

County of Maui Water  
Supply

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
FINANCE/CAPITAL IMPROVEMENT COMMITTEE 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 August 13, 2001.

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

A T T E N D A N C E

CHAIRPERSON:

HOWARD NAKAMURA

BOARD MEMBERS:

MICHAEL NOBRIGA

KENT HIRANAGA

DIRECTOR

DAVID CRADDICK

DEPUTY DIRECTOR

GEORGE TENGAN

DEPUTY CORPORATION COUNSEL:

HOWARD FUKUSHIMA

FISCAL OFFICER:

MICHAEL QUINN

ENGINEERING:

HERBERT KOGASAKA

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS  
BOARD OF WATER SUPPLY  
FINANCE/CAPITAL IMPROVEMENT COMMITTEE MEETING  
AUGUST 13, 2001, 9:00 A.M.

CHAIRMAN NAKAMURA: I'd like to call the meeting of the joint committees, or I should say the Finance/Capital Improvement meeting to order, Monday, August 13, 2001. We are meeting in the HGEA conference room, room 207. It is 10 minutes past 9:00. In attendance are committee members Mike Nobriga, Kent Hiranaga and myself, co-chair, Howard Nakamura. Also in attendance are esteemed Corporation Counsel Howard Fukushima, Director David Craddick, Deputy Director George Tengan, Fiscal Officer Mike Quinn, and Herb Kogasaka and Herb Chang from our engineering division.

The first item on the agenda is approval of minutes. There are a number of minutes to be approved. Do I have a motion to accept and place on file?

MR. NOBRIGA: So moved.

MR. HIRANAGA: I had a comment. The minutes of May 29, it says held on 6/4/01. On page 61 or sheet 16 of 16, the person identified as A Voice I think, I believe that is me.

CHAIRMAN NAKAMURA: Okay. May the record so reflect that correction. Any other? With that correction, do I hear a second to accept as amended?

MR. HIRANAGA: Second.

CHAIRMAN NAKAMURA: It's been moved and seconded. The minutes will be accepted and placed on file. All those in favor?

(A chorus of ayes).

Contrary?

(None).

Motion is carried. Let's move on to Roman numeral five, the first item on the agenda, item A. Communication 01-21 is a request from Mr. Hans Michel for completion of the agreement from June 3, 1994. Mr. Michel's letter is in your

agenda packets.

David, would you like to give a brief explanation of this matter before we ask Mr. Michel to comment?

MR. CRADDICK: Okay, this item kind of actually goes back a long way, and I guess back to when we put some wells in and a tank down in the valley, Kanaha Valley. And after that point, or when that was done, Amfac owned the property. Subsequent to that, Hans bought it and we were kind of already in there. But with Hans now the owner of the property, he was basically wanting some agreement, and we entered into an agreement back in 1994.

Subsequent to that time, we have done some work there, but there is some work that is not completed. If you look on item number six there, where we have talked with the state about giving some of their land, they're saying they're not going to do it. The pipeline, we've looked at that, relocating it, and we feel that that pipeline probably shouldn't be moved. So we're recommending that it just be, the property be condemned and leave the pipe where it is.

The water department is no longer sending water down over that cliff. The pathway that Hans is talking about, again, is not on his property, it's on state property, and they don't want any messing around with it up there. There's an old path, I guess, where the ditch flume used to go back in the valley. And the land survey, that's something where Hans I think said he was going to give us two points so we could do a survey. We're still waiting for those two points to be identified for us so that we can do a survey, because with only one point in there, it's a property that I guess belongs to his wife's family up near the intake, and not really his property.

But in any case, we said we'd survey it because we cross over the land, and they wanted to know where it was. We'd actually like to know where it is, too. So if we can get two points, we can probably survey it out. If we can't get those two points, then we are not sure how anybody could reconstruct the survey.

