

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR MEETING

Held at the HGEA Conference Room, David K. Trask, Jr. Office Building, 2145 Kaohu Street, Room 207, Wailuku, Maui, Hawaii, commencing at 9:00 a.m., on May 24, 2001 2000.

REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135
IWADO COURT REPORTERS, INC.

A T T E N D A N C E

CHAIRPERSON:

PETER RICE

VICE-CHAIR:

HOWARD NAKAMURA

BOARD MEMBERS:

CLARK HASHIMOTO

KENT HIRANAGA

MICHAEL NOBRIGA

JONATHAN STARR

ORLANDO TAGORDA

ROBERT TAKITANI

EXCUSED:

ELMER CRAVALHO

DIRECTOR

DAVID CRADDICK

DEPUTY CORPORATION COUNSEL:

HOWARD FUKUSHIMA

BOARD SECRETARY:

FRAN NAGO

ENGINEERING:

HERB KOGASAKA
WENDY TAOMOTO
HERB CHANG
FISCAL OFFICER:
HOLLY PERDIDO
ADMINISTRATIVE ASSISTANT:
JACKY TAKAKURA
PLANNING:
ELLEN KRAFTSOW
PERSONNEL:
CINDY GRASSA
WATER TREATMENT PLANTS:
PAUL SEITZ
CHARLENE SUZUKI
ALSO PRESENT:
ADAM PATEL
JOHN RUSSELL
WARREN SUZUKI
GARY ZAKIAN, ESQ.
PAUL HORIKAWA, ESQ.
RAY MATASCI
DAVID HOEKSTRA

IWADO COURT REPORTERS, INC.

REGULAR MEETING BOARD OF WATER SUPPLY
TRANSCRIPT OF PROCEEDINGS
MAY 24, 2001

CHAIRMAN RICE: I will call to order the Board of Water Supply meeting, Thursday, May 24, HGEA Conference Room, Number 207. Board members in attendance Clark Hashimoto, Jonathan Starr, Mike Nobriga, myself, Peter Rice, Orlando Tagorda, Howard Nakamura, Kent Hiranaga. Staff, Director David Craddick, secretary Fran Nago, and staff. Members of the public signed in.

Okay, let the record reflect those members of the public that are present, and esteemed Corporation Counsel to my left.

Are there any minutes, minutes from the prior meeting?

MR. NOBRIGA: Yes, Mr. Chairman. I'd like to move that we receive the minutes of the regular meeting on 3/22/01, and the special meeting on 4/18/01, and let stand for 30 days subject to review. If there is no review, corrections, additions or deletions, the minutes will be filed.

MR. TAGORDA: Second.

CHAIRMAN RICE: There's a motion and a second on the table to accept the minutes for 30 days subject to review or changes to be accepted. Is there any discussion? All in favor signify by saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried. Before we get into testimony, members of the Board, a procedural issue that I want to raise -- and I will take all the blame on this issue, as I'm the one that created the agenda -- in my haste to try and start to clean up some items on the old agenda, I have listed all the committee reports on the agenda, and in fact we don't have but one committee report ready at the time of the filing of the agenda.

So it is my feeling that in the future and at this meeting, that unless we have committee reports in hand at the time of filing of the agenda, that we will not be taking up those issues. I don't think it's fair to the members of the Board to have something presented to them at the meeting and to be asked to make a decision. So unless there's some objection, that will be the case as we move forward. I apologize to the Board members and any members of the public for that oversight on my part.

Now, is there testimony from the public? Sir, would you sit here and state your name for the record?

MR. VARES: Yes, thank you, Mr. Chairman. My name is Nathan Vares, and I'm with the Tri-Isle Research Conservation and Development Council, I'm the coordinator with them. And I'm here today to -- I'm going to pass this letter along to you, it's from our chairman, Buddy Nobriga, and I have copies of it and an attachment for each member of the Board.

This is concerning funding for Miconia control. We had an item in your budget requesting \$100,000 continued

funding for fiscal year 2002, and it became apparent a few weeks ago that the state legislature was not going to come through with the funding that they normally had in the past few years. And in light of that, we had asked the County Council to increase their allocation this year, and they have graciously approved \$200,000 of new monies from them. So this has helped make up the shortfall to fund the Miconia effort, but we're still not quite there yet, and that's why we were hoping that the Board of Water Supply could come through with an additional \$100,000 to make a total of \$400,000 from County sources.

We have other sources from the Nature Conservancy, the National Fish and Wildlife Foundation. This year we're finishing out a grant from the Community Block Grant. But Miconia is becoming -- it's becoming increasingly apparent how serious a threat it is, and this is what the attached paper to this letter has indicated. The devastation in Tahiti is a common example that is cited as to how bad it actually could become, and we're just barely holding our own right now. That's why we want to request this increase in funding to help sustain the effort and really get a handle on it.

CHAIRMAN RICE: Thank you, Nathan. Any questions from the Board? Go ahead, Jonathan.

MR. STARR: Mr. Chair, I appreciate you coming before us, and I really support the program. I'm one that really believes that we have to deal with the Miconia problem. My question to you is whether you are going to be at the Board of Land and Natural Resources meeting tomorrow morning, because I understand that they are recommending a reduction in the lease payments for the entire East Maui Watershed that's leased to A&B and EMI. They're reducing the amount from \$160,000 a year to \$144,000 a year, which makes it probably the cheapest water anywhere in the world.

But what that does is because they have such artificially low lease rates, DLNR, which should be able to afford to fund this program, is not able to fund it. So my question to you is, are you going to go and appeal to the Land Board to make the lease rates more reasonable so DLNR can fund this program, which my belief is that it should be coming out of the water lease money.

MR. VARES: I see. Actually, that matter was not taken up by the Maui Species Committee. We have sought various sources and various scenarios to keep the funding adequate, but it's something that wasn't discussed at the last meeting, so I can't say that we had planned to go to this one. I can make an appearance, but that's last minute.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: I have to disclose to the body that the chairman of the Tri-Isle Council, Buddy Nobriga, is my daddy.

CHAIRMAN RICE: So noted. Any other questions from the Board? Nathan, we have the request for the Miconia in the budget, and it will be taken up by Finance and CIP and the whole Board at some future date. And we understand your request, so thank you.

MR. VARES: Thank you.

CHAIRMAN RICE: Next. Any other public testimony? Thank you. We will move on. Communication 01-19, request from Paul Horikawa on behalf of Mr and Mrs. Robert Fevella. Paul, I see you here.

MR. HORIKAWA: Hi. Good morning, Mr. Chairman. I represent Mr and Mrs. Fevella. It's my understanding that this matter will be referred to committee, and if that is the case, I will reserve my comments until the committee meets.

CHAIRMAN RICE: Thank you, Paul. I am referring that to the Oversight Committee.

MR. NOBRIGA: I have to disclose to the Board that Mr. Fevella's son works for me as a management position.

CHAIRMAN RICE: So noted. And then in the discussions for the Oversight Committee, you will take that into consideration?

MR. NOBRIGA: Oh, definitely.

CHAIRMAN RICE: Thank you. Communication 01-20, request from David Myers for a water bill adjustment. David, anybody here? That's referred to Finance.

Okay, now we're into committee reports, for which there are very few. We have one committee report from --

MR. NOBRIGA: Mr. Chairman, if I may.

CHAIRMAN RICE: Yes, sir.

MR. NOBRIGA: I would like to beg your indulgence in handling -- which one now? Sorry, yeah. You know, the one about Kamaole. Which report is that, David? Help me out.

MR. CRADDICK: It's 8.

MR. NOBRIGA: Yes, handle number 8. The information is disclosed within the agenda and has been passed out to all members of the Board regarding the action of finalizing our disputes with the Construction Development, Inc., and the Board of Water Supply, resulting in the completion of a project of Kamaole Weir.

CHAIRMAN RICE: Procedural issue. Members of the Board, that issue was assigned to the Finance Committee, and if there's no objection I will accept it back to the Committee of the Whole, full Board for action today. If there's no objection to that. Go ahead, Mike.

MR. NOBRIGA: Thank you. It is the recommendation of the Oversight Committee and the Finance Committee that the Board approve the action of line within the report. Would you identify the page, David?

CHAIRMAN RICE: If I recall correctly, members of the Board, this issue was taken to mediation and it was referred to Mike's committee, and has to do with the dispute over a project with this contractor. And the mediator

recommended a settlement, and Mike's committee was recommending that the Board approve that settlement recommendation. And there is a combination -- the reason it went to Finance was because the settlement was \$325,000. There was 90-some thousand dollars left in the account for that project, and the difference of I believe it's \$248,000 was going to be appropriated from CIP projects.

MR. NOBRIGA: I saw it in here.

MS. NAGO: You had it in a previous agenda. It's not in this agenda packet.

MR. TAGORDA: Mr. Chairman, in light of the absence of that information in front of us, I think if my colleagues agree, we should really review this. I never had a chance to read that settlement agreement, Mr. Chairman.

MR. NOBRIGA: Fair enough.

CHAIRMAN RICE: Okay.

MR. CRADDICK: I would ask that you maybe defer on this item for a little while. I'll talk to you when we get a break.

CHAIRMAN RICE: We just did defer it.

MR. CRADDICK: Well, I mean defer it to later on in the meeting, because you may find out that the expense rises if you wait longer.

CHAIRMAN RICE: Okay, well, we've deferred it, so we can move on.

MR. NOBRIGA: I believe, sir, the Chair does have the authority to call special meetings, so it wouldn't mean that we'd have to wait a full 30 days before coming back to our meeting.

CHAIRMAN RICE: Jonathan?

MR. STARR: Mr. Chair, I would have no problem, certainly the committee chair is very well familiar with --

MS. NAGO: Jonathan, I'm sorry, you're going to have to speak up.

MR. STARR: I'm sorry. I was saying I would have no problem if we find a way to deal with it, because I know it is a timely matter and the committee Chair is certainly familiar enough to brief us on it.

CHAIRMAN RICE: Mr. Tagorda, we talked about it. Kent is familiar with the issue, I think, you attended our committee meeting. Howard, you are familiar with the issue.

MR. NOBRIGA: Mr. Chairman, I move that the Board accept the recommendation of mediation on the matter of Construction Development, Inc, versus Board of Water Supply.

MR. STARR: I second that.

CHAIRMAN RICE: There's a motion on the table to accept the recommendation of the mediator on the issue of the Construction Development, Inc, versus the Board of Water Supply. Discussion, gentlemen?

MR. NOBRIGA: Mr. Chairman --

MR. STARR: I'm sorry. I was just going to request, Mike, you give us as much of an overview as you can.

MR. NOBRIGA: Mr. Chairman, we have in the audience some key people that may be able to give us a brief outline. Mr. Blake is not here, but David, would you assist me in this matter?

