being brought up for reconsideration. It does not involve Maui.

MICHAEL CLAPPER: Does not. Okay.

CHAIRMAN RICE: We're not considering that.

MICHAEL CLAPPER: Thank you, I appreciate the clarification. I just want to point out for concerns of infants on Molokai, when you try to give fluoride in the water supply for dental caries in these infants, a real issue is the amount of water that they will be drinking. The one part per million that's supposed to add dental protection is based on drinking one liter of water a day.

However, we exceed that in many ways. One is that we are telling people to drink two or three or four liters of water a day to increase our water consumption. Two, since infants are so small proportionately and if a mother is making up the infant formula with fluoridated tap water and giving this child, this small, one month, two month, three month infant a steady supply of fluoridated water in the infant formula, this child is getting, proportionate to its weight, a far greater dose than is safe for that child.

And third, as you cook with this water, as the steam rises off, the concentration of the fluoride increases in the water. If you have a pot of soup on the stove all day and it's been steaming away, by the time you serve that for dinner, the concentration of fluoride in that water is much, much higher than was intended to produce beneficial effects.

So I'm saying that this is a very crude technology, to dose an entire population to create one small effect that you can get just by taking a child to the dentist and having the dentist apply that fluoride locally.

To add this potentially toxic material to the public water supply and run these tremendous dosing disparities that may have tremendous adverse effects throughout the entire adult population, unborn children, cancer risks, etc., I'm saying it's a very crude technology whether it's being considered for Molokai or any other place.

There's far better ways to administer fluoride than putting it in the water supply. I would really urge people to keep these mechanisms in mind when they consider the possibility for Molokai or any other municipality in this state. Thank you very much for your consideration.

MS. NAGO: Terry Holter.

CHAIRMAN RICE: Thank you, Doctor. How many do we have?

MS. NAGO: Ms. Holter and after that is Mr. St. John (phonetic).

TERRY HOLTER: Hello. I'm a psychiatric social worker and today I'm here giving up my income with the kids back in school in order to be here to talk with you about this, because I'm very concerned about the effects of this on children and adults.

CHAIRMAN RICE: You are talking about fluoridation?

TERRY HOLTER: Fluoridation, yes. I'm in full concurrence with everything that's been said so far. You heard briefly mentioned that the American Psychiatric Association is one of the groups that has withdrawn support for fluoridation of water as more studies have come out, as more information has come out about the harm of fluoridation, and it lacks benefits.

Many health care professionals believe as a result of studies and a result of treatment being done with children with attention deficit and hyperactivity disorder that key factors in this condition are deficits in nutrition, and toxins taken into the body. Fluoride is a class 4 industrial waste poison.

The American Medical Association past president, Dr. Charles Gordon Hayden (phonetic), said, quote, I am appalled at the prospect of using water as a vehicle for drugs. Fluoride is a corrosive poison that will produce serious effects on a long-range basis. Any attempt to use water this way is deplorable.

The American Dental Association, first of all, is not a professional organization. It's a trade organization for business purposes. And in its '95 legal brief, it reads, The ADA, American Dental Association, owes no legal duty of care to protect the public from allegedly dangerous products, mercury, fluoride, etc., used by dentists. Dissemination and information relating to the practice of dentists does not create a duty of care to protect the public from potential injury.

In their own journal, the journal of the American Dental Association, in July of 2000, they remind all dentists that only topical application of fluoride is going to be a benefit for dental caries. That's fluoride that's applied in the dentists' office or through tablets chewed topically in contact with the teeth.

Fluoride added to drinking water has no benefits whatsoever and it has considerable harm. So I would ask that under no circumstances would you approve of putting a poison in our water that we cannot filter out. And I would also support the recommendation to establish a moratorium until such time as there is safety proven and the various matters before the United States governmental bodies have been resolved as to determination of fluoride. Thank you.

CHAIRMAN RICE: Let's take a five-minute recess.

(A recess was taken.)

CHAIRMAN RICE: Members of the public, in no way ever do I want to be construed as saying anything that would restrict the testimony of the public. It's not my intention. We have a lot of people here testifying on the fluoridation issue, and if I could ask those who are on the list to testify, if you have new testimony, please bring it forward. Otherwise, if I could ask you to keep your comments brief, we would appreciate it.
Who's next?

MS. NAGO: Mr. St. John.

KADAR ST. JOHN: Aloha, Mr. Chair. I would like to say that this issue of --

CHAIRMAN RICE: Mr. St. John, identify yourself, please.

KADAR ST. JOHN: My name is Kadar St. John, and I live in Haiku. I am a resident of Maui for 11 years. This issue of fluoridation came to me once when I was looking through a copy of the Earth Island Journal, who is -- they are a watch dog group, and it was all about fluoridation.

And just having a young son, I started looking at this stuff and it said that -- fluoride was so poisonous that

it says it right on the toothpaste, that this is poison. So I immediately went to the bathroom and checked out the toothpaste and sure enough it says if a young child were to swallow more than the size of a pea of toothpaste that you should take him to the doctor, that this is potentially poisonous. So I started thinking that this is not right. Immediately I changed my toothpaste to a nonfluoride toothpaste.

I wanted to say that -- I just want to quote a couple of paragraphs from the Earth Island Journal. It says here, In 1972 the newly formed EPA surveyed atmospheric pollution reported the fluorides currently emitted by industry may damage economic crops, farm animals, and construction buildings -- and glass. Nonetheless the report concluded that the potential to cause fluoride effects in man is negligible.

Another EPA report confirmed that fluoride emissions do have an adverse effect on livestock and vegetation, but insisted that fluoride emissions from primary aluminum plants have no significant effect on human health. In other words, the stuff withers plants, cripples cows, and even eats holes in stone, but it does not hurt people. Nature even surprises.

So I want to stand up here for the children of Molokai, for the people of Molokai, being a very small island in our county, with great concern that they may be somehow or other pressured on a state level. Because the American Dental Association came into our state and says, hey, we won't come back here without convention unless you fluoridize the water. Plus they give the people a bunch of pills when they arrive.

Tell them to fluoridize their own water. Put it in their drinking water. Don't contaminate Hawaii nei. Wai, the water. The name of our islands has this water issue right in it and you guys are the water board, so I believe that there's a great responsibility that you have for the people of Hawaii.

Let us keep our waters pure. Go swimming down at the beach and check out how the coral reefs are dying, because of what, because of the chemicals that have now come, flushed into our oceans. We have to protect our people here, our aina here, and the jobs that are based on tourism here. We want to destroy the very thing which gives us our sustenance.

Anyway, I just want to say that I'm firmly opposed to any type of fluoridation on Molokai and any potential proposal for being here on Maui. Thank you.

MS. NAGO: Jean Blum.

JEAN BLUM: Good morning, my name is Jean Elizabeth Spencer Blum. I live in Haiku, I've been here for seven years. I was going to address all of the other points which have already been put forward, but I think what I really have to offer is having grown up in Bermuda.

It's a British colony, it's very small, it's only 19 miles long. And throughout our history since the 1600s we always relied on rainwater for our water supply. Each house that was built was built of limestone and the first thing that was done was a tank was quarried and every household was responsible for its own water.

In the mid '40s, part of the island was put on public water supply. Anything that constituted a large building which did not have a water catchment for its roof. And large equaled schools.

In the late '40s onwards, all of the private and public schools in Bermuda were subjected to fluoridated water. We have a population of 67,000 people. Per capita in the world, we have the largest incidents of heart disease, kidney disease, liver disease, Alzheimer's, ADD, infertility, miscarriage, abnormal sperm, and AIDS.

And I can personally speak from the results of fluoridation, by the time I was 11 years old I had rampant kidney disease. And when I was sent off to England to be with my English relatives and educated in England, the majority of my health problems disappeared.

From the age of 11 until 18 when I came back to the Island of Bermuda at the age of 22, I eventually ended up on dialysis and recovered. But all of my friends who were born in the '50s, I'm 49 now, all of my friends had infertility problems, they had miscarriages, they were married to men who had two-headed sperm or no sperm counts at all.

I think if you add fluoride to the water of Molokai you will be doing an enormous injustice to your children, your future generations of Hawaiians and your elders. You will see large numbers of Alzheimer's cases coming into being. And it's not something you should do to your people, you should keep your waters as pure as possible. It's just a huge no-no. Thank you.

CHAIRMAN RICE: Thank you.

MS. NAGO: Kelly Arber (phonetic).

KELLY ARBER: Thank you for this opportunity to speak with you. I have lived on Maui for 21 years. I have two children who were born and raised here. When my oldest was an infant, she had cavities and we applied topical fluoride to her teeth and it was very helpful. I had some problems with tooth decay and I use fluoride and it was very helpful. I believe that there are times when topical fluoride is of benefit.

I do not believe that fluoridating the water supply is called for. For one thing, I believe it's highly undemocratic. I think the overwhelming sentiment is against it; so for government to override the overwhelming sentiments of people, I think you would have to have very strong scientific evidence in support of it and I do not believe that exists.

People feel it's a matter of choice, and I believe it's a matter of choice. I can choose to use fluoridated toothpaste. I can ask my dentist for a prescription for a higher dose if I need it.

And as a previous testifier said, there are warnings not to swallow it, and so I believe that there's good justification for believing that taking it internally is not appropriate. So we can say that it is appropriate externally or works externally with some risks, but I would not recommend that people be involuntarily forced to consume it internally.