So we do have some things that we're supposed to still be doing. And the things that are in Hans' letter there, the parking area, I thought I had talked with him before and we said that area was completed, the drainage was completed, but if he's saying it's not now, then we need to get into that and see what is being talked about there. But as far as I know,

the road, we paid him some money for that. We do improve the road when we go in there. That's all I can say.

CHAIRMAN NAKAMURA: Okay, before we ask Mr. Michel for comments, any questions to David from members of the committee?

MR. NOBRIGA: Yes, do we have a cancelled check?

MR. CRADDICK: Yes, I'm sure we can dig it up. It's not in there.

MR. NOBRIGA: Okay, thank you.

MR. HIRANAGA: Yes. Mr. Chair?

CHAIRMAN NAKAMURA: Mr. Hiranaga?

MR. HIRANAGA: David, did we visit this site on our tour of the Lahaina system?

MR. CRADDICK: I don't believe we went down there in the valley, we just looked over the hill from the treatment plant looking down.

MR. HIRANAGA: So is this the property that has the mules on it?

MR. CRADDICK: Yes, right.

CHAIRMAN NAKAMURA: I'm sorry, has the what on it?

MR. HIRANAGA: Mules or donkeys. Donkeys.

CHAIRMAN NAKAMURA: Okay, any other questions from members of the committee? I just have one observation before we ask Mr. Michel for comments. Again, I'd like to ask that we be provided with better information at committee meetings. I have no idea where this property is, what the physical layout of the subdivision is, what the issues are. The Director's

explanation, he may understand it, so it may be clear to him what's happening, but to be very honest with you, I have no idea, and I think we need better information.

I have asked for maps time and time again, and I'm going to repeat my position, that when we have an item on the agenda and we don't have adequate information or adequate maps, it's my intent to not take it up, although I feel very badly about that because of the time and effort the Applicants may have put in. But it's very unfair to the members of this Board to get matters coming before us when we have no information.

So with that, Mr. Michel, would you like to say anything regarding this matter?

MR. MICHEL: Yes, I have some maps from way back which never got completed, and here is one very good map I have here which everything is here, but it never got completed, it never got completed. Here it says preliminary, yeah, you know. And then this here was sent to my lawyer, which was Xeroxed out and we had it like this. But when you have preliminary on this map and you Xerox it, the preliminary disappears. And preliminary I believe is something incomplete.

Because over here it is very nice when you can read, it says here "Easement 13 is for access purpose in favor of Hans Michel and Pioneer Mill." How can that be when I own the land? You understand? I own the land, and here the water department, when they made out the blueprint, it says it is for access purpose in favor for Hans Michel. It's my land, you don't need to give me an easement, you know. And then as you can see, I'll show that you better over here, it's over here on this little green, on this little green thing. I went donate a little more land so they can park, I mean move things around here. It's in the back. And that's all you are going to have is what's in the green, and the rest is still my land. And until today I pay land taxes on you guys' land. You know you guys have been pumping water since 1977. I still pay the land tax. Mr. Craddick try hard, but sometimes something come in between and then no can complete, and then one guy retire.

And then we get Herb K., Herb K., he tries to make some paperwork, you know, put it in writing. I didn't want to come here, but I tell you why. February I got into hospital 2:00 in the morning, I thought I am going to die. That's the reason why this comes up, why I like to get this complete. I

had a side pain over here and the doctor lucky, he didn't know more than me, but I had a pinched nerve. I never had that, but right under here and I couldn't breathe, I couldn't breathe. That's the worst. I mean the arm fall down, no problem, you can fix, but you no can breathe the next thing you going to die, you know.

Anyway, I went to the hospital, and the reason why, I make me a promise that I put this thing in order. My wife don't know nothing to do with that. That's why I come here. No worry, you guys make yourself when you have time, but I know this one thing, water works never have time. Not because of you, you know, you have all these guys over here who do the paperwork. I mean I told you before, you do a job and if you don't get it done by next week, no payroll for you, because I like the thing complete. So is water works through all the region, they start little bit, they scratch little bit, they took out a pump, the well side they took it out, and then they put the new thing inside and everything was finished. But they never did finish the parking area to go behind, they like to park on my side because my side is finished way back, you see.