MR. CRADDICK: I'll do the best I can. This matter arose out of the Kamole treatment plant contract. What had happened was during the course of the contract some changes were made. I believe the changes were made for the benefit of

the water department. We lowered the filter unit down. I don't know if you have all seen Lahaina, but it's about three-and-a-half feet above the ground. This is about 18 inches or a foot off the ground. We did that for the safety of our employees, because they have got to get into the equipment from time to time. If any one single person fell and hurt themselves we'd probably be looking at an expense greater than the entire change order on the job. That was why we did it.

How the change orders came in, they did not come in on one item. There was one to put the piping underground, and then there was a tank off on the side that was designed for the filters being up high. That tank did not get changed. Because that tank didn't get changed there was piping that was left high up in the air, and the pipe supports had to be changed. That was one change order that we're talking about.

The other change order is on the generator building. The generator building had louvers in it that it was felt should be put in a different place. That change order was a fairly substantial change order. There are arguments on how fast it all proceeded, those two items. In the end they were both things that needed to be done, and we feel they're valid change orders. Now, that's on the change order side.

There's an additional problem in that during the course of the work, CDI did something that we felt compromised the integrity of the filter units themselves. The Board of Water Supply went in and changed the modules on the four worst ones. Now, the claim from CDI was above double what we had settled for, and during the course of this mediation they presented their best evidence of why they were not responsible for the filter damage; we gave our best evidence why they were. In the end they finally accepted responsibility for that, and we were able to settle at this reduced amount, rather than the higher amount. And their higher amount was for interest in non-payment of these monies that we actually owe them for the change orders, and the retainage that we held on the job. Peter said that we're still holding about 90-some thousand dollars. That's retainage on the job because it has not been completed, and the job was completed about three years ago and they're asking for interest on those funds. That is basically it.

But I'll leave it up to Mike whether he felt in all the discussion that the settlement was fair. From my part, I believe it is a fair settlement. There are some other things

that we are getting from the filter manufacturer. I don't have a letter to give you here right now, and it's not really related to this settlement, that I think will make this settlement even better for the Board. But that's basically what has gone on. We have two things, change orders and filter damage -- I take that back, there's one more thing. There's still a few items on the job that are not completed, and those, what we're going to do is just complete them ourselves, rather than go into a long song and dance with them over trying to get these things worked out.

There are a few things that relate to safety and structural things with the electrical side, but we feel we can do those in a cost that is under \$50,000. So those we will do in-house. But that's another small aspect of this settlement.

CHAIRMAN RICE: Okay, any questions? Mr. Tagorda?

MR. TAGORDA: With regard to those filters that the CDI accepted responsibility, David, how much are you going to minus from that money that they're trying to settle with the department?

MR. CRADDICK: Orlando, I don't think you can look at it as any one particular item, because they had a claim in for over \$600,000. We know we owe them retainage on the job \$100,000. We know we owed them a certain amount for the change orders that they did, the two things that I told you about on the generator building and the pipe supports. We know we owe them something for that. The amount that we reasonably feel we owe them is what we are giving them, okay.

Now, in settlement of keeping out of a court case that would probably cost us as much as the filters cost, plus they're reducing their claims down by more than what the filters cost, we feel I think, and I hope Mike agrees, that we feel this is a reasonable settlement. Without going into details, if the Board doesn't settle this that it's best not discussed in open session. But Mike has sat through the whole thing, and I would just ask that if you don't want to go into executive session and get into those things, that you rely on his presence at that meeting and his feeling, whether he feels the Board was properly served by this settlement. I'd rather not get into the details of that, because how you lay the

numbers out is really up to the settlement.

MR. TAGORDA: So in light of all those things that you just mentioned, David, CDI and you know that they have deficiency work done in treatment plant. Were all those things taken into consideration when you folks did make the settlement agreement with them?

MR. CRADDICK: Yes.

MR. TAGORDA: So who is going to finish that work?

MR. CRADDICK: We will finish up with our own staff.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, correct me if I am wrong, but I believe that where we are on this right now is that the matter was initially referred to the Oversight Committee chaired by Mr. Nobriga. Mr. Nobriga participated in the mediation process, and the committee had recommended approval of the settlement agreement as suggested by the mediator, and the matter was accepted by the Board and referred to the Finance Committee for the funding. My recollection is that the substance of the agreement as recommended by Mr. Nobriga had been conceptually agreed to by the Board, I believe.

CHAIRMAN RICE: That's correct.

MR. TAGORDA: Call for the question, Mr. Chairman.

CHAIRMAN RICE: We are going to call for the question. All in favor say "aye."
(A chorus of ayes).
Opposed say "nay."
(None).
Motion carries.

MR. NOBRIGA: Thank you, Mr. Chairman.

CHAIRMAN RICE: All right, thank you. So there was no report from Capital, no report from Oversight. Operations Review. I think Molokai. Howard, do you want to take the Molokai one out?

MR. NAKAMURA: Mr. Chairman, with your indulgence, perhaps you may wish to consider withdrawing Director's 01-14 from the Capital Programs Committee, and I would have no objection to that if you wish to do so.

CHAIRMAN RICE: If there's no objection from the members of the Board, I will withdraw that Director's Report 01-14. Howard, do you want to explain that?

MR. NAKAMURA: Mr. Chairman, this request is for appropriation of \$440,000 from the Pipeline Replacement Fund, which has an earned balance of \$961,000, roughly. The project was designed through a prior year's appropriation. The design has been completed. We have been advised by the department that all of the land issues have been resolved with the Department of Hawaiian Homelands, and the project is ready to go out to bid.

The project would replace existing substandard lines in the Kapaakea area on Molokai. Construction of the project was proposed in the next year's CIP budget. The Board's approval at this time would permit the department to proceed with the authorization of bids at this time, which would expedite this project. As I said, it's ready to be put out to bid, and we would meet a need on Molokai in that area.

CHAIRMAN RICE: So our action on this issue would be to simply move the bid process forward expeditiously.

MR. NAKAMURA: Probably to approve appropriation of \$440,000 from the Pipeline Replacement Fund, and that would permit the department to proceed with bids on the project, and I would so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Discussion?

MR. TAGORDA: Mr. Chair, is Mike Quinn here?

CHAIRMAN RICE: No.

MR. TAGORDA: Is there any problem with the budget amendment?

CHAIRMAN RICE: We have \$900-something.

MR. TAGORDA: That's fine.

CHAIRMAN RICE: Any other questions? All in favor signify by saying "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried. Oversight, pass. Operations Review. Jonathan, you wanted to give a verbal report?

MR. STARR: I'd like to give a verbal report on a few items. There was a meeting last night of the committee. We had an overview of the process that's being followed in creating the Water Use and Development Plan. It's a modified IRP process, which means they will be allowed public participation and a lot of opportunity for the community to be involved. My feeling and the feeling of the members present, there was a motion that it's long overdue and that we'd like to see the process proceed, and I hope that the Board will find an opportunity that all the members can be familiar with the way it's being done.

A full IRP, if it were to be done the way Honolulu is going, would probably cost us somewhere between a half and a million dollars. And cutting corners but still trying to keep the integrity of the process going, I think it will end up being much, much less expensive than that, though it will take years. And we're using several consultants on the project, and one of them is operating on a contract that goes back about four years. And then there is another contract for facilitation, which was put out to bid and has been awarded to Peter Adler to facilitate all the public meetings and to help make sure that the public proceeds through the process as an open process, and that contract is just about ready for signature.

The committee did vote that we felt supportive of having that contract signed, and I know that there is a desire to get it signed in this fiscal year. So I want to leave it to you on how you would like to handle that contract, because Corp Counsel has -- what?

MR. CRADDICK: It is not awarded until you appropriate the funds. You have to encumber the funds.

MR. STARR: Excuse me, I'm talking about the facilitating.

MR. CRADDICK: I am too.

MR. STARR: You have a contract ready for signature.

MR. CRADDICK: But we don't award it, we encumber the funds.

MR. STARR: Technically I was misspoken. But there is a desire to get the contract signed and the funds encumbered in this year. So Mr. Chair, can I leave it to you on this matter on how you would like to handle that?

CHAIRMAN RICE: Yes. I think if we get a report from your committee we can deal with it at the next meeting.

MR. STARR: I will write up a report. There is one other matter, and this is a bit more confusing, and the committee didn't take action on it. But I do feel that we're going to -- I guess we were asked to act on it, but it's in a -- there was a request for bids for additional consulting work on creating financial models and the various types of information that needs to be gathered to work on the plan. There already was one, there is one contract that had been awarded sometime back to Haiku Consulting, I believe. Do I have that right?

MR. CRADDICK: I think so.

MR. STARR: Haiku Consulting, and they're doing part of the work, and then there's another bid out, and we have not yet received the bids, and the date for the closing is June 7

-- June 8th. However, even though we haven't received the bids back, we were requested by staff to try to find a way to either get the thing encumbered in this year's budget or else create some budget funding in next year. The committee didn't quite know how to deal with it, it wasn't really an operational matter. So again, I kind of pass you that hot potato, sir, knowing that in your wisdom you can find a way to make it work.

And the last bit of committee report is that we did have a meeting on the criteria for evaluation of the Director, and one of the members said -- there was some feeling that the criteria needed some fine tuning, and one of the members offered generously to help improve the criteria. So we're waiting for that, and that will come back in a future report.

CHAIRMAN RICE: Ellen, you wanted to say something?

MS. KRAFTSOW: It was to follow the screening process that's defined in the statewide framework, and also to do the economic analysis.

CHAIRMAN RICE: Is it something that you did not put in the budget that we received recently.

MS. KRAFTSOW: Yes, the \$150,000 that you put in 2001 I was hoping to have encumbered before the year end. This particular contract I was planning not to bid. I had spoken with the procurement officer, and it was allowable, but they felt that because it was a large increase that we should bid it. So what I was going to ask is if you could take the money and move it to next year, so we don't lose it.

CHAIRMAN RICE: I suggest that you talk to the chairman of the CIP committee. I know there's a meeting coming up.

MR. CRADDICK: It's in the Professional Services, not CIP.

CHAIRMAN RICE: Who is in charge of that committee?

MR. CRADDICK: You.

CHAIRMAN RICE: Okay, I've got the potato, thank you. All right, Rules Committee, there is a report in your packet. It was submitted by the chairman of the Rules Committee, Mr. Cravalho, and I believe the committee, the report does not require any action. Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I was just going to note that three out of the four items are recommending deferral. One item is an item which is to be withdrawn. So I would move that the committee report be accepted and filed, and that three out of the three matters that are recommending deferral remain the proper of the committee, and that the fourth item, 01-15, be withdrawn, as requested by the Applicant.