The other issue I would like to bring up is the question of money. We have heard the aphorism that money is the cause of all evil. In fact, the real true quote is, The love of money is the root of all evil. And I really think that we as a society need to look at that when we make decisions, whether we're being led by a greed for the money that's being offered.

In this case, there's money interests that are offered to pay the bill. So do you accept it and say it's free? I don't think it's free. I think it's a very detrimental thing to just take something because somebody says, oh, this is free. Look at the positive and negative behind it. You are basically saying to people your health concerns don't count. I think that's very wrong.

I saw the testimony on Akaku, the state legislature, and there was some very emotional testimony. Some of it may be well informed; some of it may be poorly informed; but the point

is, the people are strongly opposed to it and I think that really needs to be your first consideration. You don't have overriding evidence that it's in the public good. Don't vote for it, please. Thank you.

CHAIRMAN RICE: Thank you.

Members of the board, would it be -- would anyone be in opposition to taking this item on the fluoridation of Molokai reconsideration of Ms. Mapel's request out of order? We have so many people testifying on this issue. Would anybody object to that?

MR. NOBRIGA: No objection.

MR. CRAVALHO: No objection.

CHAIRMAN RICE: No objection. What's the pleasure of this body?

MR. NOBRIGA: Ms. Mapel is present, I would allow Ms. Mapel --

CHAIRMAN RICE: There was no more testimony.

MS. NAGO: The sign-in sheets, there were no more signed in.

CHAIRMAN RICE: I'm sorry. Any more testimony?

DEBRA MAPEL: Are you going to take this item at this time?

CHAIRMAN RICE: Yeah.

DEBRA MAPEL: I would like to speak.

CHAIRMAN RICE: Please.

DEBRA MAPEL: Good morning. I didn't sign in because I am Deborah Mapel, and I was waiting for this item to come up and then I was going to speak at that time.

I was aware there were going to be several people here today to speak on this item, because I also got a copy of

the e-mail that was sent to all these people or a majority of these people about this issue. We did request a reconsideration, in the letter we stated why.

This has been a process. This is my fifth month to be here. We have tried to work with the board. I know this was the first time the issue came before you and we have felt our way through the procedure of how to address this. So the group, the coalition which I am part of and have come to represent has tried to find a way to address what appears to be a controversy and we have tried to reiterate that this is a scientific fact.

Now, I represent the coalition which is a large segment of the medical and dental health care providers on Molokai. This was not something we also invented, although it is something we wanted. When we were offered the opportunity, we proceeded to what we thought was the proper procedure of coming to the board, going to the community and having the public hearing.

After the public hearing, we were told that there was going to be a recommendation made to the whole board and at that time an action would be taken. And that was last month's meeting. At that meeting, I was told that not all the board had received the testimonies, all the information that you had prior to the meeting, so you needed to review it before an action could be taken. But at that time we were filed.

So this is a month later and we feel that the request was appropriate to come to the board to come out of file for action to be taken.

It's interesting, today's testimonies. When you came to Molokai we were only allowed three minutes. Everybody, including myself. It was publicly notified that this was a public hearing. And I understand you do take public testimony on items that are on the agenda.

It is financially and almost physically impossible to bring everybody on Molokai to this board again. That's why I represent the coalition. And you don't see the whole coalition here, and I don't feel it was necessary for the coalition to return and repeat what's been said already with a public hearing.

And I do think you realize that this is quite an issue on Molokai. I have been asked continually: So what happened? What's happening with the issue? And I agreed to not make any statements or to take any action until this

request to come out of file and be heard was heard today. So I know you have heard a lot this morning, all of those can be answered.

I am again going to remind you, as you did the audience, we're talking about Molokai. The situation on our island. We strongly feel fluoridation is appropriate and necessary and a long overdue opportunity that we finally have. So we're requesting today that this item be brought out of file and put on the agenda for consideration by this board.

CHAIRMAN RICE: The item is on the agenda. Is there any questions you have of Ms. Mapel?

MR. HELM: I just have a few comments with respect to Debbie Mapel and their coalition and also to the people of Molokai. Unfortunately, as a representative of Molokai for the board, I was not at the meeting when this issue was filed. Nor was I at a previous meeting where a decision was made also on certain aspects of this initiative here.

My concern is, at this point, is that if a decision is made, we are just taking into consideration the coalition's compliance with the request that the board made about, you know, they needed to go out to the community, they needed to educate the community, they need to basically do some homework so that the board was more familiar about the issues in regards to that. So I think they have done that.

But at this point, I would just like to say it's a very hot issue; it's a very sensitive issue on Molokai right now, and I think I would support at this time whatever the board's decision is. Thank you.

CHAIRMAN RICE: Mr. Cravalho and then Mr. Starr.

MR. CRAVALHO: Taking into consideration all that has been said, I move that we deny the request for reconsideration, matter be placed on file and not appear back on the agenda in the immediate future.

MR. STARR: I second that.

CHAIRMAN RICE: Second. Members of the board, is there any discussion on that motion?

MR. STARR: Yes, sir. I was one of the participants in the hearing at Molokai and it seemed to me there was a lot of impassioned testimony and it seemed that the testimony was really divided into two groups.

There were health professionals primarily from Oahu and from other places who flew in there to tell the members why this should be imposed on the people of Molokai. Then there was the Molokai citizens and they spoke with almost one voice against it. So I came away from it with a feeling that this is not something that we should unilaterally oppose on our customer base on Molokai.

CHAIRMAN RICE: Any other discussion or comments from the members of the board? You've heard the motion. The motion is that reconsideration be denied and not be placed on the agenda in the near future, duly seconded. All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried. Thank you.

We'll move on to the agenda, Director's Reports 01-13. Mr. Craddick, request approval to write-off uncollectible accounts.

MR. CRADDICK: This one here, if you want to refer that to the committee.

CHAIRMAN RICE: Refer to finance committee. Excuse me, I meant to deal with the issue of committees, I promised that after we finished the testimony. I would ask that the indulgence of the board members that the existing committees remain until the next meeting. After I have a chance to review each individual committee and talk to the committee chairs. And if anyone has no objection.

MR. STARR: Mr. Chair, I would like to be sure that the committees will not hold any meetings that are not noticed or are not in full compliance with the Sunshine Law.

CHAIRMAN RICE: Absolutely not. Okay. All right. Director's Report 01-14. Mr. Craddick?

MR. CRADDICK: This is for a project that was not budgeted. We're asking for funds for it. We have worked out the issues with Hawaiian Homes on this item. If the board wants to deal with this, we would actually -- we need to go out to bid the whole work. If you refer it to committee, basically that will --

CHAIRMAN RICE: If there's no objection, I'll refer that to the capital improvements committee.

MR. HELM: I have a comment, please.

CHAIRMAN RICE: Adolf.

MR. HELM: This is in reference to Kapaakea. And my concern is that this service is for Hawaiian homesteaders; am I correct?

MR. CRADDICK: That's correct.

MR. HELM: Before I came to this board meeting, I had a telephone conversation with John Dudoit, who is the supervisor in charge of the Board of Water Supply over on Molokai, and I had asked the questions about what are some of the problems that he is concerned with and the situations that he deals with on a day-to-day basis.

And he has a very strong concern about the customers and the people he services. And these people have been suffering for a long time with inadequacy and there are times when the crew have to go in and repair pipes and do all of this, and it puts a major strain on those people living in that particular community.

So my concern is that we try to expedite this. If it does go into committee, that hopefully we emphasize the fact that we need to take a special interest in this and we try to push the idea of getting it done quickly.

MR. CRADDICK: I'll just say that if it goes to committee, there will be no chance to get it done, because by the time the board acts on it, it will be May, we won't be able to get it out to bid in time and considered. So if it's going to go to committee, we should just put it on the budget for next year.

MR. CRAVALHO: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Cravalho.

MR. CRAVALHO: The point raised by Mr. Craddick may have some merit emphasizing the word "some." The question before this body is following the proper procedures. In the light of any emergency that may be developing, the practice or proposals that come to this body expecting immediate consideration and immediate action is a little bit odd.

I would like to suggest that this be referred with the understanding that the committee that you refer to expeditely (sic) give prior approval to your expediting it and if it's approved, proceed.

The question of unnecessary delay can all be very, very dangerous and it places it in the hands of a top administrator the opportunity to come before this body at all times pleading an emergency, and, in effect, takes on to himself the power of appropriation and the power of public expenditure of public funds. I think that's a very negative thing to do.

CHAIRMAN RICE: Mr. Nakamura, do you think we can have a meeting and expedite the approval process?

MR. NAKAMURA: Mr. Chairman, I have no objection to the procedure that board member Cravalho has suggested, if the board approves of that.

I am concerned with the fact that we have a request for an appropriation of \$440,000 that comes to us and presented to us on the basis that you need to approve it immediately or the project is not going to happen this year. I think that puts the board in a very, very awkward position, given Mr. Helm's identification of the need, and it bothers me that it comes to us in this fashion. But we certainly would be willing to expedite it at the capital programs committee level.

CHAIRMAN RICE: So ordered.

Director's Report 01-15, request for fiscal year 2001 budget amendment for electricity expenses.

MR. CRADDICK: This is a finance matter.

CHAIRMAN RICE: Refer to finance committee. Any objections?

MR. NOBRIGA: None.

CHAIRMAN RICE: Director's Report 01-16, request approval to acquire outside recruitment service to assist in obtaining letters of intent for the Engineering Program Manager position. If there's no objection, I'll refer that to the finance committee.