Then when we go to the intake we have a problem. We go into the Kahawai. I believe the previous operator went help put shoulders, which I will show you so you guys understand. But for the best thing to do, you guys all come there, bring your own lunch, and we can take a look at the place, then you will have no problem.

This is how the water goes here and this is how we banked it (indicating). We made a good job, but we need a complete cabin so it no goes away. These boulders goes away, the river has gravel behind now. And you protect those boulders, everything goes down the road. And in order for go to the intake they keep on cutting in my land. But the best is if you guys come look. Best come when it rains so you know how it works, you know. No offense against you, David, you done your best, I know that.

MR. NOBRIGA: Mr. Michel, what are we looking at with these pictures?

MR. MICHEL: This is behind my property, this is behind my property now going into the river bed for go to the intake where you guys clean up over here. You see? And this is the one, after every rain we never get a break there, but

maybe some day we get one.

MR. NOBRIGA: When were these pictures taken?

MR. MICHEL: Oh, the last couple of months. This one is doing intake repair. This is the very first picture after the intake got repaired. I went give an easement across our family land, but it happened that it's a half an acre. And the rest, no offense, is all kanakas, and if they know what I'm telling you here they come for money tomorrow. I never get involved with them because no bother. We like to get the thing finished because it got promised by you, you remember that. I have the letter, do you want to see 'em?

MR. CRADDICK: No, I don't need to see it.

CHAIRMAN NAKAMURA: Any questions to Mr. Michel from members of the committee? Mr. Nobriga?

MR. NOBRIGA: I came early so we were like chatting for awhile already.

CHAIRMAN NAKAMURA: Mr. Hiranaga?

MR. HIRANAGA: I guess I just want to endorse what he said about having prior data for the meeting, because looking at this, it's pretty much Greek to me, what needs to be done, what's promised. I know some other boards where issues involve a site, they have done videotapes and done a video presentation to the Board so the Board does not have to go out on a site inspection. So that's something we could consider in the future, if the Director feels it appropriate to help explain the issues, that a staff person goes out and does a videotape.

MR. MICHEL: And who operates the camera, you?

MR. HIRANAGA: A staff person.

MR. MICHEL: Staff. The other day one guy went out from Maui Electric. Boy, the guy went burn rubber, he couldn't

climb the hill, you know.

Mr. Craddick was mentioning about not moving the pipe, yeah, but you have a 20-foot easement for a road and you have a 20-foot easement for water line. That's 40 feet, and the land is only 60 feet. What I get, 20 feet from it? The road easement and the water easement lines supposed to be together, and the water pipe is exposed on the top. The pump water line is on top of the road, because when they made that, they made a bum job over there, but nobody ever tried to correct it, you know.

MR. HIRANAGA: Mr. Chair, so this pipeline easement I guess is depicted by this dotted or dashed line that runs pretty much down the middle of this property? In other words, it looks like a big E?

MR. CRADDICK: That's right.

MR. HIRANAGA: So why do you say that the pipeline should not be moved, but the department is no longer sending water?

MR. MICHEL: But they do, they pump water.

MR. HIRANAGA: I am addressing the Director for an answer. Can you explain that further?

MR. CRADDICK: What did you say?

MR. HIRANAGA: Why do we need to keep the pipeline if we are not using it?

MR. CRADDICK: We do use it, it's connected to a well.

MR. HIRANAGA: You are no longer sending water to the treatment plant?

MR. CRADDICK: We do, it's a different pipeline, it's not this particular pipeline.

MR. HIRANAGA: So this water goes where?



MR. CRADDICK: It just goes into Kanaha tank down into Lahaina town.