MR. NOBRIGA: Second.

CHAIRMAN RICE: There's a motion on the floor to accept the committee report, whereas the three items will remain the matters of the committee, one will be withdrawn. There's a second. Is there any discussion on that motion?

MR. STARR: I'm having trouble finding the committee report.

CHAIRMAN RICE: It's early in the packet. Okay, any other discussion, comments? All in favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion carried.

Okay, I'm moving into Old Business. Request from Adam Patel of Upcountry Flowers for agricultural water rates. Is someone here? Do you want to say anything, Adam?

MR. PATEL: Good morning, Mr. Chairman. I realize that the zoning has changed due to the previous grandfathering of this property.

MS. NOBRIGA: Could you speak up a little bit more, I'm having difficulty hearing you.

MR. PATEL: Up in Kula I believe there's a large number of people operating on rural property with ag rates because of the situation of supplying foods and flowers on the island. I myself, I bought this property last year September, and my ag rate was taken away. And I over 12,000 rose bushes there, and it's coming to the point where we have to decide to keep the rose bushes or sell them off and shut it down, because roses are just not a viable product as Ecuador is coming in with just large numbers of roses, as well as Columbia, at such low rates.

However, we have a lot of ladies throughout the island who make leis, and we're the only ones who grow the mini leiheads. And also throughout the island you see the scented flowers, the Sterlings, those are our roses. So they're very much liked, and we'd like to keep them if at all possible. And I'm asking for an adjustment from September 21st, and also to get my ag rate back.

MR. HASHIMOTO: So what is the reason for your ag rate being dropped, what was the reason given? Because I'm familiar with the operation, Mr. Patel.

MR. PATEL: The reason why my ag rate was dropped is I believe the property was agriculturally zoned and then the whole area went through rezoning at some point years ago, and they grandfathered the agricultural rate, is what I'm gathering, from the previous owner. Correct me, because I only have so much knowledge myself.

MR. CRADDICK: I don't know if you want to go over all of this or refer it to committee.

CHAIRMAN RICE: I will be referring it to committee.

MR. NOBRIGA: Why is this in Old Business?

CHAIRMAN RICE: It was never referred.

MR. PATEL: I thought it was being referred to committee.

CHAIRMAN RICE: It was in the March agenda but it

was never referred to any committee, I guess, so Fran was trying to clean up all the old stuff. I'm going to refer this to Finance. Thank you, Mr. Patel.

MR. PATEL: Thank you.

CHAIRMAN RICE: You're welcome. The next item is a request from Andrew and Sheila Fujikawa for a water meter, and this was brought up previously. I thought there was no report. I'm going to refer this to Oversight.

MR. NOBRIGA: I'm pretty sure we acted on this.

MR. CRADDICK: No. What happened there was it was referred to the staff to try and work something out, and what happened was I had thought our pump station was a lot closer to the property than what it is, and when we finally found out where the pump station is and the property is, whether they go that route or the route that the staff had previously told them to go, it's probably no difference in the cost to them. So there was no way to reduce the cost of it. So probably you will want to refer it to committee, that would be the proper way to go at this point, and we will just make the staff report on it. But we weren't able to resolve it.

CHAIRMAN RICE: Are the Fujikawa's here? No Fujikawa's here? Oversight -- I'm sorry, Howard.

MR. NAKAMURA: I was just going to make the same observation, that it was in committee and there was an indication from the staff that there were some alternatives that might permit them to proceed without the need for a waiver. But as David said, that did not turn out to be viable. I believe it was in the Rules Committee, but I think Oversight is appropriate.

MR. NOBRIGA: I need to ask a question, because not that I don't want to handle the topic, it's just that there was a motion put forth by Jonathan a few meetings back to assist in issuing meters to an alleged list, at which point the Corporation Counsel came up with a rule and we are reviewing that rule right now. So would this applicant come within the

purview of that list?

MR. CRADDICK: No, because they can currently get a meter if they make fire improvements. They're trying to really get a waiver from the fire improvements, is what they're trying to do. They can get a meter if they put the improvements in.

CHAIRMAN RICE: Gentlemen of the Board, this issue, this brings up something that I wanted to raise with the Board to think about. We have a lot of special requests at every meeting, and I believe that a lot of the requests relate to rule issues that need to be looked at, and possibly changed. Not necessarily all changed, but possibly changed. And I would like the Board to think about -- for the next meeting I'm going to talk about committee assignments, and I'd like the Board to think about the fact that we would have a committee, maybe the combination of the Oversight, that would look at the entire packet of rules.

We would start the process for amendment of those rules, if necessary. And taking into consideration all these requests and in effect defer them until we get -- some of the rule changes may satisfy some of the Petitioner's requests as opposed to us making exceptions to rules every month at the meeting. It would seem to me it would make more sense to address the rule. If it's the wrong rule, change it, and that way we can possibly reduce this list of requests every month. So that's where I'm leaning, and you guys can think about it and certainly give me your comments over the next month for the next meeting.

MR. STARR: Mr. Chair, I think that's a great idea, and one thing we might think about is creating, you know, under that committee a working group that might include some people outside of the Board who might be willing to help spend some of the time. It's going to take a lot of time, you know, it will certainly take some Corp Counsel time, but also just take some time of people just wading through it and thinking it through it, and we might be able to find some people in the community who could help draft some stuff that the committee could look at.

CHAIRMAN RICE: I think that's a good suggestion. This in my mind right now it's a combination of Rules and

Oversight committees. Okay, we will move along in that regard.

Request from Michael Conway for a waiver of fire flow requirements. Mr. Conway? Refer to Rules. Okay, the next item Board of Water Supply Rules and Regulations for Review and Comment. That's just what I talked about, so that's something that we will deal with at the next meeting. No objection there?

Request from Deborah Von Tempsky for a waiver of subdivision requirements. Mr. Horikawa again.

MR. HORIKAWA: Mr. Chairman, it's my understanding that the matter is going to be deferred to committee. I'll address this issue in committee.

CHAIRMAN RICE: Thank you, Paul. I'd like to refer that to Oversight. Request from Katie Romanchuk for approval of condominiumization. Oversight.

Ron and Dawna Richmond. Ron? I know you want to read something. Please.

MR. RICHMOND: Can we wait for the member to come back? Oh, here he comes. My name is Ron Richmond, and first, I'd just really like to thank the Board members in the subcommittee for listening to me through all this.

Mr. Chairman and Board members, Although the subcommittee has twice voted unanimously to grant a waiver of subdivision requirements on this matter, I would like to take the time to clarify some issues. In January of 1999, I began my preliminary subdivision process with LUCA. They suggested that I speak with DWS, as they were unsure as to how DWS would handle this subdivision. I went to engineer Chang, who advised me to write directly to Mr. Craddick.

In my letter dated February 9, 1999 to Mr. Craddick, I stated I had a 12-acre parcel that I wanted to subdivide which was presently served by DWS with a five-eighths inch meter. Two acres were to remain on the meter and 10 acres were to be serviced by a private water system. I asked for no additional meters or service. Mr. Craddick's response was that there were no additional meters available. He also listed some criteria that were under consideration regarding private water systems, but had not been adopted as policy.

I contacted engineer Chang for clarification, as Mr.

Craddick's letter addressed none of the questions raised in my letter. At this time Mr. Chang told me it was the official policy of DWS that I must give up my meter. I then proceeded with the subdivision of my property on the basis of Mr. Chang's response. It soon became apparent that giving up an existing meter was not the official policy of DWS. DWS Rules and Regulations do not mention giving up a meter. I asked Mr. Chang to put this official policy in writing and he failed to do so. I spoke with Mr. Fukushima at this point and he counseled me against voluntarily giving up my meter.

In Mr. Craddick's letter to me dated April 28, 2000, he states, "We do not have the authority to tell you to disconnect." He also goes on to say, "We do not review private water systems," and he also indicates that private water systems and DWS systems could not co-exist within the same subdivision. As DWS does not review private water systems as stated in Mr. Craddick's letter of April 28, this 10-acre lot is not under DWS jurisdiction.

Nonetheless, there was some concern by the subcommittee about fire protection for the 10-acre lot. I would like to assure you, there will be fire protection. All building permits on private water systems are routed through Maui Fire Department, and the guidelines from the Uniform Fire Code or the National Fire Prevention Administration are used to set their requirements. Corporate Counsel's ruling dated 3/7/01 states that private water systems and DWS systems can in fact coexist as long as they are not connected.

Thus we see the following. 1) Official policy to give up my meter was, in fact, not official policy, nor would it be put in writing. 2) Private water systems and DWS systems can co-exist and, 3) Private water systems are not reviewed by DWS. What is left now to consider is a two acre parcel with its pre-existing water meter and the subdivision improvements including main extensions that Mr. Craddick would like to impose.

The rules and regulations are consistent throughout in their addressing subdivision improvements, water system improvements, and water system development fees. They are based on additional service and additional demand. Over and over we see the same terminology in the rules and regulations. "To take on new or additional service." "To serve new water consumers or additional demand," and "To increase service capacity." This is simply not the case here. This property

that is served by an existing DWS meter has been reduced in size from 12 acres to two acres. This is a reduction of 83 percent in service area. There is no additional service or demand, but rather reduced demand.

The last issue I would like to discuss is section 2-1 in the rules and regulations, in which the "point of adequacy" and extension of water mains is discussed. The point of adequacy as stated from the rules and regulations is one where sufficient water supply has been developed for fire protection, domestic, and irrigation purposes. DWS indicates by its actions that this point of adequacy has been met in two ways: 1) By the issuance of a water meter and 2) The signing of building permits. In my case, DWS has already made a determination of "point of adequacy" by signing a building permit and the issuance of a water meter. What was adequate for 12 acres must be adequate for the same parcel after a reduction in size by 83 percent to two acres. Under section 2-1, once the point of adequacy has been established, the only reason for a water main extension would be to take on new or additional service. This is not the case.

Gentlemen of the Board, soon you will be asked to make a decision either to waive subdivision requirements or not. If you vote not to waive subdivision requirements, three things will happen: 1) Mr. Craddick will have imposed \$400,000 of improvements not sanctioned under any DWS rule or regulation, and will destroy our family financially. 2) These improvements will greatly increase demand on DWS as new customers could now easily access the DWS system, and 3) The rules and regulations of DWS will have not been followed.

If you vote to waive subdivision requirements two things will happen: 1) You will give my family declaratory relief so we can develop our property as permitted by the existing rules and regulations. 2) There will be a long term and significant reduction of water usage to this pre-existing meter. Thank you.

CHAIRMAN RICE: Members of the Board, questions? Howard?

MR. NAKAMURA: Mr. Richmond, at this point so you are not suggesting that you are giving up your existing five-eighths meter, you are just going to have a private water system that serves the remainder of the lots in the subdivision, is that right?