Director's Report 01-17, request authorization to provide leak insurance as a customer service to consumers. Finance?

MR. CRADDICK: Finance.

CHAIRMAN RICE: Request for decision on service options for Ulupalakua line. If there's no objection, I'll refer that to capital improvements committee.

Director's Report 01-19, request approval of the Memorandum of Understanding for Lanai Forest and Watershed Partnership and for the board to agree to join the Partnership.

MR. CRADDICK: It's the board's pleasure there if they want to refer it to committee or take action now.

CHAIRMAN RICE: Any comments? No objections?
Referred to finance.

Director's Report 01-20, request approval to accept a \$50,000 pass-through grant from the state Department of Health for a project entitled "Lanai Watershed Restoration: Erosion and Fire Control Component for Lanaihale and Surrounding Buffer Area."

Anything to add, Mr. Craddick? Refer to finance.

MR. CRADDICK: I don't know if there's a time issue. I see you raising your hand.

MS. KRAFTSOW: I don't think we're going to get the money. The memorandum, though, I just want to make sure your understanding, the memorandum itself does not commit us to any funds. So I don't know if you still want to refer this to

finance.

MR. CRADDICK: You don't think we're going to get this money?

MS. KRAFTSOW: No, that legislature extra money that we might have gotten --

MS. NAGO: You have to speak up, I can't hear you over here at all.

MS. KRAFTSOW: You can refer it to wherever you want to. That's okay.

CHAIRMAN RICE: It's been referred.
Director's Report 01-21.

MS. NAGO: Referred to which committee?

CHAIRMAN RICE: Finance.

Request approval to schedule a Water Use and Development Plan workshop or committee meeting between now and the May full board meeting, etc.

MS. KRAFTSOW: This comes about because of the board had appropriated funds because they wanted to expedite the water use and development plan and also because the state water commission finalized their IRP guidelines and they want us to go to the commission with a scope of work for the commission to approve, even though it's in progress.

And we didn't want to go to the state water commission without making sure that we were in concert with the board once again with that. Since we have to go to the state, we should go to the board first.

CHAIRMAN RICE: Thank you. Mr. Starr?

MR. STARR: Operations committee would be able to take that up.

CHAIRMAN RICE: Okay, so ordered. Operations committee. That's all the Director's Reports. Communications 01-13. Is there anyone here to

testify or give any comments on that? Yes, Fran.

MS. NAGO: Mr. Chair, I informed -- previously what we were doing is new communications on the agenda, we would inform the applicants that they would be referred to committee. I did mention to these people that they would be referred to committee. I think we do have some people here under this section, though; but this one, this particular one chose to come to the committee that it would be assigned to.

CHAIRMAN RICE: Then the chair's intent is to assign these to committees. It has been the practice of the chair to assign these types of issues to either the rules or to oversight.

And I believe that the distinction was that those items that came up were introduced for the first time and there was a request for some waiver of rules would go to rules, and those items where an item or the applicant had received an unfavorable decision would go to oversight. And I see no reason to change that.

And as we go through these, I'm not sure, Mr. Craddick, in which cases these are new or --

MR. CRADDICK: The nearest I can tell, except for the 1-16 and 17 are all no. I'm not sure whether --

CHAIRMAN RICE: Let's take it one at a time. Communication 01-13, if there's no objection, I'll refer that to rules; Communication 01-14, if there's no objection, I'll refer that to finance; Communication 01-15, rules; Communication 01-16 and 17 to oversight; and Communication 01-18 to rules. If there are no objections or any comments by board members or members of the public at this time --

DEBRA SMITH: I have a question, if I may. When does the rules committee meet, and if we're one of these people, how do we address the rules committee regarding the issue?

CHAIRMAN RICE: There will be a public notice of the rules committee meeting and it will be set with the chairman of the rules committee and you can keep in touch with Fran. The next item on the agenda, No. 8, is the report

from the capital programs committee.

MR. NOBRIGA: What is the disposition of Communication 01-18?

CHAIRMAN RICE: Rules.

MR. NOBRIGA: Thank you very much.

MR. NAKAMURA: Mr. Chairman, you are going so fast I'm having trouble keeping up.

CHAIRMAN RICE: I'm sorry, I'm new at this.

MR. NAKAMURA: Mr. Chairman and members, the report of the capital programs committee has been circulated on a number of items. First item is a request from the director who transferred funds presently appropriated for test well Kupaa No. 2. The request was to transfer those funds to do exploration further north in the North Waihe'e aquifer.

That committee recommended approval with the understanding that the staff would proceed to prepare a preliminary report to the board, relative to location and the program for test drilling before it were to be actually implemented. I would move that the request be approved on that basis.

CHAIRMAN RICE: There's a motion.

MR. CRAVALHO: Second.

CHAIRMAN RICE: Motion has been made and duly seconded to approve the request on the exploratory well, with the understanding that the location be approved by the board prior. Any discussion?

MR. STARR: Mr. Director, what is the status of the easement and the documents to allow us to use the property and also to get a pipeline from there to wherever it needs to go?

MR. CRADDICK: We have the approval of the lessee, but because it's under an active lease, it has to be approved by the DLNR board. So next step would be the board.

MR. STARR: Aren't there three parties involved?

MR. CRADDICK: You mean the fact that the Boy Scouts have subleased to somebody else?

MR. STARR: Yes.

MR. CRADDICK: That's their party, I presume they would have to negotiate with their party prior to giving the letter to us. So we're not dealing with that. We just deal with the person who has the lease, and the landowner.

MR. STARR: Okay. And so do we -- we have the approval from the Boy Scouts?

MR. CRADDICK: Yes.

MR. STARR: Does that run to the end of their lease or is that for just a certain time?

MR. CRADDICK: It gives us approval to go on there and with that letter we can go to the land board and the land board will determine those terms.

MR. STARR: Okay. And does this include --

MR. CRADDICK: What usually happens is it's taken out from the lease and then there's an executive order covering it.

MR. STARR: It will have to be surveyed and then taken out?

MR. CRADDICK: Yes.

MR. NAKAMURA: Mr. Chairman, I believe the recommendation of the committee was basically to identify the most desirable location for the test well. And the question is, assuming that it's already been done, which the committee indicated they were not in a position to approve but wanted to get an actual recommendation following some study by the staff, at which point, the location would be become relevant and the

necessary easements would become relevant.

MR. STARR: My concern is just to make sure that we have all the documentation in order before we proceed. If the committee is going to be looking at that, then that's fine with me.

MR. NAKAMURA: The board, it will come back to the board.

MR. STARR: I just want to be sure it includes all the pipelines we're working on, the easements for the pipeline.

MR. NOBRIGA: Mr. Chairman, I would like to disclose that I sit on the board of the Boy Scouts Association of Maui and I do drive past Camp Maluhia to go out to my daddy's place to have dinners at Easter and Christmas.

CHAIRMAN RICE: Thank you, Mr. Nobriga. I also sit on the board of the Boy Scouts and I have not been to a meeting in so long that I did not remember that I do.

MR. NOBRIGA: I forgive you.

CHAIRMAN RICE: You know what my address is when you send out those letters.

There's a motion on the board and seconded. Is there any other discussion? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. NAKAMURA: Second item, Mr. Chairman, is for the request of a pipeline authorization of a waterline replacement project on Molokai. This is in the 2001 budget, funds are available. Committee felt that the request was appropriate to replace existing inadequate lines and recommends approval. So I so move that this be authorized from the waterline replacement account.

MR. CRAVALHO: Second.

CHAIRMAN RICE: Moved and seconded.

MR. HELM: You beat me to it.

CHAIRMAN RICE: Moved and seconded. Any discussion, comments, or questions? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. NAKAMURA: Mr. Chairman, Director's 01-06 is also a waterline transmission line replacement project. It's included in the 2001 budget. Replace existing substandard 8-inch transmission line with a 12-inch line. It's part of a project for incremental approval of the upper Kula transmission line. And the request is for authorization for design services. I would move to approve the request.

CHAIRMAN RICE: Motion to approve.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Seconded. Any questions, members of the board? Comments or discussions? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. NAKAMURA: Mr. Chairman, Director's 01-07 is for requesting approval of a construction change order for a project in Kihei. The request change order is somewhat less than \$16,000, which is less than 3 percent of the contractor amount, which the committee felt was reasonable.

The basic problem was that there was an inaccuracy on the existing identification of the size of the existing -- existing waterline which required extension of the project for an additional, I believe it was 40 feet, David, or something like that? Relatively small.

MR. CRADDICK: Something around that order.

MR. NAKAMURA: I would recommend approval of the request and so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Any comments from anybody? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion carried.

MR. NAKAMURA: Director's 01-08 is a request for \$45,000 to be taken from the pipeline replacement account for small in-house upgrades. This will be done in-house. This is a project in Hana which is to replace an additional -- sorry, replace an existing 4-inch polyethylene line with a 4-inch ductile iron line, due to the fact that the polyethylene line has been subject to break to high pressure near the pumps.

The committee recognizes that funds were available and felt this was an appropriate project and I would move for it's approval.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded to approve the project as explained. Any comments, questions? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. NAKAMURA: Mr. Chairman, the last item is the status report on FY 2001 Capital Improvement Program Budget. The committee briefly reviewed the status report of the FY 2001 budget, the capital programs budget. The summary is attached.

The committee expressed concern over the fact that there is significant unspent balance available to date of those funds that are appropriated and whether the department had the ability to implement all of the projects authorized in the

budget, and we didn't have a chance to review it in great detail.