MR. HIRANAGA: It's not treated?

MR. CRADDICK: No, it's well water.

MR. HIRANAGA: It's not being collected off of the stream?

MR. CRADDICK: No.

MR. HIRANAGA: That's a different system?

MR. CRADDICK: Yes.

MR. HIRANAGA: Why would you condemn the property? Because then you would functionally subdivide his property.

MR. CRADDICK: Well, you would condemn an easement, not condemn it and subdivide it out. You would just condemn the easement and he would continue on using it as he is now.

MR. MICHEL: Excuse me, I been donate the easement, if you look in the thing, and I also donated the land from the pump site, correct, and I donated the land. Here, it's in my contract over here. You guys have the contract, don't you?

MR. HIRANAGA: If Mr. Michel is willing to grant the easement, why would you have to go through condemnation?

MR. CRADDICK: The pipeline, in order to relocate it, it's all in lava rock, there's very little dirt there. So it would be probably using either a hoe-ram to dig it out or explosives.

MR. HIRANAGA: He's willing to grant the easement, so why would you have to go through condemnation?

MR. CRADDICK: You have to move the pipeline, and

moving the pipeline is going to cost you more than all the other items on there.

MR. HIRANAGA: You mean the pipeline is not located in the easement area?

MR. CRADDICK: That's right. If you recall, I told you when we started off, all of this stuff was in there before Hans even came on the scene. We were dealing with Amfac at the time. And why, you know, the proper easements and things like that weren't done with Amfac before Hans got in there, I don't know. This happened back in the seventies.

MR. HIRANAGA: So this is a recorded easement, but the pipeline is in the wrong location?

MR. CRADDICK: I'm not certain, until that map is made permanent and recorded, that anything is recorded.

MR. HIRANAGA: So why don't you relocate the easement if it's not recorded?

MR. CRADDICK: Well, we could, but that would be adverse to what he wants. So I think the Board needs to decide what they need to do.

MR. HIRANAGA: But you would prefer the pipeline be placed in the easement area?

MR. CRADDICK: Right, that's right.

MR. MICHEL: Excuse me. I am there since 1969, and the water department didn't have nothing to do with making the water development in there, it was the State of Hawaii. The State of Hawaii made a big mess in there and then they turned it over to Tats Imada, which was the Director at that time. He told me at that time, "Don't worry, we will take care," and until today it never got taken care of, you know.

As far as the road, like I say, you guys come look, you make sure you put on shoes so you can walk, you know, because it's not a drive kind over there where a holo holo car

can come up, any type of truck. The day when you come we walk up so you can see.

CHAIRMAN NAKAMURA: Okay, any other questions?

MR. NOBRIGA: I don't have any questions, but it seems that there is an agreement entered between Mr. Michel and the Board and the Department dated 1994 that Mr. Michel is requesting to be finished after five years. The agreement was voted upon, was signed, everything was supposed to be taken care of five, six years ago.

CHAIRMAN NAKAMURA: Okay, my suggestion is that we just got this information today, this is the first time I have seen the agreement. Clearly Mr. Michel has entered into an agreement with the Board by which he was obligated to do certain things and the Board was obligated to do certain things. Mr. Michel's position is that he has complied with his obligations and the Board has not complied with its obligations.

MR. MICHEL: Since 1994.

CHAIRMAN NAKAMURA: As set forth in this 1994 agreement. So my suggestion would be that we ask the staff to review the agreement and to advise the Board as to what the status is of each of the 20 items which the Board has an obligation to provide to Mr. Michel. Is that satisfactory to the members of the committee?

MR. NOBRIGA: Very much so, very much so.

CHAIRMAN NAKAMURA: Could I perhaps have a motion to that effect?

MR. NOBRIGA: So moved, Mr. Chair.

MR. HIRANAGA: Second.