MR. RICHMOND: Yes, sir.

MR. NAKAMURA: What is the nature of that private water system?

MR. RICHMOND: A well.

MR. NAKAMURA: Thank you.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: Some things that he left out here is one, the review by Corp Counsel said that they could have the hybrid system, if you will. They didn't necessarily have to give up their meter, but they had to meet the subdivision requirements. Now, for the first building on the lot the requirements are not that they're not required, they are waived by rule. So the fact that he got a house there under waived rules and he's now subdividing, those rules are no longer waived when you subdivide, is what he's caught by.

I sympathize with the money issue, and there may be something in the Dolan versus Dolan case where they ration the access the improvements required, but that's our rules right now. Now, if our rules are found to be in violation of established law or something like that, that's possibly the way you can look at this, I don't know. But all we're doing -- he keeps using the words Craddick. All we do is apply the rules, it's got nothing to do with Craddick.

And the reason why the meter issue comes up is if there's no meter there then right, there's no subdivision requirements. Whether that's good too, I don't know. But very clearly if there's no meter there, there's no subdivision requirements. But whether he connects or doesn't connect to the system and he subdivides, the requirements are not waived. And Corp Counsel has given that opinion to the Board.

MR. RICHMOND: Can I address what he has said?

CHAIRMAN RICE: Yes, Mr. Richmond.

MR. RICHMOND: I believe Mr. Craddick was talking under Section 3-1, General Conditions. It talks about fire hydrants. What it says is, in the agricultural districts as required by the department for adequate fire protection, they're talking about putting hydrants in, provided however that the foregoing shall not be applicable to the construction of the first and second dwelling unit on premises in any district. And what I'm asking to be treated is as my neighbors have been treated, simply as they have been treated. There's been seven building permits signed off by DWS in this area. My neighbor directly below me has two 3,000 square foot houses that the Department of Water Supply has signed the building permits, and also there's a 2,000 square foot horse barn that this Board has granted a fire protection waiver to. What I'm saying is, please treat me as my neighbors are treated, that's all.

MR. NOBRIGA: Mr. Chairman, I know this matter came out of the Oversight Committee. I'm not sure what action was taken, but we did recommend approval of the waiver of subdivision requirements. I believe that we did take a vote, but I don't remember what happened.

CHAIRMAN RICE: Mr. Fukushima?

MR. FUKUSHIMA: If I may, Mr. Chairman. Member Nobriga's recollection is correct. Approval was recommended by the Oversight Committee. The Oversight Committee also requested our office to submit their opinion with respect to this so-called hybrid system. The characterization of that opinion is correct, that our office could find nothing in the rules which prohibited this type of system, which consisted of private and public systems within the same subdivision. Again, the committee did recommend approval of this request and a waiver of subdivision requirements subject to our office's opinion, which was subsequently submitted.

MR. NOBRIGA: Are we required to revote then, or was the vote already taken?

MR. FUKUSHIMA: There was a vote several times for the Board, however because five votes could not be gotten, no action was taken.

MR. NOBRIGA: Mr. Chairman, since we have more members today, I'd like to again place a motion and move that we grant the waiver of subdivision requirements for this application.

MR. NAKAMURA: I second the motion, Mr. Chairman.

CHAIRMAN RICE: It's been moved to grant a waiver of subdivision requirements and duly seconded. Any discussion? Jonathan?

MR. STARR: Mr. Chair, I have to just comment on the process where this had been voted on by the Board and it lost a vote, and at that time the Chair at that time said, "We will just keep bringing it back until it passes." I'm not sure if that's something I really like as a precedent, but I have no objection to the vote taking place. I just wanted to comment on that process.

CHAIRMAN RICE: Okay, whatever the prior Chair did I am not always aware of. But it is on the agenda, and it could be referred to Oversight just to come back for the same recommendation. David?

MR. CRADDICK: Could I ask under what rule the waiver is being given?

MR. FUKUSHIMA: The waiver of subdivision requirements, I believe it's 214.

MR. CRADDICK: 216 allows a modification of requirements.

MR. FUKUSHIMA: 216, yes. Excuse me, 212, Rule 212.

CHAIRMAN RICE: We've got some discussion here. I am going to ask, there seems to be some disagreement between Counsel and the Director here.

MR. CRADDICK: No, I'm just trying to find out what rule, because if you use 212 then you're setting a precedent here. If you use 216 it's pretty clear by the rule that you

can waive, but then further subdivision of the property requires that the requirements be put in. If you use 212 it just says that you're finding that nobody is harmed by this, so then other people can come in in a similar situation and I guess do the same thing. And if that's your position, then that's your position.

CHAIRMAN RICE: Mr. Craddick, I'm concerned. I'll tell you my personal feeling. I'm concerned with Ron's comments about the department having approved similar situations already. So if we're not talking about --

MR. CRADDICK: The Board has approved them.

CHAIRMAN RICE: The Board has approved similar situations, so the precedent has been set.

MR. CRADDICK: Well, I am not certain that it was clear why they did it, and that's what I'm trying to get here.

CHAIRMAN RICE: Well, let me pontificate here, as the former Chair would have. That's exactly why we need to go back and review all the rules, have a thorough review and make changes, if necessary. Because if we're sitting here every month and making exceptions and amending the rules and providing for exceptions, then we are going to get ourselves in trouble. And we're already deep, as I can see it, in some kind of trouble. I don't know everybody's personal situation everywhere on Maui, but to me, Ron's request seems to be reasonable. What would be required of him otherwise, and what where you're referring to under Rule 16 is that we would waive subdivision requirements, but he would still be required to put in the \$400,000 worth of improvements. Is that what you're saying?

MR. CRADDICK: No, no.

CHAIRMAN RICE: I want it on the table now, I don't want something to come back later.

MR. CRADDICK: If the subdivision requirements are waived, they're waived, there's no requirement.

MR. TAGORDA: Mr. Chairman?

CHAIRMAN RICE: Yes.

MR. TAGORDA: I recollect some of this discussion in the past from the Oversight Committee, and the vote taken by the full Board on this matter. I think us questioning the process right now is whether it's right to reconsider this same matter without new developments. Because I believe it's only the members that voted no can bring up this matter again for reconsideration. Is that right, Mr. Corp Counsel?

MR. FUKUSHIMA: That is not correct. You are not reconsidering this matter. This Board took no action in its previous votes. There was not a sufficient number of voters or members voting aye or nay. I believe the vote was four to three or four to two, and because of that, no action was taken by this body, and the matter remained before this body.

MR. STARR: Let me clarify. There was a vote and the vote failed.

MR. FUKUSHIMA: There was no action, Member Starr. Action requires a vote of five members. And the fact that a sufficient number of votes was not available does not mean the action or the request is denied. No action was taken.

CHAIRMAN RICE: I'm not so much worried about the vote as I'm worried about the decision itself. It appears that I haven't heard anything, any other information. Are we ready to have the vote, ready for the question, gentlemen? Kent?

MR. HIRANAGA: Mr. Chair, I am not familiar with the specifics of this particular request. If a vote is brought to the Board I will probably be voting nay, because I believe an abstention is considered an aye, is that correct?

CHAIRMAN RICE: Abstention is considered an aye?

MR. NOBRIGA: It goes with the majority.

MR. FUKUSHIMA: No, if there is a refusal to vote, that vote is counted as affirmative.

CHAIRMAN RICE: But if you vote nay, it's a nay.

MR. FUKUSHIMA: That's correct.

CHAIRMAN RICE: Howard?

MR. NAKAMURA: Mr. Chairman, I just wanted to say that although generally my preference is not to grant waivers, I think this particular request, looking at it from several different points of view, is a reasonable one. The practical impact of this action is going to be that you have an existing five-eighths inch water meter that is going to serve a smaller area, and the remainder of the parcel is to be served by a private water system. I think it is a ridiculous argument to say that you can have a hybrid system if you put in all of the requirements that are required by the rule, because if you were going to do that, why would you want a hybrid system to begin with? I think that argument is ridiculous, and I think this is a practical solution to Mr. Richmond's request.

MR. TAGORDA: Mr. Chairman?

CHAIRMAN RICE: Yes, Mr. Tagorda.

MR. TAGORDA: I voted nay before in the past on this item, but hearing Mr. Richmond and David argue on things that are not really going to resolve this, the reason why I had voted in the past nay is because I don't want to set a bad precedent. But in light of the new legal opinion by the Corporation Counsel, I think I'm going to reconsider my vote and I will give my vote to the gentleman.

CHAIRMAN RICE: Any other comments? Mr. Starr?

MR. STARR: I voted nay in the past, and I will continue to do so because I just feel that this is, you know, a way around the subdivision requirements, and that by taking a

larger parcel that has a meter and cutting off a certain amount of it and saying that that will have a private water system, that kind of opens the door for possible successors. I don't think Mr. Richmond would do anything wrong, you know, because he's a man of character, but possible successors might say well, you know, we will just move a pipe across from one lot to another and end up with one meter serving two lots, or else finding ways to come back for other meters. So I really don't like to circumvent our rules in this way, so I continue to be opposed to it.

CHAIRMAN RICE: Clark?

MR. HASHIMOTO: Wasn't that lot going to be sold off and the rest of the lots are going to be for the family?

MR. RICHMOND: Yes, sir.

MR. HASHIMOTO: I voted for the proposal, and I think I will vote, in light of the legal opinion also, I will be voting in favor of it.

CHAIRMAN RICE: Jonathan, I don't know what we're circumventing. It appears that Corporation Counsel has given us a ruling that there is no circumvention of the rule. We still have a dispute with Mr. Craddick.

MR. CRADDICK: Well, you have to understand, Howard's view and the attorney for the staff, I don't know if it's different, but the staff attorney said they could have the hybrid system but they still had to meet the subdivision requirements. And you're saying it's reasonable and practical to waive this, but under 212 there's no provision there to waive the rules because it's reasonable and practical.

So there are certain requirements that you have to meet under 212, if you are going to use 212 to waive the requirements. And I agree with what Howard says, I have to agree with you, it does seem pretty dumb to make somebody put the fire improvements in when they're providing something else for these other lots, but I think you need to look at what this causes. I mean we have no guidance whatsoever for the next person that comes in similar to him, what reasonable and

practical is, none whatsoever. So that means they're going to continue coming to you for this guidance on what reasonable and practical is.

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

CHAIRMAN RICE: Yes, Howard?