We recommend that further review of the carryover projects and this issue of the -- whether or not we can implement all the projects or how we can implement all of the projects that are budgeted be considered as part of the FY 2002 budget review process. So I don't think any action is necessary on this, except that that is the recommendation of the committee and that we feel this does need to be pursued.

CHAIRMAN RICE: Any questions of Mr. Nakamura on that issue? Thank you, Howard.
We'll move on to No. 9.

MR. HASHIMOTO: I see Mr. Siele is here. He was not here when --

CHAIRMAN RICE: Mr. Siele, your request was referred to the rules committee.

MR. SIELE: Clarification. What does rules committee mean? How long does the process take?

CHAIRMAN RICE: The chairman of the rules committee is here and he will set a meeting and it will be noticed publicly. You'll be advised and welcome to attend and testify, whatever manner you think is appropriate. Once the committee chair sets the meeting, Fran will notify you.

MR. SIELE: Thank you very much.

CHAIRMAN RICE: Moving on to Other Business, Section 9, discussion and possible action regarding the Central Maui Source Joint Venture Settlement Agreement. That's been filed. B, discussion and approval of outside counsel in Thomas Craig vs. County of Maui. Jim?

MR. TAKAYESU: At the last meeting this last week, we discussed this matter in executive session. At that time we informed the board that there was a scheduled court hearing for Monday, I believe, 4/23.

At this time I would request that this matter be deferred based on what happened at the court proceedings.

We'll be preparing some pretrial motions on that, I believe, at this time. I would request that this matter either be deferred or just withdrawn so we can resubmit it at another time.

MR. CRAVALHO: Mr. Chair, I suggest we allow corp counsel to withdraw.

CHAIRMAN RICE: We need a motion for that.

MR. CRAVALHO: So moved.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded to allow corp counsel to withdraw item B. Any discussion? All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response).

Motion carried.

Discussion and possible action regarding Stolle vs. Craddick.

MR. TAKAYESU: Again, at the last meeting, we had discussions with the board in executive session. Following that meeting, we did continue settlement negotiations with Mr. Pierce on behalf of Mr. Stolle. We have received a new offer. This is the type of matter that we would request to speak with you in executive session.

CHAIRMAN RICE: What's the pleasure of this body?

MR. NOBRIGA: Mr. Chairman, if there's no objection, can we defer this item to the end of the agenda?

CHAIRMAN RICE: Certainly. So ordered.

Discussion and possible action regarding Maui Tomorrow, Inc. et al., vs. Board of Water Supply. Yes, Mr. Starr.

MR. STARR: Do you have something first?

MR. TAKAYESU: I believe we have submitted to the

various board members a draft answer at this time. The answer is due to be filed by the end of the month and we would like to go ahead and just file the answer. If you wish to discuss this matter because it involves pending litigation, we request that the matter be discussed in executive session.

CHAIRMAN RICE: Members of the board, I'm not in possession of the document of the draft answer; I don't know how it was communicated to the board. Was it mailed?

MR. NOBRIGA: No, I don't have it.

MR. HASHIMOTO: It's not here.

MR. TAKAYESU: Richard Minatoya, who had drafted the answer, and I thought it had been transmitted. He is on Oahu today. He is attending a deposition in another civil case.

CHAIRMAN RICE: In that case, I suggest we defer any action on this until we get something to look at.

MR. FUKUSHIMA: If I may, Mr. Chair. The answer is due on April 30th, so we will be filing the answer to comply with the rules of civil procedure. We have no choice, our answer is due at the end of the month.

MR. CRAVALHO: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Cravalho.

MR. CRAVALHO: A question to corp counsel's office. Is this not based on the deadline which has been set which could be extended?

MR. FUKUSHIMA: If the plaintiffs are agreeable to extending time to file an answer or otherwise plea, we can speak to them, but otherwise the answer must be filed by the 30th.

MR. CRAVALHO: Question of corp counsel's office. If an answer is filed, is it an answer that is amenable?

MR. FUKUSHIMA: Certainly.

MR. TAKAYESU: Generally.

MR. FUKUSHIMA: If there's --

MR. TAKAYESU: It's more difficult.

CHAIRMAN RICE: Yes, sir, Mr. Cravalho.

MR. CRAVALHO: Excuse me, we're merely trying to expedite. We don't have before this body your response. Your office advises us there is a deadline of the 30th. There isn't sufficient time in between to have the other meeting and to review to expedite and say, well, okay, file it.

And if the board disagrees with it, it's amenable at a subsequent meeting. If it's not amenable, how are you going to get something filed and approved by this board where we don't have a single copy of it?

MR. TAKAYESU: Could we defer this to the end, I can probably get copies made downstairs with the Liquor Department.

MR. CRAVALHO: That would be helpful, Mr. Chairman, that is on the assumption we're going to agree with what you have drafted.

MR. TAKAYESU: To show it to you so you can look at it.

CHAIRMAN RICE: So it's deferred at this point until we get to the end. Do you want to make a comment?

MR. STARR: I did have some other comments regarding this matter not relating to that side of it. We'll defer it.

CHAIRMAN RICE: We'll take it all together if it's okay with you. Then No. E section, discussion and possible action regarding Construction Development, Inc. vs. Board of Water Supply.

MR. NOBRIGA: Mr. Chairman, I would like to make a motion that we accept a report from the mediator, if that's a good enough motion.

MR. CRAVALHO: Mr. Chairman, for the purposes of discussion, I will second the motion and have a question. Does the intent of your motion include the making available the satisfactory -- the necessary funds to carry out the provisions of the mediator's recommendations?

MR. NOBRIGA: I think procedurally that would be the chairman's call, if you would wish to defer to finance, because it does include a financial obligation.

MR. CRAVALHO: Then the sense of your motion would be to refer it to the finance committee for the appropriate funding.

MR. NOBRIGA: Thank you. I would accept that.

CHAIRMAN RICE: Are you amending that motion now?

MR. CRAVALHO: If it's okay with him.

MR. NOBRIGA: Yes.

CHAIRMAN RICE: I understand what's being proposed is that the settlement issue be referred to the finance committee.

MR. NOBRIGA: Received and referred. Is that appropriate, Mr. Chair?

CHAIRMAN RICE: Certainly that's appropriate.

MR. NOBRIGA: Okay then, let's do it.

CHAIRMAN RICE: Moved and seconded. Members of the board, any comments regarding that? It means it will be sent to committee and it will be taken at this meeting. All in favor signify by saying "aye."
(A chorus of ayes.)
Opposed say "nay."

MR. KOBAYASHI: I'm Blaine Kobayashi.

MR. NOBRIGA: Sorry, Blaine.

MR. KOBAYASHI: I would like a time line from the chair and the members as far as when I can expect or hope to get a full approval from the board for this settlement, because it's been referred to the finance committee.

CHAIRMAN RICE: The chair is also the chair of the finance committee and I believe we can set a meeting and have it on the agenda for the next May meeting.

MR. KOBAYASHI: Which day would that be?

MS. NAGO: End of May, May 24th, Thursday.

CHAIRMAN RICE: Is that going to work?

MR. KOBAYASHI: I was hoping to get the board approval today of the settlement to finally settle this case, but if it's the chair's intent to --

CHAIRMAN RICE: It's the will of the board. The motion has been made and seconded, just barely voted on it. I will -- at the risk of some procedural error, I think we're set with our decision.

MR. NOBRIGA: It will be okay.

CHAIRMAN RICE: All in favor signify by saying "aye."

(A chorus of ayes.)

Oppose say "nay."

(No response.)

The motion is carried. Referred to finance.

F, discussion and possible action regarding draft of proposed fiscal year 2002 operating budget. I believe that fiscal officer Quinn has handed out that draft and supplementally you received a capital improvement budget.

If there is no objection, I would refer these to finance and capital improvement jointly and I would intend to schedule a workshop. And at this time, let me first refer those to finance and capital improvement. If there's no objection, so ordered.

We were talking about that the development fee issue was referred to your committee and it may be a long day so I

need some feedback from the board members, if we had a workshop to do both of those.

MR. CRADDICK: East development plan?

CHAIRMAN RICE: That's something we put our schedules to -- we would take both of those together.

MR. STARR: Perhaps the chair can decide how to do them together.

CHAIRMAN RICE: No objection. We'll move along that line.

Item G, discussion and possible action regarding the draft Water Meter Issuance Rule for the Upcountry water system. As I indicated earlier, the chair's intent is to refer this to the rules committee.

MR. STARR: I have no problem with that, Mr. Chairman. I did want to make a comment on the rule that we received, because it had been initiated through action of recommendation of my operations committee and I didn't think that the rule that came back from corporation counsel did so just a few days ago, not giving me time to really comment on what was submitted.

It hadn't all that much to do with the issue that we were trying to resolve. It didn't specifically mention giving water to people on the list, but seemed to deal more with others that may or may not have a vested interest in water Upcountry. And I'm really concerned that if it were enacted the way it is, it would not do anything for the people on the list but would give a whole lot of subdivisions water instead.

I look to the rules committee to, in their wisdom, to find a way to straighten this out and make sure that it is doing what we're attempting to do. Which is to issue a five-eighths inch meter to each person, going down the list until the water available to us for doing that is expired and then not take away the rights from anyone else on the list.

MR. CRAVALHO: No objection.

CHAIRMAN RICE: Thank you. So ordered. Refer to rules.

H was already taken up.

I, evaluation of the director of the Department of

Water Supply. Howard?