CHAIRMAN NAKAMURA: The motion is to refer the matter to the staff for an analysis of each of the 20

conditions that the Board of Water Supply was required, was obligated to comply with in exchange for Mr. Michel's conveyance of land and easements, and to report back to the committee at its next meeting. Okay, any other comments? If not, all those in favor?

(A chorus of ayes).

All those opposed?

(None).

Motion is carried.

So, Mr. Michel, the committee will be pursuing the question of whether or not the Board is in compliance with the conditions of the agreement, and if not, what needs to be done to satisfy the conditions, or if necessary, I suppose, to reopen discussions with you as to how to bring this long-standing matter to resolution.

MR. MICHEL: How can you reopen when everything got sealed and signed in 1964? I'm a patient guy, and I am not talking about odds and ends, but somebody didn't do their job definitely, there is no question about it. Then as far as this goes, I don't know, you see, I'm a collector. When you give me something, I'll keep it. I don't give 'em to my wife.

Here, Mr. Craddick, you might read this and then we take -- this is my paper here, I believe. Number nine on this paper, the one I send in for the meeting today. Then it got signed by you people, you know. So what we going to do? Buddy Nobriga was all out when he saw that, you know, so this is -- what we going to do with that?

MR. CRADDICK: I'm not even sure what that is.

MR. MICHEL: Mr. Craddick, you read it, you give it to the Board.

MR. CRADDICK: I think all this was was we were asking Bodel (phonetic) for some prices on something which they refused to give a price on.

MR. MICHEL: The problem is still there, so what you do when the whole thing crumbles off the hill? That is the problem. And then that's the reason why we have the meeting here today.

MR. NOBRIGA: Hans, you take that back.

CHAIRMAN NAKAMURA: I suggest you hang onto your paper.

MR. MICHEL: Mr. Chairman, I want you to read this about the survey, you know, this one here. And then we go this one. You see what uncle said over here, and he signed it. I no like people send me paper that we do, and then we don't, and then we wait how many years. Like I said, if I maki, my wife no have nothing. I do all my paperwork and that guy don't know nothing either.

CHAIRMAN NAKAMURA: Mr. Michel, the committee is very sympathetic to the fact that this matter has taken a long time to resolve. We appreciate your patience, and the committee is committed to following up on the obligations that the Board has committed to in their agreement. We will do that.

MR. MICHEL: And no snow job this time.

CHAIRMAN NAKAMURA: We certainly hope not.

MR. MICHEL: You see, I am getting old, and the older I get, look out, we might be gone too. Mr. Craddick knows. And I tell you, he's the best Water Board boss you have ever had in Maui County. The other ones was more screwier. He inherit this problem. This problem we got here, he inherit that when he became the Director. I mean he's a good man, I got no problem with him, but the problem now is he has to step in somebody's shoes and get the job done.

It's not Pioneer Mill or, you know, Mr. Craddick. Pioneer Mill has nothing to do with this. Pioneer Mill sold the land to me and I pay for that place and inherit that place, and they tell me, "It's yours, now you go hassle with them."

CHAIRMAN NAKAMURA: Thank you.

MR. MICHEL: Thank you very much for you take your time for me.

CHAIRMAN NAKAMURA: Thank you for taking the time to come to the meeting.

Okay, moving on to item B, communication 01-10, request from aDAM Patel of Upcountry Flowers by Patel for agricultural rates. I don't believe Mr. Patel is here. David or Mike, any comments on this request?

MR. QUINN: Yes, Mr. Chairman. Mr. Patel applied for ag rates, and our rules I believe it's quoted in the Director's Report, one of the requirements for ag rates is that the land be zoned County or State designated agricultural. This particular parcel is zoned rural.

We've had several of these items. The process is when we get the application in we send a memorandum over to the Department of Planning to tell us what the plan designation is and the zoning. In this case it was rural, so he was denied his ag rates by virtue of the definition of an ag consumer in our rate rules.