MR. FUKUSHIMA: That may be -- I don't want to put words in the mouth of any member here, but I would like to state that the standard that this Board must comply with, if they are waving requirements from the subdivision rules is to determine that the modification, or in this case the waiver will in no way jeopardize those already served in the area. I think there are statements and evidence that there could have been a residence built here with no further water permits, and that could very well be taken one step further. Because that could happen, we don't believe that there's any cause to believe that any persons or that it would jeopardize anybody already served in the area. So I think there is evidence on the record that the Board is making a finding, David, that this modification will not jeopardize those already served in the area.

CHAIRMAN RICE: Yes, sir?

MR. KOGASAKA: In the report, I mean on the committee agenda there's a March 9, 2001 opinion from Corporation Counsel in the packet.

CHAIRMAN RICE: I think Howard referred to that already.

MR. KOGASAKA: I believe he mentioned March 7th. Is there a difference in that?

MR. CRADDICK: There were two.

MR. FUKUSHIMA: The meeting was on March 7th, if I'm not mistaken.

MR. CRADDICK: Well, there were two opinions, too.

MR. FUKUSHIMA: Yes, and I believe we made it clear before the Board that in the first opinion that the questions that were asked in the first opinion would not serve to enlighten this Board in any way with respect to the issues before this Board. So we asked that the department submit another request which would answer the question that the Board had posed. And the March 9th communication from our office answered that question.

MR. CRADDICK: Anyway, I agree with what Howard is saying there. If the standard is to modify the requirements and the modification in no way jeopardizes those already served, but I don't hear that being said. I hear some standard of reasonable, practical and maybe I'm just not hearing what Howard is hearing.

MR. NOBRIGA: I find the discussion of the Director extremely suspicious. It's as if he's trying to find a way from this Board to deny the request that the Board is acting upon. And had the Director acted in his ten years of tenure on improving source capacity, then we wouldn't have to be hiding behind source inadequacies, we wouldn't have this problem.

CHAIRMAN RICE: All right, that's enough.

MR. NOBRIGA: Call for a vote and a recess, please.

CHAIRMAN RICE: All in favor say "aye."
(A chorus of ayes).
Opposed say "nay."

CHAIRMAN RICE: All in favor raise your hand.
(A show of hands).
Opposed raise your hand.
(None).
Motion carries. Recess.
(Whereupon a brief recess was taken).

CHAIRMAN RICE: I'm going to call the meeting back to order again. Item H, communication 99-31 request from attorney John Rapacz on behalf of the Hoekstra family. And John Rapacz does not practice law anymore? Did he go in the

seminary?

Mr. Zakian, are there some regulations regarding your absence from representing anybody after being CorpCounsel?

MR. ZAKIAN: Yes, I did get an advisory opinion from the Board of Ethics before I left, and from a period of one year since my departure I could not appear before this Board. It's been about a year and a half now. I did check into that.

CHAIRMAN RICE: Thank you, sir. Proceed.

MR. ZAKIAN: Thank you. And unlike John, I went from the seminary to the practice of law.

CHAIRMAN RICE: No comment.

MR. ZAKIAN: Thank you Chairman and Board members. As Mr. Hoekstra said, I'm coming in for John at a very late date. I've taken a look at the Oversight Committee minutes of March 6, 2001. At this point I'll keep it very short and simple. We urge this Board to adopt the Oversight Committee's recommendation, which is to approve the private water system modification of subdivision requirements that was provided by the Hoekstras, and for the use of the one and a half inch meter for all lots in the subdivision. We would ask your favorable vote on that recommendation from the Oversight Committee, and that if you vote for approval you instruct that the appropriate documentation be prepared to implement your decision.

One final plea. It's been over a year and a half since the process was begun with the Hoekstras on this request. They need a decision one way or the other, and we again ask your favorable approval based on the Oversight Committee's recommendation. At this point I don't have anything further to add.

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

MR. NOBRIGA: The Oversight Committee, Mr. Chairman, I know we took action to waive fire protection and the motion was made for the waiver of fire protection. We also have a letter from Mr. Craddick stating that the Board did not approve

the request to allow the additional one-and-a-half inch water meter to serve the three lots. I need to ask the Hoekstras to again brief the Board on the proposal of a private system for fire protection.

MR. HOEKSTRA: Mr. Rapacz had written a letter --

MS. NAGO: Mr. Hoekstra, I'm sorry, if you could maybe come up here.

MR. HOEKSTRA: Sure. There was a request for clarification that the previous Chairman had asked for, and Mr. Rapacz had written a letter to that effect, which should be in your files. It was in the files the last time this came up. There was a motion made by the Chairman of the Oversight Committee, Mr. Nobriga, and he just addressed the fire protection. But everybody's packet had in there the letter from Mr. Rapacz stating that there were two things at issue, the waiver of fire protection and the service of the three lots.

At the time the motion was made, I personally got up, because Mr. Rapacz was not available at that date, and I said, "I want to remind the Board that what we're asking for here is waiver of fire protection, which was already granted, and the service of the three lots by the one meter." And we went around and around with staff, and Mr. Rapacz had made it very clear to the Board that we would not be an exception to this. That there are many lots where one big meter serves three lots. So that's really the essence of what we're talking about now.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I'm a little bit confused, because I thought that they were looking to exchange an inch and half meter for three smaller meters.

MR. HOEKSTRA: That was not the request, Mr. Starr.

MR. STARR: It was to use one meter to serve --

MR. HOEKSTRA: Use the existing meter to serve three lots, rather than one lot. The three lots are already protected with a private water system for fire protection, and we want to expand that to serve three lots with the domestic water service.

MR. STARR: Is there a provision in our rules to allow one meter to serve more than one lot?

MR. HOEKSTRA: Mr. Rapacz says --

MR. STARR: I'm asking the Director.

MR. CRADDICK: Not to my knowledge. As a matter of fact, the rules specifically prohibit it.

CHAIRMAN RICE: Mr. Tagorda?

MR. TAGORDA: Thank you, Mr. Chairman. I believe that when the Oversight Committee took your item, Mr. Hoekstra, it was very clear that the intent was just to waive the fire protection. And I think the request of you to use that inch and a half meter to serve three lots was also taken up, but it didn't pass, it was denied, if I'm not mistaken.

MR. HOEKSTRA: Well, you know, the Oversight Committee minutes are not taken verbatim, and there was some confusion because we were lumped together with two other issues. But there was a lot of discussion at that Oversight Committee meeting, and the final conclusion was to approve both requests. But like I say, I tried to go back. And if I may make a suggestion, maybe it would be good to have verbatim minutes of the committee meetings, because there's a lot of confusion if you say, "Let's approve A, B and C all in one item."

And Mr. Pearce, who was the attorney for one of the other requests, also asked that he be separated out because some things were lumped together in the meeting in the minutes that were not clear.

MR. TAGORDA: I was there at that meeting, Mr. Hoekstra, and I would really strongly deny the request for

you to use the inch and a half meter to serve three lots, because I knew in my heart that that is not called for by our rules, that one meter only serve one lot, and I knew that by heart.

MR. HOEKSTRA: I'll let my attorney handle that.

CHAIRMAN RICE: Mr. Zakian, did you want to say something?

MR. ZAKIAN: Yes, Mr. Chair. With regard to the one meter, one lot rule, I'm looking at the minutes from the March 6, 2001 Oversight Committee meeting. I'm quoting the esteemed Mr. Fukushima. Mr. Fukushima said, "If there is an approval by the Board there will be no violation of the rule, the one meter, one lot rule. That's with Board approval. If the Board doesn't approve, then there is a problem and a violation. But if the Board approves in the context of a request for modification of the subdivision requirements, then it's approved, and Mr. Hoekstra can proceed."

Also, with regard to the Oversight Committee, this particular committee meeting did have verbatim minutes kept by Iwado Court Reporters. The motion that was stated by Committee Chair Nobriga, I'll just read it as it is written here. "The motion is to recommend to the Board approval of the private water system modification of subdivision requirements provided by the Hoekstras for the use of a one-and-a-half inch meter for all lots in the subdivision." Close quote.

So that was the motion. The motion was approved, two in favor, which was Mr. Hashimoto and Mr. Nobriga. There was one no vote, which was Mr. Tagorda. So that was the Oversight Committee meeting of March 6, 2001. It's part of your official records. That's what we'd like to have you vote on.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I move to deny.

MR. TAGORDA: Second.

CHAIRMAN RICE: There is a move to deny approval for a one-and-a-half meter to serve three lots, and it's duly seconded. Any discussion?

MR. HIRANAGA: Mr. Chair, I have a question. Again, not being familiar with this issue, looking at the map, it's apparent that the one-and-a-half inch meter is located just below the Ault lot, is that correct?

MR. HOEKSTRA: Yes, it's about 1700 feet below the lot that we're talking about.

MR. HIRANAGA: And I guess why did the Hoekstras not consider exchanging the inch and a half meter for three five-eighths inch meters, because there are some off-site improvement requirements to do that?

MR. HOEKSTRA: It just seemed like a lot less work, because we have the private water system and we're satisfying the fire protection with the line, to put in five more lines. See, the water department is not able to give me a meter on my lot. I have signed an elevation agreement. So to have three meters means that you would have three lines running for 2700 feet. So it doesn't make much sense from an engineering or a practical or an economic standpoint to have three meters.

MR. HIRANAGA: Mr. Craddick, do you wish to comment on that?

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: This is kind of a touchy issue here. We have allowed larger meters to be reduced into smaller meters when the usage on the meter was sufficient to allow those smaller meters and not exceed what the consumption was on the other meter. Because this particular meter is serving a high place, it costs a lot of money to pump the water up there, which they have to do, there was not much use on it and there are no rules for this. I have been using a rule of thumb that we take five years of consumption, and if that five years of consumption translates to what meters they want, we give them the meters.

And we would ask actually that you consider putting something like that in the meter issuance rule or generally for the county as a whole. I know it only applies to Upcountry, but one or the other probably should be resolved and get some

rules for it, because we are operating in an area that is a grey area. Is it any harm to the Upcountry system if they're not increasing the demand? We have taken the position no, it's not. And Corp Counsel has said that they don't think it's an issue, and that particular opinion was written by John Rapacz some time ago. But that I think is why they're not here, because there's no consumption on the meter.

CHAIRMAN RICE: And the one-and-a-half inch meter serves a private water system?

MR. HOEKSTRA: Correct. That's how we feed our fire protection tank way on top of the lot. So we have a line already going up there.

MR. CRADDICK: But when you say a private water system, it currently serves that fire system, which you can call it a private -- we call it a private fire system, but it uses our water. And if you allow numerous lots to be served, I am not saying we don't have similar cases to that, we do have similar cases, Maui Ranch Estates, Kula Nani, there are many cases out there. But the Board, when they passed the water system development fee, it said one premises, one meter, and granted.