MR. NAKAMURA: Mr. Chairman, I have a question. I was not at the meeting when this matter was presented by the operations committee. Has the recommendation of the operations committee regarding the process been approved or accepted by the board or was that matter merely deferred?

MR. STARR: As I recall, it was approved, the basic process.

MR. CRAVALHO: The process as opposed, Mr. Chairman, the process as opposed to the content. Yes. If Mr. Chairman and if the board members may recall, former member Takitani expressed concern and this concern dealt primarily with the content, and the original motion was to approve the content as well.

It was my suggestion, as I recall, to have it changed; that we merely accept it for consideration by the board without any indication as to approval of the content time of the recommendation -- of the report.

CHAIRMAN RICE: Okay. Go ahead, Mr. Starr.

MR. STARR: It was also the desire of the committee that the question, the pool of the actual substance of it be open for it and some of the questions were moved or changed or added, that that was something that we would want to do before we proceeded.

CHAIRMAN RICE: As I understand it, the step process that we're at here is to improve the document whereby the director would be -- his performance would be reviewed. Is that correct? And that we have a document to consider at this point.

MR. STARR: We have two things: a framework, a structure of how to do it, and then we have questions that would be answered or graded by the board members. So we have two separate items. And I do feel that the questions could perhaps be fine-tuned by the board before some action. But I believe that the framework was what we had agreed upon at the previous meeting, not the specific content of the questions.

MR. CRAVALHO: Mr. Chairman, if I recall correctly, the concern that Mr. Takitani was addressing dealt with content. What we're going to be doing in the acceptance of that time was with respect to the framework, with no limitation as to the content.

Mr. Takitani's consideration or concern was that the content was pretty much one-sided or it wasn't all inclusive of the responsibilities and the performances of the person under consideration, and that we need to give attention to this.

The other concern, as I recall, Mr. Chairman, was that the filling out of a questionnaire rating the incumbent on a variety of areas and the possible score would result in an automatic -- would have an automatic result.

If a certain score was presented, the incumbent would be retained. If it wasn't, he will lose. Thereby limiting the ability of the board to consider at a subsequent time or at the evaluation time the complete area and the complete requirements for the evaluation.

And I think we need to keep this in mind at all times, that we're not involved -- we shouldn't be in a highly personalized kind of a situation.

CHAIRMAN RICE: It sounds to me that the committee has additional work to do and should be bringing back some additional recommendations at the next meeting.

MR. STARR: I would be happy to have another committee meeting and do it again, and hopefully, if it's desired by the board members, if we're still on the board to alter it, we'll certainly listen.

MR. HELM: Mr. Chair, I agree with that. I think we should have a better look at it to see if we need to fine-tune it.

MR. STARR: One thing. So the committee will look at it again. And once again I would like to state that my committee really invites all the board members to come and join in and to participate. So please, if you wish to join and be part of a committee, I don't want to limit it to two or three of us.

CHAIRMAN RICE: I think that's a fair comment on behalf of board member Starr. If you have comments about the

substance of the report, then either get those comments to him or participate in the meeting, so we can take some action next week. So it's referred back to that committee.

Update on Upcountry water situation. Mr. Craddick?

MR. CRADDICK: Again, the long-term output is still for -- dry weather reservoirs are pretty full right now and the ditch is pretty full right now.

CHAIRMAN RICE: Mr. Starr?

MR. CRAVALHO: You have so much water in storage that you don't know what to do with it.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Once again, I move we go out of the state of emergency, which we have been in for a long time. Reservoirs are full.

CHAIRMAN RICE: There's a motion on the table to come out of emergency situation. Hearing no second, that motion dies. Anything else on Upcountry, board members? Your pleasure, Mr. Starr.

MR. STARR: I had requested that an update on the Upcountry well program be on the agenda. I was denied the ability to have that on the agenda; but since we do have this, I would like to understand what has happened with the program for getting an Upcountry well, which I feel is of the absolute highest priority for this board.

MR. CRAVALHO: Mr. Chairman, to respond to that, in my time, just a few hours ago, the question of the Upcountry well, if I recall, was reported back to us. There had been some request by a certain member of this board to limit our consideration or the consideration of this body to one particular site.

The decision of this board was to consider a variety of sites in the Upcountry area, because the budget of the capital improvements did make reference to some other locations as well.

As I recall, authorization was given to proceed for

the possibility of hiring consultants to examine this matter and to find and to have a recommendation back to this body as to the more precise recommendation for the site. That's the status, as I recall it, is for the proceeding to hire a consultant to begin to implement. The decision of the committee that was brought forward to this body. And that was done recently.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: That's basically what we're doing. But because of a DBCP settlement case, we have to go through that process with the defendants, you know, in the DBCP case. We're actually going through that now, giving them a list of sites. Whether they say yea or nay on it, and then go from there.

MR. CRAVALHO: That's two different matters.

CHAIRMAN RICE: Yeah, I think we had -- excuse me.

MR. STARR: I'm very reluctant to have Dow Chemical making that decision on where we're going to drill our wells. I understand that if we pick a site it may have -- that may have DBCP, we may want to go to them. But I want a well site selected by a hydrologist, and I want to get a well filled. I don't want to play games with this thing.

Have you proceeded with what you were asked to do by the board or told to do by the board?

MR. CRADDICK: If you want, you can refer the matter to corp counsel. But my understanding is any well site we do right now, if we do not give them the option and it turns up with chemicals in it, we're not covered.

MR. STARR: What site do we give them?

MR. CRADDICK: We have to give them that option.

MR. CRAVALHO: Mr. Chairman, we're dealing with two completely separate, different items.

MR. CRADDICK: We are.

MR. CRAVALHO: We should not be confusing or attempting to combine the two. The question of Dow Chemical and others is based on the settlement due to the pollution of the source and whatever the case may be. I believe what Mr. Starr is making reference to is an additional deep well for the Upcountry area, separate and distinct from the question of the Dow Chemical.

So we talk about two different things and we shouldn't be using the excuses or the reasons on one as an excuse for the other. There is no reason, in my mind, Mr. Chairman, why we cannot proceed to move on this question of an additional well site in the Upcountry area.

This board in the past, in the capital improvements program, did indicate a consideration in the Hawaiian Homes area or towards the Ulupalakua as a possibility. There has been some presentation by you, Mr. Craddick, it seems that you have an undue romance going on with Pookela. There may be merit to that.

But I will bring forth to this body again the same concern that I expressed months ago, that if you get into this kind of a situation and you sink a well in that area which will be touching or dealing with an underground stream which has an impact, a potential impact on the East Maui aquifer, you are asking and raising additional problems and questions along the line.

Case in point, Mr. Director, in what came out of the Committee of the Whole in the last meeting with respect to the agreement we made by a gentleman who has a well in the Maliko area, it's my understanding that the contents of that agreement does make reference -- well, does two things.

That agreement, as I recall, indicates that the pumping in the H'poko and related areas may have had an impact on the water that this gentleman was able to and has been able to recover from his well. And in this agreement, if I'm not mistaken, Mr. Director, it says that the county, therefore, if such is the case, becomes liable. That's what was agreed to. I think I'm right on it.

This opens up a tremendous potential problem if we are not careful when we begin to sink a well in the Upcountry areas which may have an impact on any stream which is contributing to any existing well down below. And if at any time there is a corresponding reduction on what that individual is able to get from his well and we have set the precedent for

this body and this county to be held legally and financially liable.

And I believe, Mr. Director, when I made reference to this in the past, it wasn't given that much attention. But I think this body has gone on record that your department has gone on record with this agreement. If we had tied the two areas together, the potential for a problem would be tremendously increased.

This is especially true when we begin to examine Mr. Mink's report with respect to the EIS statements for the East Maui area. And in hindsight, Mr. Chairman and Mr. Director, this boat made the right decision when it did not join the two districts together into one under this East Maui combination.

Because of this potential, and I believe -- my memory may be bad, but not that bad -- at that time, Mr. Director, you did not agree with me. You said I did not know what I was talking about. And I said I know what I'm talking about. You didn't, in that particular case. And I think time is proving us to have been correct, especially in the light of your agreement with that Maliko guy.

I think we need to be very, very cautious so, Mr. Starr and Mr. Chairman, the point you have been raising with respect to an additional well is absolutely correct. It has nothing to do or very little, if anything, to do with Dow Chemical. Those are two separate questions completely.

CHAIRMAN RICE: Mr. Starr?

MR. CRAVALHO: Two separate questions. And in this process, I'm saying lets be cautious that we don't get into any kind of operation that will contribute to what this board has agreed to on the Maliko area and the potential liability when we -- if we happen to be tapping into an underground stream which may have the affect on the availability of water way down below and reduce the amount of water available for withdrawal by people way down below, we need to be very cautious.

And I agree we need to get this done, but exercise great prudence in the review. I think it's reasonable.

CHAIRMAN RICE: It sounds to me like the charge for the director was a list of alternative sites that we need to see. That is our next step.

MR. STARR: I believe the director is proceeding in a different manner.

MR. CRAVALHO: I agree with you.

MR. STARR: Mr. Director, have you chosen a site for the well and sent that to the various chemical companies for consideration?

MR. CRADDICK: We have not sent anything yet.

MR. STARR: Did you not tell me that you were sending them a package listing Kamole weir as a site for the proposed well?

MR. CRADDICK: Kamole weir, Pookela, Pulehu.

MR. STARR: You told me you had chosen Kamole and sent it to them.

MR. CRADDICK: No, no site. Variety of sites.