CHAIRMAN NAKAMURA: Okay, any questions or comments from members of the committee? May the record also reflect that Board Member Jonathan Starr is in attendance. Any questions or comments, Mr. Nobriga, Mr. Hiranaga?

MR. HIRANAGA: Mr. Chair, does the staff know, based upon the average usage of Mr. Patel, what the financial impact would be if he is granted the ag rate versus the rural rate?

MR. QUINN: Yes, I have that figure. For instance, his last bill as of 7/10, July 10, 2001, was \$1,321. With ag rates it would be roughly \$883. So it's a fairly sizeable impact on him.

MR. HIRANAGA: Have there been any precedents set as far as granting this type of relief?

MR. QUINN: Not since the rule went into effect, that I am aware of. This Board has had some other applications, similar applications in front of it. I think they're still unresolved.

MR. CRADDICK: I think they did resolve the one with, what is it down here, Kalima O Maui.

MR. QUINN: I'm talking about the Upcountry one.

MR. CRADDICK: Kalima O Maui was slightly different. They already had the ag rate, and just somebody, through butterfingers, let the renewal slip.

MR. QUINN: I believe this parcel did have ag rates before Mr. Patel, since he purchased it, he required the new owner to reapply for ag rates. Then it wasn't grandfathered in by the 1997 rate rule.

CHAIRMAN NAKAMURA: So the rule was that if you were grandfathered in and you continued to be -- the same meter holder continued on, they were grandfathered in for as long as they were the person that was responsible for the meter, is that the way it worked?

MR. CRADDICK: Right. If you had ag rates on non-ag land, you continued to get that rate as long as you were on the land.

CHAIRMAN NAKAMURA: But you had to reapply each year?

MR. CRADDICK: Yes, right.

CHAIRMAN NAKAMURA: And in this case, Mr. Patel is a new owner?

MR. QUINN: That's correct.

MR. CRADDICK: Right.

MR. NOBRIGA: It appears that once Mr. Patel would designate his land as ag zoned then he could reapply to get the ag zoned rates. Move that the denial is granted.

CHAIRMAN NAKAMURA: Moved to deny.

MR. HIRANAGA: I wanted to ask him a question.

MR. NOBRIGA: I withdraw the motion.

CHAIRMAN NAKAMURA: I was going to suggest you ask for the purpose of discussion. The motion is withdrawn. Mr. Hiranaga?

MR. HIRANAGA: Geographically, this property, is it close to other ag lands or is it in the middle of a large rural track?

MR. QUINN: I don't know.

MR. HIRANAGA: It would certainly help I guess to have a map. The other question I have is, when was this property zoned rural, do you have any idea?

MR. QUINN: No, I don't know that, either.

CHAIRMAN NAKAMURA: Being this issue has come up in the past, in fact I believe I may have raised it, that I feel that there's some inconsistencies in the sense that rural district, state rural district does permit agricultural use, agricultural uses are a permitted use in rural district.

My feeling is that while I agree with Mr. Nobriga that this particular request should be denied, that the rule is quite clear, I think that we should take a look at amending the rule to allow the agricultural rates for bonafide agricultural uses which are located in areas in which the agricultural use is legally permitted, such as a rural district. That would be the Chair's recommendation, that we do deny this request, since it is clearly not in accordance with the rule, but that we suggest to the Rules Committee that this rule be reviewed again. In fact, I would be happy to request the honorable Corporation Counsel to prepare an appropriate amendment for consideration. Is that acceptable, Mr. Hiranaga?

MR. HIRANAGA: Yes.



CHAIRMAN NAKAMURA: May I have another motion, if that's the case?

MR. NOBRIGA: So moved.

MR. HIRANAGA: Second.

MR. FUKUSHIMA: Just for clarification, a little direction as to the amendment that has been proposed. Would that be for agricultural activities in rural zones?

CHAIRMAN NAKAMURA: Rural zones, or within zones where agricultural activities are permitted by zoning. I am not sure if there are other --

MR. FUKUSHIMA: How far do you want to take agricultural activities? Things like greenhouses are allowed?