As Howard informed the Board, there is a provision in there for the Board to waive that rule, if they do the same for every similar situated person and it doesn't harm anybody and things like that, there's some criteria you can use to waive the requirement. But, you know, really this matter is a new matter and there seems to be a lot of discussion going on. If the Board can see their way to defer it to the committee, we will make a report on that matter.

CHAIRMAN RICE: There is a motion and a second on the floor. I was thinking of referring it to committee, because it did seem to be -- there didn't seem to be unanimity here on the Board. But there is a motion.

MR. TAGORDA: Call for the question.

CHAIRMAN RICE: Call the question. Okay, there's a motion to deny on the floor. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion carried.

MR. ZAKIAN: We're to understand that's unanimous?

CHAIRMAN RICE: I didn't hear any nays. Okay, next item communication 01-05, request from Anthony Amaral, Senior for a water meter on ag land. Mr. Amaral?

MR. NOBRIGA: I think we took this up once already.

MR. CRADDICK: Actually, that was another issue that was referred to staff to try to do something. We talked with them. I believe the subdivision or group has a similar situation to this one here that just was before the Board. I think Mr. Amaral had characterized it that they wouldn't let him into that system, and I believe that would be correct. I mean I don't expect that people, once they get the situations approved where one meter serves multiple lots, they can then go out and tell people, "Oh, you can come into our system" without our knowledge. So I think that's probably the correct decision on the part of Elliot Krash's group, so I'm not quite sure.

MR. NOBRIGA: This should be Oversight, Mr. Chair.

CHAIRMAN RICE: That's Oversight. Okay, J, request for Board authorization for the Director of the Board of Water Supply to cancel the Kualapuu Village Subdivision Agreement. Mr. Craddick, this has been deferred from previous meetings, is that right?

MR. CRADDICK: Yes. Basically what the Board had asked for is some kind of a report, and Mr. Edwards is here from Molokai Ranch. He may be better equipped to give you some background. Myself, I am really not familiar with it.

MR. NAKAMURA: Mr. Chairman, before Mr. Edwards starts, can I ask a quick question?

CHAIRMAN RICE: Yes, Mr. Nakamura.

MR. NAKAMURA: The agenda says that the request is to authorize cancellation of the Kualapuu Village Subdivision Agreement. The letter from Molokai Ranch seems to be a request to immediately accept the Kualapuu water system. So I'm not sure what issue is before the Board.

CHAIRMAN RICE: Mr. Fukushima?

MR. FUKUSHIMA: If I may. The letter that you have reviewed that's included in the packet is a 1993 letter. The Kualapuu agreement encompassed both or it encompassed a number of items, including the water system, including certain roadways and certain obligations that Molokai Ranch had. The water component is just one of the components of this agreement. With respect to the other components, I believe there have been discussions with Public Works, I believe Planning may be involved with the cancellation of the agreement.

As far as the other terms of the agreement relating to Public Works and roadways and waste water and so on and so forth, there has been an agreement between the County and Molokai Ranch to cancel that agreement. Because there is a water component to the agreement, it was believed that the Board of Water Supply should also give its consent to the cancellation of the agreement since it was part and parcel of the entire agreement. So taking the Board's approval, hopefully, the Board approves the cancellation of this agreement, the County is in the position to cancel the entire agreement.

CHAIRMAN RICE: They've already taken that position.

MR. FUKUSHIMA: They've already taken that position. And Mr. Edwards can correct me or make any corrections, if I misstated it.

MR. CRADDICK: I'll just say something too for the record. As far as the staff goes, we have no objection to cancelling the agreement also. We feel that for mutual beneficial reasons the source that supplies Kualapuu we will still be working together to get some background from that for

our system, and our system can back up that in the future if the line that it talks about in that agreement is ever put in. But we have no objection to cancelling the agreement.

CHAIRMAN RICE: Mr. Edwards, you are not here to provide testimony in any other way than that, or are you?

MR. EDWARDS: I'm basically here to lend clarification. I think Mr. Fukushima stated the situation accurately. So to the extent there's additional confusion or concern, I'll be happy to address it further.

CHAIRMAN RICE: Then we might entertain a motion to authorize the cancellation.

MR. NOBRIGA: So moved.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Okay, any discussion? All in favor say "aye."
(A chorus of ayes).
Opposed say "nay."
(None).

CHAIRMAN RICE: Thank you, Mr. Edwards.

MR. EDWARDS: Thank you.

CHAIRMAN RICE: Request approval of Agreement Concerning Withdrawal from the Iao/Waikapu Ditch with Alexander & Baldwin. I believe this issue is covered in our MOU, and I believe in our MOU we say that we will execute some agreement that relates to that. David?

MR. CRADDICK: Well, I think the last time this was before the Board, some Board members said they wanted EMI or some representative from A&B here. I talked with them about it, and their feeling is that this is in keeping with the MOU, and if there is some need to renegotiate the MOU, they're open to that. But they didn't want to come and try and do that

renegotiation of the MOU in a meeting here. So they said Avery Chumbley might come this morning, but he's not here either. So I think they're willing to let this go up or down, based on what the Board decides. I think we feel that the liability issues, which are the main reason for having this agreement, are covered in here.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I remember looking at this briefly before, and I haven't looked at the changes that were made, but I didn't feel that this is a great agreement, you know. I was really hoping that in the spirit of cooperation we might be able to get more water out of the ditch since we have the ability to process it. But I do feel we should probably act on it, and at the same time see if there's a way to perhaps over time increase the amount of practical utilization. But there is 300,000 gallons of water a day that is usable to the central system and that we do need, so I would like to proceed. But I don't know if you or any other members have actually read this through with the changes.

CHAIRMAN RICE: This is different from the original agreement?

MR. CRADDICK: There are no changes.

CHAIRMAN RICE: The lining.

MR. CRADDICK: I mean yes, obviously the dates are changing and things like that.

CHAIRMAN RICE: But in the proposed agreement here there's a lining which I assume means a red lining, right?

MR. CRADDICK: Yes. Those were things that when we were discussing with A&B and Wailuku Agribusiness, things that we changed when we presented this to the Board. But there's been no changes from the time this was presented.

CHAIRMAN RICE: Orlando?

MR. TAGORDA: Mr. Chairman, before I comment, Mr. Chairman, I would like to disclose that I have a conflict of interest from my personal information about this contract. We said before with those people to answer our questions, that the 300,000 that was allotted for that Iao Waikapu ditch. My question, I don't know if you know the answer, David, is the 300,000 that is allotted, is that a net 300,000 passing through that microfiltration or before it goes into your filter system?

MR. CRADDICK: That's my understanding. The way this agreement reads is that the backwash water and stuff is not counted.

MR. TAGORDA: So you have a clean 300,000 that goes into your tank?

MR. CRADDICK: Correct.

MR. TAGORDA: The 300,000 gallons is a net. It didn't say it's a net 300,000.

MR. CRADDICK: The MOU says that, and I believe Corp Counsel has reviewed this agreement to make sure they're comfortable that that is the case. Because I know when we got the first draft it was questionable, and we made some changes, and we feel comfortable now that that's clarified in there that it's net.

MR. TAGORDA: And I believe maybe in the near future that if this department is going to utilize that Iao/Waikapu Ditch Agreement permanently, and in the near future that you guys might think of trying to put up a reservoir before it goes through the microfiltration system, will this affect this agreement?

MR. CRADDICK: If you are going to do this permanently, there are many things that have to be done. You have to get a place to put it, there's a whole lot of things that need doing, because this is currently taking up the site of a future reservoir.

CHAIRMAN RICE: Paul?

MR. SEITZ: Mr. Chair, I'd like to comment. You have to be aware that that facility is a temporary facility, and I stress the word temporary. There are no feed pumps, there's inefficiencies up there that would have to be corrected if that's going to be made into a permanent treatment plant. The filtration system up there has the capability of two million gallons a day, not 300,000, so you're using a semi-trailer to deliver a pickup truckload here, so you have to be aware of that also.

If we are going to operate it at a capacity of 300,000 gallons, I will be recommending that we move one of those filters out and we place it at the Lahaina treatment facility where we have some water that we can use. But I think what the Board is going to have to do at this point in time is determine if they want to make that a permanent plant, then there's going to be -- the CIP projects that will go along with that and that sort of thing. But right now I want to stress to you that it is a temporary facility, it's not a permanent facility.

CHAIRMAN RICE: Mr. Tagorda?

MR. TAGORDA: Mr. Chairman, the transmission fee of \$2,000 per month once this contract is signed, whether you pick up 300,000 from the ditch once a month or you don't pick up in six months, you still have to pay \$2,000, right?

MR. CRADDICK: That's right. But the way the agreement is structured, we can take that all the time. So I mean if our equipment breaks down that's our fault, not their fault.

MR. STARR: Are we prepared to process this water starting immediately?

MR. CRADDICK: There's going to have to be some Health Department notification, there are some things we have to put back in place, there's pieces of pipe missing out so we can't bring water into the system right now. But within I would estimate a week or two weeks it would be operational.

MR. STARR: I notice that the starting dates are October of 2000 to October of 2002.

MR. CRADDICK: No, we would change it to the correct dates.

MR. STARR: But it is only a two year term so, you know, I would assume we can't actually issue meters against it, but it is a good buffer.

CHAIRMAN RICE: Yes, I agree.

MR. STARR: I think we realize that this is a temporary measure, but it's a starting point. I'd like to move that we approve it subject to the Chair and Corp Counsel's checking it over and final review.

MR. NOBRIGA: Second that motion.

CHAIRMAN RICE: Okay, it has been moved --

MR. NAKAMURA: Mr. Chairman, I am recusing myself.

MR. TAGORDA: Me too.

CHAIRMAN RICE: May the record show the two recusals, Mr. Tagorda and Mr. Nakamura.

MR. STARR: And Mr. Chair, I would also for discussion like to put forward that we look ahead to a longer term of utilization of the Iao stream water and see if we can find some way to get a larger allocation of it that we can use for a longer period of time, and then in that design a permanent plant that would do the job of treating it and putting it into the system.

CHAIRMAN RICE: Is there any other discussion? All in favor say "aye."
A chorus of ayes).
Opposed say "nay."

Two recusals. Next, Director's Report 01-12, request permission to accept Central Maui Source Joint Venture's offer to well site/easement to Board of Water Supply.

MR. NAKAMURA: Mr. Chairman, for the record, I'm recusing myself from this issue also.

CHAIRMAN RICE: I think we are going to refer this -- I think I'm going to refer this to --

MR. CRADDICK: The Property Acquisition Committee.

CHAIRMAN RICE: I think I'm going to refer this to the Chair, how about that, how does that sound? I think there are some issues coming up.

MR. NOBRIGA: No objection.