MR. STARR: I myself believe that Pookela is probably the most suitable site since we own the land, we own the tank. And I did go and ask on my own a hydrologist their opinion about whether that would be -- if there would be any hydrological problem in continuity of flow between the aquifer at Pookela and streams. I was told that that was not an issue.

However, I was told there was another issue, and that is that there is an understanding that some kind of secret deal had been made by members of this board; that Pookela tank was going to be a well site to be utilized by Maui Land & Pine; and that they were going to drill at Pookela; and that that well would be used for giving water to new subdivisions that were going to be built in the five trees area.

And that it was hoped that they would make an agreement with the board and it would be like the Dowling agreement; and that for this reason there's an attempt to delay our drilling a well at Pookela tank, our own site, so that Maui Land & Pine can meanwhile go through the process and get there first. And this is something that I have great concern with.

I would much rather cease drilling the well and providing them to the people who have been waiting, rather than saying Maui Land & Pine or any other commercial entity drill the well, and then have the priority of service go to the new subdivisions.

MR. CRAVALHO: Mr. Chair?

CHAIRMAN RICE: Mr. Cravalho.

MR. CRAVALHO: I think Mr. Starr has improved quite a bit in his statements, innuendos. If Mr. Starr is aware or if Mr. Starr or anyone else is aware of any member of this board, meeting with any representation of Maui Land & Pine or any other entity, finger that person openly and completely and have a discussion. At all times.

In the absence of certainty and a willingness for identification, I would suggest to hold your peace. We have had these innuendos made more directly in the past by you, Mr. Starr, you have made reference in your criticism to Mr. Nakamura on a number of cases. And others.

Now, if any member of this board, the present speaker not exempted, can be identified with a certainty of your innuendos, let's say so. And in the absence of that certainty, let us be very cautious with respect to Pookela. If anything, Mr. Starr's voice has been the loudest for that site only. That's the record.

So let's keep the record straight and let's make reference to that record in an accurate manner. The time is too great and the work is too important to innuendoes made or suggestions that have absolutely no basis in fact. Absolutely none, as far as I know.

And I stand ready at all times for a public discussion and a review of the matter and we keep that question open as to whether any discussions had been entered into by any member of this board with any consultant or with any individual in the community with respect to the sinking of a well in Pookela and the potential costs thereof.

CHAIRMAN RICE: I think, Mr. Craddick, we have action by the board and we all recognize the importance of an Upcountry well. I think unless there's some objection by the board, we need the presentation, I think, at the next meeting

as to the various sites that the consultant has recommended so that the board --

MR. CRADDICK: There's no consultant yet.

MR. CRAVALHO: Mr. Chair, I understand that there may have been discussions, not necessarily by the director, but there may have been discussions. There's nothing wrong with it. Absolutely nothing wrong, and this is appropriate. But these discussions should be through in a variety of areas.

And the board, if I'm not mistaken, the last meeting said to proceed to get the consultant to look at all the sites and come up with one site or two sites, whatever the case may be. If I'm not mistaken, Mr. Chairman, the director informed this body directly or indirectly that the Hawaiian Homes was in the process of getting a well in the area. So what I am saying is consistent with the facts.

And I'm well aware that at times directly or indirectly, intentionally or otherwise, facts are not presented in the manner that they should be. So let's look at the facts, because we're going to have enough problems and not with respect to only this, but with a situation that this body has been very reluctant to address, and that is the water situation in Central Maui. And I have been on this one, Mr. Chair, for quite a while.

I repeat the question I had raised to Mr. Craddick sometime ago based on approved projects to date. Do we have enough water supply today to meet those demands? And your answer was no. So because this is coming back to haunt us -- with additional request coming before this body and the county for the development in these various areas.

And if we wish to, Mr. Chairman, we could talk about some of these other things. Proposals for increasing the size of the upper line to go Ulupalakua to up to 12 inches. Where is the water going to come from to fill that waterline? And when you put in the 1-inch line all the way is that not a subdivision water supply? Nobody wants to talk about it, but that's factual.

So as we look at everything, let's be factual about what we are looking at so we know what we're doing. Work on it can be remedied. I look forward, as I said earlier to Mr. Chairman, for the ability to return to this body's floor so we begin to face some of these questions that we have been

avoiding directly or indirectly, intentionally or unintentionally, is immature or immaterial.

But those are facts that we got to face. I think you agree with me; I think I'm right.

CHAIRMAN RICE: Okay. We look forward to your report on that issue.

MR. CRADDICK: Okay.

CHAIRMAN RICE: Moving on. Update on water issues discussed at public meetings.

MR. CRADDICK: We had one, the treatment of the Upcountry system with phosphates. And we held a meeting Upcountry and we have decided to go with zinc or no phosphates and we're in the process of getting that material now for treatment beginning on or about June 1st.

CHAIRMAN RICE: Go ahead and speak.

MR. CRADDICK: I don't know what she's talking about.

MS. KRAFTSOW: That the committee, the joint committee on land and water use of the state legislature requested water updates for four counties and state water commission and we gave them like a five-minute talk there too.

CHAIRMAN RICE: Any questions by the board members or the staff on that issue? Mr. Starr?

MR. STARR: What did you tell them? Did we give them a date for when we'll have a water use and development plan?

MS. KRAFTSOW: Nothing like that. Status and priorities kind of issues. Like they wanted to know what each county had done. They want every county to stay within five minutes, and then they had specific issues they wanted to discuss.

MR. STARR: I'm sorry --

MS. KRAFTSOW: That's all. I can make a copy of the slides for you.

MR. STARR: Just for clarification, do we have a water use and development plan enforced?

MS. KRAFTSOW: The board in 19 -- I have to pull out the date, but we passed it out before to you. There's a day which the board moved to accept, for the interim, the 1992 water use and development plan until such time as it was updated and accepted by the commission. Other than that, the only one that's been approved by the state is the 1991.

MR. STARR: And the 1992 one was never approved. So we don't have an approved one enforced since --

MS. KRAFTSOW: No county was approved in 1992. The board agreed to use it in the interim as their master plan until such time as it was amended.

MR. STARR: Is there a mandate to have plans every ten years?

MS. KRAFTSOW: Actually, the commission has been discussing that. I think the mandate is that we're supposed to update it every five years. And there's virtually no one that has done it. In fact, there's no one that has a plan published since that '92 drought. They didn't accept anybody's.

MR. STARR: I understand that. My point is that we're out of compliance with it. I don't think any other county is in compliance either.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The board approved in 1990 the 1990 water use and development plan, counsel approved it and that's the enforced water use and development plan to this date until it is changed. And there's no exact time table for it to be changed. Because the water commission themselves had problems with those, they tried to restart the process again in 1992. In 1992, none of them got accepted by the water commission. Ours didn't even get accepted by the county council.

Since that time, we have been working to try and do these. We have been weighing the process for some time now on Lanai. The water working group was formed on Molokai and there is a document from Molokai that the water commission is doing.

But this particular meeting that was going on at the state legislature was for the purpose of getting money for the state ag plan and the state water development plan, and I think they wanted to show to the legislature that nobody was doing anything. I myself think we're doing quite a bit and couldn't quite go along with that concept of thinking that we were not doing anything. I know very well we're near completion on Lanai. We're working on Lahaina.

So as far as I'm concerned, and I believe this would be backed up by now, that the process we're using and moving through is one that they will accept. But that workshop that we talked to you about is something where we need to get the board to agree with our process before we go on to the water commission to tell them what we're doing.

CHAIRMAN RICE: That's in Jonathan's --

MR. CRADDICK: Right. So there is an in place water use and development plan.

CHAIRMAN RICE: Thank you, Mr. Craddick.
We have got two items we deferred. Counsel?

MR. TAKAYESU: That's correct. We have requested executive session. Within the statute you need approval to go into executive session.

CHAIRMAN RICE: Okay. We need to take a break for five minutes.

(A recess was taken.)

CHAIRMAN RICE: Let's go, we're called to order. We have a quorum. Counselor Jim?

MR. TAKAYESU: This is on the Peter Stolle vs. David Craddick, et al. We are requesting that we go into executive session to discuss proposals and counterproposals on a settlement of this particular case.

MR. STARR: Mr. Chair, could I request we take the Maui Tomorrow one first? I have a comment to make before we go on into executive session, if we're going to do that.

CHAIRMAN RICE: It doesn't matter to me.

MR. TAKAYESU: It doesn't matter to us.

CHAIRMAN RICE: We'll take Maui Tomorrow first.

MR. STARR: I understand that this is a complicated matter and it also involves the Sunshine Law and I believe there's also ethics, a possible ethics violation. I would like to kind of get something off of my chest that has been on my conscience for a while and sort of, I guess, being challenged by Mr. Cravalho before and also not being able to ask a question or two when we were talking about election time.

I would like to discuss something that happened a little over a year ago. I believe it was March 17th or so. Not this year but last year. And this was when there was still a previous chair; Mr. Takitani was still chair.

The board had before it the Memorandum of Understanding with A&B. I know at that time Mr. Nakamura was on the negotiating committee; I had been on the negotiating committee too. That was in the minutes from that time. I was called to meet with Mr. Takitani, the board chair, in his office at Star Ice and Soda one afternoon, and I went up there and I was surprised to see Mr. Nakamura was there as well.

And when I asked the chair, Mr. Takitani, what was up, he said there was a desire to put into the Memorandum of Understanding with A&B that the board owed 8.9 million gallons of water to the joint venturers. And Mr. Nakamura was the proponent of that and sort of representing the joint venturers.