CHAIRMAN NAKAMURA: I think urban districts should not be included.

MR. NOBRIGA: Excluded.

CHAIRMAN NAKAMURA: I suppose more specifically rural and ag. And conservation, because there are agricultural, legitimate agricultural uses within conservation districts, I believe.

MR. FUKUSHIMA: And proof of agricultural activity would remain the same as what's contained in the present rule?

CHAIRMAN NAKAMURA: I believe so. Mr. Craddick?

MR. CRADDICK: I would question whether he's even doing agricultural activity, if you read the definition of ag.

CHAIRMAN NAKAMURA: I think that's a different issue. The motion is to deny. Any other questions or comments?

MR. HIRANAGA: Discussion. How large is this parcel?

MR. CRADDICK: I don't know. I know they allow them down to a half acre.

MR. HIRANAGA: Because if he's less than two acres he would not be able to rezone.

MR. CRADDICK: I don't know if you have to rezone it to dedicate it to ag. I don't know if you have to meet the qualifications of size to dedicate it to ag.

MR. HIRANAGA: For a rezoning?

MR. CRADDICK: Yes. If you dedicate it to ag, it's a different process.

MR. FUKUSHIMA: That's for tax purposes though.

MR. CRADDICK: Well, yes, whatever.

MR. FUKUSHIMA: That's not for zoning purposes.

MR. CRADDICK: Well, that may be an issue then, you may not be able to rezone it.

MR. HIRANAGA: No further discussion.

CHAIRMAN NAKAMURA: We are ready for the question.  
Mr. Starr?

MR. STARR: I just want to say I'm very sympathetic with Mr. Patel. I believe when he gave his testimony that it had actually gone from ag to rural not too long ago. But I think that you're dealing with it in the proper way, since we are on a fast track to change the rules. I don't see any harm from denying it, and then I'm sure the Rules Committee will be supportive.

MR. FUKUSHIMA: If the Rules Committee is supportive, again, I'm thinking about Mr. Craddick's comments, that Mr. Patel may not fall within the definition of an agricultural consumer since he may not be engaged in crop production. I believe that's Mr. Craddick's concern.

MR. CRADDICK: Right.

MR. FUKUSHIMA: Would the committee consider also amending the definition of agricultural consumer to broaden the definition beyond crop production to include activities such as Mr. Patel's?

CHAIRMAN NAKAMURA: I think perhaps that's a matter that the Rules Committee should take up.

MR. FUKUSHIMA: Would that be included in the proposed amendment that I'm drafting?

CHAIRMAN NAKAMURA: My suggestion at the time was to deal with the zoning issue. However, when it comes before the Rules Committee perhaps it may be appropriate to also deal with the definition.

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

CHAIRMAN NAKAMURA: Any other discussion? Ready for the question. All those in favor?

(A chorus of ayes).

Opposed?

(None).

Motion is denied. The matter is referred to the Rules Committee.

01-32, request approval to amendment of the agreement with Chris Mamiya for the Peahi Hui Project to increase the amount of construction funds. Mr. Craddick?

MR. CRADDICK: I have talked with Mr. Mamiya's engineer, and we have sent a letter to Mr. Mamiya suggesting that they defer this project, because the bid prices came in not only using up the extra money we were asking for, but was

\$100,000 more than that. So like almost a quarter of a million dollars more than the estimate back when the agreement was entered into. I think they want to defer it. They think that everybody is just too busy right now, and that's why the prices are out of line. We would certainly go along with that recommendation, if that's what is the final outcome when we get a response back from Mr. Mamiya.

CHAIRMAN NAKAMURA: So are you asking that this matter be deferred or are you asking that the request be withdrawn?

MR. CRADDICK: I would say that the request be withdrawn at this point until we find out if Mr. Mamiya wants to go forward. And I think we are going to have to find out how to reduce the job down in scope somehow.