CHAIRMAN RICE: If there's no objection, so ordered. Okay, Other Business, scheduling of a public hearing for fiscal year 2002 operating and CIP budgets. We did have a workshop and we did receive from Finance a revised budget. CIP has committee meetings next week and there appear to be some significant changes in the budget. And I guess, I don't know, I'm not looking for any action on the budget other than if the Board can see their way to authorize us to set a date for the public hearing subsequent to the CIP meetings, because it will come back, it will be public hearing, and it will come back to the Board again. Mr. Starr?

MR. STARR: I would have no problem with that, except that I still think there were a few things discussed at the budget meeting that were not dealt with and possibly should be really dealt with by the full Board before it goes, and that particularly relates to the Capital Replacement Fund. And I know of the desire of certain members to put it in line with the Brown and Caldwell model, and our future needs. So perhaps we could get a special meeting on that where we would have the Brown and Caldwell model brought back up and discuss that in relation to that item?

CHAIRMAN RICE: A lot of the Board members were at the workshop, and I think you all understand that the comment made by Board Member Starr is that the budget under transferring Capital Replacement Fund should reflect the full amount of the funding per the Brown and Caldwell report, and

that would obviously make this a deficit budget. The point being that we know that we have the requirement coming up that we have to provide for that, is that not correct, Howard? So I don't know why we wouldn't include it, personally, because it is a requirement, a funding requirement, unless we didn't think the Brown and Caldwell report was accurate in some way and needed to be adjusted. That would then adjust that number. We shouldn't just pick a number and put it in here.

MR. STARR: Mr. Chair, then I believe the number that was -- you know, at the end of the Brown and Caldwell report, which gave the best, seemed to give the best performance, was 8.1 million dollars, and that that would, you know, that way we would never actually tank at the four million, we would tank after three years. So with the approval of the Chair, would you favor a motion to plug that number in there?

CHAIRMAN RICE: One second. David?

MR. CRADDICK: I think there's a law that requires the budget to be balanced, so putting in a number that makes it negative, I'll leave that up to Howard on how you would do that right now with the current law. I'm not certain you can.

CHAIRMAN RICE: That was a question I was going to ask.

MR. FUKUSHIMA: It says the County budget, it doesn't really say the water budget. What we attempted to do in the past was to -- that you follow as close as you can the budget process set forth in the charter for the county. And we would further believe that a balanced budget is appropriate. I would like to remind the Board that because of the public hearing, we're running out of time if you want a budget in place by July 1st. The 30 day notice for the public hearing --

MS. NAGO: Two-week notice.

MR. FUKUSHIMA: Excuse me, two-week notice according to the provisions in the charter. So we are cutting it a little close.

CHAIRMAN RICE: Yes, I understand that, but I intended to move along on that process. And I wonder if as a compromise here, Mr. Starr, we can footnote the budget to say that we are aware, we have a report in hand and we are aware and understand the requirement that the capital replacement fund be 8.1 million dollars.

MR. STARR: My feeling is that if that's what we need to be able to maintain the plant that we have, it should really be there. You know, I know it's strong medicine and it's a strong statement, but I really feel that's the only way that we can really make a case for getting the funding that we need to be able to properly maintain the system.

CHAIRMAN RICE: And I don't disagree with you. I'm reacting to the comment that we may have to provide a balanced budget, and that the footnote be a compromise.

MR. STARR: I wish Michael were here, because I believe that there may be a way to do that, you know, by creating another category on the other side.

MR. NOBRIGA: A bond, huh?

MR. STARR: What it is is basically a non-funded liability, but I believe there are ways to end up with the bottom line still coming out at zero, but put it in there.

CHAIRMAN RICE: Okay, David, you were going to say something?

MR. CRADDICK: I think your suggestion maybe of footnoting the budget is definitely one that would be good, because somehow the auditor has to deal with this at the end of the year, because they are going to be required to follow the requirements. So putting this note in the budget that we recognize that we are not fully setting aside what the system is depreciating, or putting back into the system what it's depreciating and handling that as a footnote in the budget may be the way to start. And as the requirements solidify on the other end, on our audit, we will know how to progress in the future. But right now just the recognition by this Board that they're not doing that is probably a good step in the right

direction.

CHAIRMAN RICE: Ellen?

MS. KRAFTSOW: I just wanted to mention I happen to have the report with me, and the consultants had mentioned three options, a baseline option, a level option, and a stepped option. At the baseline option it was 4 point some million that we should transfer. At the level option where you put the same amount every year it was about I think at this point about 8 point something, 8.2, and at the stepped option it was 5.3, okay. So putting 4 point X million this year would mean we were actually in conformance with one of the options. Now, it may be that the Board wishes to choose a different option, but we are not substantially outrageously below.

CHAIRMAN RICE: Simply revealing the three options is not adequate, you have to reveal the results of picking the option, and I believe that we all thought that the other options were not going to provide us with enough money in the future. Just saying we picked one of the three I don't think is necessarily the responsible decision of the Board. We are to pick the one that provides the results that we think are desired. The other options then don't mean anything. So I appreciate you trying to rationalize some number in there, but we shouldn't be rationalizing a number, we should be picking the correct number.

MR. NOBRIGA: It would appear that the Board and the department is in the same pew in the same church and reading from the same hymnal, so I would urge that we make the appropriate motion to go to public hearing with this current budget.

CHAIRMAN RICE: Let's see if we can figure out a way to show that 8.1 million is the -- the crowning question, I believe, Mr. Starr.

MR. STARR: What I would like -- is there going to be a Finance Committee meeting before the --

CHAIRMAN RICE: Before the public hearing?

MR. STARR: Yes.

CHAIRMAN RICE: I hope so.

MR. NOBRIGA: Wouldn't the discussion of our plan options, shouldn't that be more realistically added into the public hearing testimony?

CHAIRMAN RICE: Sure. I mean we are not approving a budget here now, remember that. This is just another step in the process. So I think that we need to -- I'm not sure that its absence in that, as long as we note it, the public hearing process is bad, because when Mike will be back we can figure out a way to insert it in the actual budget, we have accomplished our goal.

MR. STARR: So in other words, perhaps it could come -- there can be an alternate that could come to the public hearing with it, with this possible solution to that.

CHAIRMAN RICE: I think minimumally we should make a motion to bring the budget to public hearing and so note that this is under funding according to schedule X of the Brown and Caldwell report.

MR. STARR: I move that we --

CHAIRMAN RICE: One more comment, Howard?

MR. NAKAMURA: Mr. Chairman, I would support the motion of footnoting the transfer for the money at this time, with the note that it is our intent to fund an amount to establish an adequate reserve. But as Ellen has mentioned, the amount is not necessarily 8 million dollars, 8 million dollars is one option. All of the options do result in fully funding the replacement account, it's just different ways of getting there.

And I believe the 8 million dollars resulted in at some point a huge surplus, and there was one problem that arose out of that level of funding. I think, I could be wrong.

Whereas the 4 million created that so-called -- 4 point whatever created that so-called Nessy curve, which tried to balance out the expenditure requirements versus the funding provided. But, you know, I think this is all something that the Board needs to decide, and because of that I think it's appropriate to just footnote that amount and indicate our intention to fully fund the replacement.

MR. STARR: Mr. Chair, perhaps we could have Brown and Caldwell, you know, or at least a model available at that public hearing so we can bring that out to the public, and also I for one would like a refresher. My own recollection is that the 4 million dollar option had us bankrupt in two or three years, and that the 8 million dollars was a Nessy curve, and that there was a climbing -- there was another one that did create a bigger reserve. But I would like to have an opportunity to refresh my memory.

CHAIRMAN RICE: I think we will probably need to have another meeting with Brown and Caldwell, and have the Board agree on some level of funding, so that we move to provide the public hearing a note that says that we intend to establish a number based on our report. We can then have a meeting where the Board can review the Brown and Caldwell report and choose an option, then we can then go forward with the final budget approval.

MR. STARR: Mr. Chair, I so move.

MR. NAKAMURA: Second.

CHAIRMAN RICE: Any discussion? With the Chair to pick the date. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Thank you. Update and status report by the Director on Upcountry well. Mr. Craddick?

MR. CRADDICK: What staff report are we on here?

CHAIRMAN RICE: Update and status report by the

Director on the Upcountry well.

MR. CRADDICK: We've asked a number of consultants to submit proposals on it, that's it.

MR. NAKAMURA: Mr. Chair?

CHAIRMAN RICE: Mr. Nakamura.

MR. NAKAMURA: Mr. Chair, could we request that the Director provide the members with a proposed scope of work? Not immediately, but if you could perhaps circulate it.

MR. CRADDICK: Do you have that there? Do you have enough copies for everybody?

MR. KOGASAKA: No.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I would like to ask the Director about whether he's aware of information that I have that Maui Land and Pine is planning, as I heard it, with the consent of either the Department or Board members to put a well until at Pookela tank.

MR. CRADDICK: I think I told the Board here before, they have talked with us that they want to put a well up there. We haven't talked about participating with them. They've indicated they would like to participate with us, and I learned that this morning from Warren. But there's been no discussion of any kind from the staff side on that matter.

MR. STARR: You know, I'm concerned about this. You know, at first I heard it as a rumor, then I heard that they'd hired a consultant to begin the process of putting a well in on board at Pookela tank. And then I understand that at one of our -- after one of our meetings last week that -- I wish Mr. Cravalho was here -- but that he had told some members of the public that he had made some kind of agreement regarding a well at Pookela tank, and that Maui Land and Pine would pay for

it in exchange for the fact that they're using water from Awalau. I just would like to know if, you know, if it's in the Board Chair's knowledge is there any kind of agreement to this effect?

CHAIRMAN RICE: The Chair has no knowledge of anything that you're talking about. I haven't heard anything about it from anybody.

MR. STARR: My own desire is that the Board drill a well Upcountry and provide the water to our customer base, rather than getting into another deal like the Dowling well where a well gets drilled but all of the water gets allocated in this case to a Maui Land and Pine subdivision. I'd like to have the people who have been waiting have first crack at it.

CHAIRMAN RICE: I'm sure, Mr. Craddick, if there's anything going on with regard to development or well drilling that you will bring it to our attention.

MR. CRADDICK: Well, again, we can go to the Water Commission and get a permit for that with no action by this Board, and there's very little we can do about it. And my understanding is that's exactly what they're going to do. I don't believe they're going to go in and ask for a well permit on our property, but you know they can go 10 feet outside the fence and get the permit for it. The power is there, the tank is there, everything is there.

MR. STARR: What would preclude us from being able to drill a well there?

CHAIRMAN RICE: I think there's probably sufficient conversation going on with regard to partnering for well development that it may be an issue the Board wants to look at as an overall policy issue, I don't know. I'll just throw that out for consideration, not for any particular action.

MR. STARR: I mean I think we need to, you know, get that considered quite quickly.