And I said that I had a real problem with that; it was something I could not go along with. And I also didn't like meeting like this, meeting members in private to work about this with specialty, you know, something in a sense that when I left the meeting.

But I felt that since these matters are kind of hanging over our head, this is something that I should come out with. And frankly, I didn't feel there was much I could do about going into that meeting because I didn't know what was

going to go on. Since that time, I haven't really felt good about it afterwards. And I felt this is something that I should be open about.

So those are my comments, take them as you may.

CHAIRMAN RICE: Thank you, Mr. Starr. Jim?

MR. TAKAYESU: On the two items, both the Stolle and the Maui Tomorrow, I would be requesting that we go into executive session on both of those matters. I think generally if there's more than one item, we'll make the request and they vote on it. And we'll go into one executive session and then come out, and then into the open portion of the meeting again.

CHAIRMAN RICE: At this point, what is on the agenda is the Maui Tomorrow issue. Mr. Craddick?

MR. CRADDICK: Do you want us in here? Is this a matter between Maui Tomorrow and the board? I don't know if you want staff here. If you don't, we'll leave.

MR. CRAVALHO: Are you going into executive session?

CHAIRMAN RICE: I have not heard a motion.

MR. CRAVALHO: I personally don't like executive. If it's an open meeting, no executive session, fine.

CHAIRMAN RICE: What's the pleasure of this body?

MR. STARR: Could I ask counsel, is there any way we can do what we need to do without going into executive session? Can we see the reports, for one thing?

MR. TAKAYESU: Yes, I have copies. These are --

MR. NAKAMURA: Mr. Chairman, may I ask a question?

CHAIRMAN RICE: Yes.

MR. NAKAMURA: The substance that the lawsuit deals with is an issue that I have declared a conflict on, as you know. However, the lawsuit does deal with procedures with

potential violations. I have been named in that lawsuit and I would seek your guidance as to whether or not it's appropriate for me to participate or not.

MR. FUKUSHIMA: I would believe, Mr. Nakamura -- if I may, Mr. Chairman.

CHAIRMAN RICE: Yes.

MR. FUKUSHIMA: Yes, if you as a defendant -- as a member of the board and a defendant in this lawsuit have a real interest in how this lawsuit is dealt with by our office. And I believe that you have every right to be in this meeting discussing the lawsuit.

MR. NAKAMURA: Thank you.

MR. TAKAYESU: I concur with that. Like 9A where we're dealing with the specific -- the joint venture settlement agreement, he disqualified himself. But this item here deals with the lawsuit in which he is, along with other members of the board, is named as a defendant. They are definitely related but they are very different.

While you are reading it, I would -- we have handed out a draft answer. In Hawaii, like all the other states, we have noticed pleadings; so you basically answer the complaint by either admitting or denying. Or certain cases you deny with additional comments or admit with additional comments. You also spell out additional defenses that are available. It's fairly standard.

It doesn't go into much detail, but it's designed to basically frame the legal issues that will be presented to the court. For instance, usually in the complaint you spell out preliminary matters like jurisdiction of the court or venue. Is this, say, proper venue.

This dispute is on Maui, and so it should be heard in the second circuit court as to allegation of proper venue. We admit that. So the parties and the court know we won't be fighting over whether this action should be heard in Sacramento or Kauai. The proper court obviously is on Maui. And so it's just a basic -- the normal type of answer we would file.

In terms of executive session, it's more to go ahead and actually get into the meat of the legal issues presented.

To be able to answer questions, and if you want to know what our strategies might be; what the strengths and weaknesses of the case are. Those are the types of things that are properly the topic of discussion within an executive session.

Again, at this point, we're just dealing with the fairly standard answers. You've had an opportunity to look at it. In order to understand it, you have to actually take a look at the complaint, which I believe all of you have. So you can compare, you know, paragraph 1 and see how we are responding to it. At this stage, it's fairly standard procedures.

CHAIRMAN RICE: What's the pleasure of this body?

MR. CRAVALHO: Any need for us to go into executive session at this particular time?

MR. TAKAYESU: It depends. If you want to get into some discussions beyond just the filing of the standard answer. If you don't, there's no need to. We'll just go ahead and do our lawyer thing.

CHAIRMAN RICE: What's the pleasure of this body, gentlemen?

MR. NOBRIGA: It looks good. Proceed.

CHAIRMAN RICE: Okay. I don't know if we need a motion.

MR. CRAVALHO: No.

MR. TAKAYESU: No need.

The other item involves the Stolle case. Again, this is different than just filing an answer. Here we have been engaged in settlement discussions, we have traded communications, written offers and counteroffers. We submitted subject to limitations of Rule 408. These are basically confidential settlement offers that go back and forth.

At this point, I can tell you that we have not been able to come to an agreement; so Stolle has asked for a certain amount of money to settle the case and we have offered another sum. And as of yesterday, we were not able to come to any type of agreement. So what we would like to do is go ahead and

discuss with you the -- or present to you the dollar figures. I could do it one way by letting you know --

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Would you have a document that we could review?

MR. TAKAYESU: Yes. As a preface, after the meeting we did contact Mr. Pierce. We asked him for some figures. He provided us with a breakdown of what he would consider special damages and accounting of his attorney fees. So this is the document and I can pass it around.

After we received that breakdown, we took a look at it; we presented him with a counteroffer, a certain dollar figure, which would be -- we covered everything, special and attorney fees. How they want to break it up among themselves, that's between the attorney and the client.

PETER STOLLE: Can I call my attorney?

CHAIRMAN RICE: Sure.

MR. TAKAYESU: So we gave him a figure and they came back with another counteroffer. They rejected our proposal. And the counteroffer and rejection dated April 25th was -- this is the next letter. It's a money thing at this point.

MR. NOBRIGA: It's like the teachers.

MR. TAKAYESU: Yeah, like the teachers. It's a question of what the board wants to do in terms of a dollar amount. I don't think it's a big difference, but there definitely is a difference. Unless we can agree to the dollar and cents, there was nothing we could come back and say we have agreed to something. So we'll leave it up to the board.

MR. STARR: May I ask a question? If Mr. Stolle and his counsel were willing to just try to talk it out and work it out here, is that something we can do, or is there a reason why it has to be confidential? We're all sitting here together.

MR. TAKAYESU: What was the question?

MR. STARR: Is there a way we can --

CHAIRMAN RICE: We could do anything we want, I believe.

MR. STARR: No, we can't make this public because right now it's privileged. Until both sides say okay, we'll put it out in the open to see if we can discuss it and settle it. Is there a mechanism for that, if everyone involved were desirous?

MR. TAKAYESU: I would think so. It's unusual. I would have to think about it.

MR. NAKAMURA: You would require the concurrence of Mr. Stolle and his attorney, I would think.

MR. STARR: Mr. Pierce, what I asked was is there some way that -- we're sitting here and there's sort of a negotiation taking place, and you are sitting over there with your client, can we discuss this, discuss the amounts openly in the hopes of possibly being able to put it to rest right here and now?

CHAIRMAN RICE: Yes, Mr. Cravalho.

MR. CRAVALHO: My concern, which I have expressed several times previously, is not necessarily the dollar amount that we can argue about dollars. I think that would constitute an area for discussion and an area for settlement, if anything.

My concern is the language of that settlement. To see that we address the questions that need to be addressed. My concern, Mr. Chairman, is that in the process of reaching this settlement and the language attached thereto, that an appropriate amount of attention is being given to the board's action and the justification for those actions, based not only on the decision of the board at two separate times; but based on past practices that were just about identical and have been in effect for a period of years.

With the knowledge of the department and of corp counsel's office currently and past as well. So that if, just for the sake of discussion only, if we say, well, the board did

not act in a reasonable manner or in a legal manner, and therefore the director may have been correct, then what is the defense or what is the justification for the past practices that have been going on with the knowledge of corp counsel's office?

And this has been going on for a period of years. Do we need to bring in case by case. I don't think we need to. Some sort of indication that the action of this board, based on the knowledge and the information brought to this board in the past in the examination of the question that the board's authorization for the granting of a meter to Mr. Stolle was completely correct, based on past practices and based on what the department has been doing and based on what corp counsel's office has knowledge of. That's just as an aside. And that's only with respect to this particular case.

Now, also with respect to the legality of things, and I have expressed this concern in the past, how can we as a board approve a settlement that is contrary to law and agree to a settlement which is in violation of existing law unless we can show that somewhere along the line, based on past practices of board, not just this board, but past practices as well, that this was a consistent methodology of doing business; and that this board has acted in accordance.

Now there is also another concept of law, Mr. Attorney, that if, if an individual has been given reason to believe to take -- it took certain actions and those actions were appropriate. If they had been given action by appropriate authorities to do something and they have relied in good faith and they have done it, I think you know what I'm talking about. It's legal. In terms of that person who has done these things. And there is a terminology for it. Nobody wants -- go ahead.

MR. TAKAYESU: Detrimental reliance.

MR. CRAVALHO: Detrimental reliance is absolutely right. And we need to all be aware that this is in existence. And when we try to deny its existence through a variety of ways and a variety of -- I wouldn't say misstatement of facts, but by a variety of a limitation of what the facts are, then I think we're wrong.

I think in the settlement, the dollar amount is not that great of a concern of mine. Because this has come about

because of the intransigence, one individual who in past practices have done this precisely same thing and is an ongoing basis in other areas as well. That's factually correct.