CHAIRMAN RICE: I'm not talking about any specific issue, but if they're going to -- if what David says is correct and they're going to say fine, we want to go drill a well on our own, and they can go do it, I guess that's the right of any private entity, right?

MR. STARR: You know, I know I've been pushing for us to drill a well at Pookela for the last two years, bringing it up at almost every board meeting. I've been given all kinds of reasons why the previous chair -- why, you know, there wasn't water there or stream flow or this or that. And, you know, now I see someone else is going to do it. And I feel that perhaps what we're doing is we're protecting Maui Land and Pine in their efforts to get a well for their own new subdivision in Pukalani. And while I have no problem with their subdivision or with them getting water, I do feel that it's our duty to provide water and make our system adequate. And, you know, if the best place to put the next well is at Pookela, which I believe it is because the power is there, it's hydrologically good, and there's roads and we own the site, then we should be moving faster.

CHAIRMAN RICE: Okay. Mr. Craddick?

MR. CRADDICK: I'll keep quiet.

CHAIRMAN RICE: Any other comments? Update from the Director on the East Maui EIS and monitoring well.

MR. CRADDICK: That one there we have filed the prep notice and we have bid out, gone to bid. And the bids will be in on what date, Herb?

MR. KOGASAKA: We are in the process of bidding this, and we will be receiving that drill plan.

MR. CRADDICK: What date is it bid?

MR. KOGASAKA: The price bid will be mid-June, June 15th, I think, but I'm not sure of that date exactly.

MR. STARR: Mr. Chairman?

CHAIRMAN RICE: Mr. Starr.

MR. STARR: When would we expect to be able to drill?

MR. CRADDICK: I think we have 60 days to award. I would expect to get going, it's got a 120 day completion time.

MR. KOGASAKA: I'm not certain.

CHAIRMAN RICE: Are you saying by the end of this year is reasonable?

MR. CRADDICK: It's possible.

CHAIRMAN RICE: I'm putting words in your mouth.

MR. STARR: I'm hoping it's a lot sooner than that.

MR. CRADDICK: That's what we're shooting for.

MR. STARR: I hope it's in the summertime.

MR. CRADDICK: Unless you want to pay a premium for the well, you could put in there 90 days completion, but you would pay a premium for it.

CHAIRMAN RICE: How about by early fall then.

MR. CRADDICK: You know, I mean I don't expect that they're going to be sitting around, you know, waiting to do it towards the tail end of the contract. I'm quite certain they will get on it right away.

MR. STARR: I would be happy to pay a reasonable premium to get it done sooner. I think that this is our main business at hand, to resolve the question of the viability of East Maui water sources, and this is what this well will do. So if there is, you know, if we can get it done faster I think

we will be able to plan for our future a lot better.

MR. CRADDICK: To speed it up they would have to go 24 hours a day, and where the well is located on Hog Back Road, in that particular area I know sound at night will travel, and if you want to get the community irate, that's the way to do it.

CHAIRMAN RICE: Well, we can ask the question. We're in the bid process, Herb, right now?

MR. KOGASAKA: Yes.

CHAIRMAN RICE: So once we've gotten the contractor selected, we can have discussions with him about expediting it.

MR. CRADDICK: No, if you are going to do that, you want that before they bid, because you don't want to be negotiating with him after the bid, then you will get taken to the cleaners.

MR. STARR: How is the date set on the bid documents?

MR. KOGASAKA: It will be based on the notice to proceed, the exact number of days from the notice to proceed. It would be, I would be estimating, 120 to 150 days. I don't remember what that exact number is, but to that order of magnitude.

MR. STARR: 120 days from award is not bad, I don't have any problem with that. But let's try to go expeditiously.

CHAIRMAN RICE: We are going to hear more on that as it proceeds.

MR. STARR: I just have one more request. Before we actually award I want to be sure that, you know, both -- that our counsel and also the counsel that had represented the other side, I guess that's Isaac Hall, just make sure that the location and the type of well and the way it will be drilled is acceptable.

I know that I had met Bill Myer and I had asked him a question about this, and he gave me a long, long lecture

about this well being drilled in a very specific way to monitor the continuity of water down to the layers. And that that was what he wanted to see and that's what the court was demanding. And also in relation to that was not to use certain kinds of drilling mud in it. So, you know, I would like to be very certain that the proposal we accept is satisfactory so that we don't have to go and do it again.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I am not going to say anything, I figure that's left up to the attorneys.

CHAIRMAN RICE: Jonathan's point is that we go through the process and we don't end up with data that we can't use to go forward to make our case. That's the layman's version of what he said.

MR. CRADDICK: I think that exact reason would be the reason why you don't go to the other side and get them to agree to something. You take our consultants, what they're recommending, and you rely on those consultants to do the job correctly and do it correctly. If you go to them, they're going to try and tell you to do whatever it takes to give them some challenge, and I don't think that's the way to go. If you hire the consultants, I think you need to rely on their expertise. And I can assure you the well is being constructed in a manner to not affect the stream flow.

CHAIRMAN RICE: I think there's a legal issue there, and we will have to explore that. I agree with that.

Okay, do you have anything else? Sorry to -- we are going to have a few long meetings once in awhile. Good morning, hi, Sally. Update on Upcountry water situation.

MR. CRADDICK: We're currently I think around 174 million in storage. And do you still have that ditch shut down or are you back using Kamole Weir again?

MR. SEITZ: Kamole is back on line. That was just for only one day.

MR. CRADDICK: Everything is back in operation.

CHAIRMAN RICE: It's still pretty dry, isn't it?

MR. CRADDICK: It is very dry. And as I said before, still the projection for the rest of the year is that it will be dry.

CHAIRMAN RICE: Sir?

MR. STARR: I'm beginning to have a problem with characterizing our situation as being in a drought emergency. We are still in a drought emergency, and I would rather we stop being in a drought emergency, so that if we have a drought emergency we can go there instead of, you know, being there year round. So while I do understand it is dry, you know, our systems are full and getting replenished. I think we should go down from an undeclared drought emergency, and I would like to so move once again.

MR. TAGORDA: Summer is coming.

MR. STARR: We can declare an emergency if we need it.

CHAIRMAN RICE: Is there a second? Okay, motion dies. Update on water issues discussed at public meetings. We heard from Jonathan. Any other public meetings? Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, just an announcement. The notices will be going out, or the agendas will be going out, they're probably in the mail already. We have two capital program meetings scheduled to begin review of the 2002 budget, and those dates are Wednesday, January 30th at 3:00 pm.

MS. NAGO: May 30th.

MR. NAKAMURA: I mean May 30th at 3:00 pm, and Monday, June 4th, at 9:00 am. So you might make a note.

CHAIRMAN RICE: Okay, anything else? Jonathan.

MR. STARR: Just to let other board members and interested people know, there was a meeting I believe this morning, and another meeting tomorrow morning, and that's by the Board of Land and Natural Resources. They're holding meetings on Maui. And this is an annual meeting where they deal with the award of the licenses for East Maui ditch water to EMI and A&B. So if anyone is interested in attending the award meeting tomorrow, that's at 9:00 am at the ILWU union hall at Lower Main. The meeting today was I believe the Commission on Water Resource Management briefed the Land Board on the Waihole decision and legal ramifications of stream flow.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: I have a question for engineers on the staff reports.

MR. NAKAMURA: They all left.

MR. NOBRIGA: There were 19 building permit applications and two subdivision applications approved. The subdivision resulted in the commission of 207 lots. Where the heck is this?

MR. CRADDICK: Sorry, I can't tell you. We can add that.

MR. NOBRIGA: I mean Upcountry is claimed to be no more water. Central Maui no more water. Either got to be in Hana or where they get water. No place get water.

MR. CRADDICK: We can add that to the staff.

MR. NOBRIGA: The Board of no water works.

CHAIRMAN RICE: We can add that. Thank you, Mr. Nobriga.

Miss Raisbeck, we have long past -- we are about to adjourn. A millisecond, because you're such a dedicated follower off our activities.

MS. RAISBECK: Thank you, Mr. Chair. I wanted to draw the attention to the Board to the staff report.

MS. NAGO: Sally, she's not going to be able to get you unless you come over here.

CHAIRMAN RICE: You want to be on camera, Sally.

MS. RAISBECK: I wanted to draw the attention of the Board to the staff reports for this month, where the water usage in Iao was 19.6, I believe, and the water usage in North Waihee had been brought down to 4.1 where it should be 4 maximum. This is April, and the value for April or the figure for April is 2.7 million gallons a day higher than a year ago at this time. I strongly suspect that during the summer the usage will go up a lot higher, will go up higher than last summer.

And I would also draw your attention to the fact that under the Waiahole decision the Supreme Court questioned the use of a 12 month moving average and sent it back to the Water Commission for re-evaluation about the value of a 12 month moving average as a criterion on water usage.

So I merely draw your attention, we're very close to the legally established top, and we know that the water, the salt is still rising in the Iao aquifer. I think the Board needs to do something about preparing for water shortages in Central and South Maui. Thank you.

CHAIRMAN RICE: Thank you, Sally.

MR. STARR: Thanks.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: We're again nowhere near the limit of the Iao aquifer average pumping. We are at 17.4, not anywhere near 20. It may be interesting to note that it went up from 17.1 to 17.4 this month. There is a reason for that. There are some wells in North Waihee that were shut down because of a motor burning out. We do have the two facilities that should be on line by June, Kanoa I and II well permanently where we won't have these problems. And part of that 4 that Sally is

talking about is the Iao tunnel, it's not part of the North Waihee aquifer. So North Waihee aquifer is not producing 4 million gallons a day.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Well, Sally is right, we're using 3 million gallons a day more than we were using in April of last year, so we definitely are getting close to the line. And we did use, you know, 19.6 million gallons a day in April, and we're not supposed to be using more than 90 percent of the sustainable yield, which is 18. So as David points out, on a 12 month moving average we are not exceeding it. On a monthly average we're a million and a half over it, so we should keep an eye on it.

CHAIRMAN RICE: Good point. Okay, is there any other business?

MR. CRADDICK: I guess one thing. Next month we will have -- we got the USGS report. That's not in this particular package here this month, but we will have it next month. And one other item that you have is this conservation program update, so if you can take a look at that. If you want to do some workshop on that in the future, we would be more than happy to do it.

MR. STARR: Can I get a copy of the USGS report?

MR. CRADDICK: Yes.

MR. STARR: Thank you.

CHAIRMAN RICE: Committees, reminder. Have your meetings early so we can get those reports in the next meeting. And is there a motion to adjourn?

MR. STARR: So moved.

MR. TAGORDA: Second.

CHAIRMAN RICE: All in favor?

(A chorus of ayes).

So moved. Thank you

(The proceedings were concluded at 11:25 a.m.)

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