So the action of this board, Mr. Chair, with respect to Mr. Stolle, was absolutely right. It is not my intention to penalize anyone or to point fingers at anyone; but it is my intention and my hope that the language that we have in any kind of a settlement will not directly or indirectly indicate to anyone that this board acted in an irresponsible manner and disregarded the facts. Because when one looks at what the facts were, past precedence, past action and past activities were precisely the same.

And in addition to that, Mr. Chairman, if we wish to pursue this anymore, the record does show that subsequent to the denial of facilities or water facilities and a meter to Mr. Stolle, others were given, coming from the same transmission line, coming from the same area and disproportionate and unfair treatment of people that were not being treated alike.

If one wishes to make reference, Mr. Chairman, to the contents of executive committee meetings that we have been told we cannot discuss, there are provisions in those minutes that indicate discussions that were taking place, that did take place with respect to the granting of a meter to Mr. Stolle.

And if one wishes, no connection to this case, but if one wishes, one can look at the number of existing operations that are completely contrary to law. It's not my intentions or my hope, it's not my desire to point the finger at anyone.

Mr. Chairman, I have said before many times many things happen because board members in their great enthusiasm they apply consistent and persistent and everlasting requests to the director to do a number of things. I understand that. I may not like it but I understand that. This has happened in the past. And many of the conditions that exist today may have been the result of those types of activities. I understand that.

Let us be sure that whatever settlement, and I am for a settlement -- I would like to go to court on it. I really would like to go to court.

MR. STARR: With whom?

MR. CRAVALHO: Opposing the water department.

CHAIRMAN RICE: You would be on their side. I see. You should sit next to Mr. Pierce, he would probably enjoy that.

MR. CRAVALHO: Yes. But that's not the question. Can we resolve it? We can.

MR. STARR: I would make a motion.

MR. CRAVALHO: You do.

MR. STARR: I feel that the dollar differential is certainly a lot less than holding another meeting or having more lawyer consultations. And I agree with Mr. Cravalho in that I felt that the board had tried and did the right thing way back when and it should have resolved it.

And I would like to move that this be -- that this be settled on the basis of the numbers that were given on the last request by Mr. Stolle's counsel and that he get a permanent meter and that language, to the satisfaction of Mr. Cravalho, be included in it to make sure that it's showing the board's position on the matter.

MR. CRAVALHO: You make reference to me, I second the motion.

CHAIRMAN RICE: First time they have been together. There's a motion and a second. Is there any discussion or comment? Mr. Nakamura?

MR. NAKAMURA: Does that motion include the request that the meter fee be waived?

MR. CRAVALHO: Yeah, what do you think? You are the maker of the motion.

MR. NAKAMURA: I'm asking you.

MR. STARR: Yes.

MR. NAKAMURA: On what basis?

MR. STARR: On what basis? It's a settlement from someone who potentially might have been harmed.

MR. CRAVALHO: Mr. Chair, can we have a few minutes' recess?

CHAIRMAN RICE: Absolutely. Recess with a motion and second on the table.
(A recess was taken.)

CHAIRMAN RICE: We're out of recess.

MR. STARR: You want to make an amendment?
Mr. Chair, I would like --

CHAIRMAN RICE: There's a motion on the floor.

MR. STARR: I would like to withdraw my motion and make a slightly different motion.

CHAIRMAN RICE: You wish to withdraw the second?

MR. CRAVALHO: I have no problem.

CHAIRMAN RICE: Okay, motion is withdrawn; second agrees to withdraw.

MR. STARR: I move corp counsel be empowered to settle this in the manner that was discussed.

MR. NOBRIGA: There was no discussion, Mr. Starr, you shouldn't use the word "discussion" in your motion.

MR. STARR: Mr. Nobriga, make a motion. You make the motion, how do you like to say it?

MR. NOBRIGA: Empowering the corporation counsel to proceed with settlement pursuant to the board's original intent.

MR. STARR: Second.

MR. CRAVALHO: Mr. Chair, I would suggest the elimination of one word.

MR. NOBRIGA: No problem.

MR. CRAVALHO: Delete "original."

MR. NOBRIGA: Delete original.

CHAIRMAN RICE: Restate the motion, please, Mr. Nobriga.

MR. NOBRIGA: Okay. Can I get some help?

MS. NAGO: We empower corporation counsel to proceed with the settlement pursuant to the board's intent.

MR. NOBRIGA: Yes.

CHAIRMAN RICE: Sounds like the motion. Is there a second? Mr. Starr?

MR. STARR: You got your crystal ball there?

MR. TAKAYESU: Oh, yeah.

MR. STARR: Okay. Second.

CHAIRMAN RICE: Any discussion?

MR. NAKAMURA: So am I to understand that corp counsel now has full authority to settle with Mr. Stolle in accordance with what they understand to be the guidelines of the board?

CHAIRMAN RICE: That's correct.

MR. NAKAMURA: Is corporation counsel comfortable with that direction?

MR. TAKAYESU: That's why executive session is so much easier. But I understand, based on my last discussion with Mr. Pierce and myself, what the settlement would be.

MR. CRAVALHO: Will be, period.

MR. TAKAYESU: Period.

CHAIRMAN RICE: Okay. Howard?

MR. NAKAMURA: It's a democracy, Mr. Chair.

CHAIRMAN RICE: I want everybody to have their chance to speak. All in favor signify by saying "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion carried.

MR. HIRANAGA: I would abstain.

CHAIRMAN RICE: Let the record show Kent has abstained.

MR. TAKAYESU: May I make a statement in response to Mr. Cravalho's statements. Past practices has bothered me and at some time there is need for change. We are operating under rules that for the most part were adopted in '77 during your time as mayor. Now it's 2001.

And in the past, I think there were some past practices that would raise concern about what was happening with Mr. Stolle and it was my understanding that -- my feeling is that because of not enough updated rules, certain pressures were placed on the director by former boards and he felt that, okay, that's -- he would follow through with that. But those were anomalies; that was not the standard practice.

My feeling always has been that more rules the better. Because then everybody is on notice as to exactly what their rights are and what their requirements are going to be. And even in terms of an appeal process, you should have procedures and standards to apply so that everybody knows where they stand. And because of that, we'll be working with you to go ahead and try to adopt additional rules.

Again, I think it will make it much easier for everybody to be able to operate, it would help to reduce conflicts. People's expectations who will have greater basis in reality in terms of when can they get a meter and won't they

be able to get a meter, and what types of priorities they are looking at.

Again, water, as you folks well know listening to all the citizens who have come to these meetings, water is so important. It's so essential to everyone. And everybody wants to be treated fairly and equally, if possible. And the best way to do that is to have good rules.

The rules, I think, should have been continually updated from '77. And without this evolving process of rules, rules tend to get out of sync with the needs of the community. So I think that's one of the things that we really want to work with you in the near future to get some of these things resolved.

And I think that's why the rules committee getting proposed rules to deal with the water situation Upcountry is so important. So many people are up there and they really want to know where they stand. At this point, without those type of rules, it's tough.

Unfortunately, while -- for the longest time they didn't have that much water, so everybody sat there just waiting for additional water resources to be developed. But since this board is moving in that direction, now people are going to start feeling that water is on the way.

So the timing is, in terms of dealing with the rules, it will make everybody's life a lot easier and we can avoid litigation in the future. But just because somebody did something in the past wrong at some time, I hate to use that as the basis to make decisions in the future.

MR. CRAVALHO: That's all well and good, provided, however, you are on even playing field. When the reliance on past practices is used indiscriminately and it is applied differently to different people, then I think we got to take a look at what has been going on. And I think we both agree, we all agree that many of the things that took place were not appropriate, but they have taken in operation for 15 years plus.

One person comes in and the board, in light of past practices, what has been going on for all these years is okay, fine, and then that decision of the board is being totally disregarded. How then do we provide a level playing field?

And overall, Mr. Attorney, maybe not during your time, but overall, there has been a different application of

the law as it applies to the small guy and the big guy. That's factually correct. And without naming an individual, one of the officials or one of the major corporations told me months or a year or more ago that what was allowed to have happened Upcountry is nothing short but criminal. And I think that's correct.

If we want to discuss it, Mr. Attorney, we know what prior provisions -- what prior agreements provided for. We know how the amounts of withdrawals were cut by the administration at one particular time and the major supplier or transmitter of water to the Wailoa ditch.

And to add insult to injury, if one may want to make reference to that, the treatment plants were built in so that irrespective of the millions of gallons of water that may become available from that water ditch, you could process only 7.5 million a day and thereby using water as a restriction on people, and then not applying the law equally to everybody.

I think our job is very serious in terms of equality and everybody gets treated alike and we have not had that. You know that. I know that. That has been historically correct. Let's go correct it.

CHAIRMAN RICE: One more matter.

MR. FUKUSHIMA: One second. This will be real short. Mr. Hiranaga's abstention of the last vote is going to be counted as a yes. Refusal to vote or silence is counted as a yes vote. The only way to get out of the vote is to disqualify yourself.

CHAIRMAN RICE: Yes, Jonathan.

MR. STARR: I would like to challenge us all for a rewriting of the rules in the next coming year, and I also challenge corp counsel to give us the staffing and assistance we need to do that. And with that, I move for adjournment.

MR. CRAVALHO: Second the motion.

CHAIRMAN RICE: All in favor signify by saying
"aye."
(A chorus of ayes.)
Opposed?

(No response.)

Adjourned.

(The proceedings were concluded at 12:50 p.m.)

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