CHAIRMAN NAKAMURA: The Director has indicated that he would like to have this request withdrawn. Any comments or questions?

MR. NOBRIGA: I think the project needs to be continued. The scope of the project, like the Director said, may have to be reduced. But in light of the fact that this is a replacement of a storage facility that's going to degenerate it, I think it is prudent that we proceed even if it's not within the agreement with Peahi Partnership. But I have no objection to the request being withdrawn at this time until we can reclarify the scope.

CHAIRMAN NAKAMURA: Mr. Hiranaga, any questions?

MR. HIRANAGA: I guess I'm a little curious as to why this project is at its current status of five years after the agreement. Why has there been little progress on this project?

MR. CRADDICK: Do you want to try that one, Herb?

MR. CHANG: The Peahi Hui, their timetable is really lax, so we're on their schedule. They weren't really pushing

it.

MR. HIRANAGA: What concerns me is the obligation to provide 19 meters, and I feel that some type of a performance date should be incorporated so that this does not again continue for another five years. Because five years later, of course, all of these agreed-to sums are going to be outdated. You are going to continually have that problem if you continue to let this obligation be extended. Three years from now who knows what construction costs are going to be. That's my only concern. If the developer wants to move forward he should move forward in a reasonable fashion, versus waiting for opportune periods when construction costs are down or the market is up. Our obligation at this point is open.

CHAIRMAN NAKAMURA: Okay, any further questions, comments? Mr. Starr?

MR. STARR: Mr. Chair, I'll just put a comment here. I'm aghast at the numbers I am looking at here for a 50,000 gallon tank. I know I have been involved in installing some tanks in East Maui, and places where it's deemed remote and harder, and it should be more expensive. I was just helping a friend put in a 50,000 gallon tank, and it was about \$25,000, including site work and everything else. To be looking at \$6 per gallon is just crazy. It's way, way out of line. So these numbers are insane. I have a feeling that there's something funny going on with the fact that these numbers are so inflated.

CHAIRMAN NAKAMURA: The engineering department should take heed of Mr. Starr's comments. Okay, any other comments? Any objections to the withdrawal of this request?

MR. HIRANAGA: I guess maybe expanding on Mr. Starr's comments, the cost of \$80,000 for a 9,000 square foot tank site does appear to be a little high, considering the overall value of the project site. You may want to take another look at that.

CHAIRMAN NAKAMURA: Okay, I guess the department should convey to the private participants that the members of

the Board will be taking a very close look at this when it comes back, in terms of cost and in terms of the Board's obligations. Although I guess, Mr. Attorney, I don't see any time limits on the agreement, and I don't know what the obligations are of the Board in the event that you do have these cost over-runs, although the agreement does have cost estimates.

So perhaps we would also ask the attorney, when he has time, to give that some thought. If there are no objections, the request from the Director shall be withdrawn, and it should so indicate in the report to the full Board. Next item on the agenda is item D.

MR. HIRANAGA: Mr. Chair, may I request a short recess, five minutes?

CHAIRMAN NAKAMURA: Sure, short recess, five minutes.

(Whereupon a brief recess was had).

CHAIRMAN NAKAMURA: I'd like to reconvene the meeting. We are on item D, communication 01-25, request from Sandra Takahashi for an adjustment of her water bill. The communication is page 18 of your agenda. Mr. Quinn, any comments?

MR. QUINN: Mr. Chairman, I had a phone conversation with Miss Takahashi, and other people in the department did also, I believe. Basically, her contention is that the department should have I guess warned consumers that Driscoll pipe was defective or had a tendency to create these leaks. And that was her position, that we should have at least made it public that these pipes had a potential of being defective and could create a problem.

We never resolved this. I believe she was going to speak to the Deputy and maybe the Director, I'm not sure. That's essentially what her position was. She had apparently two very bad leaks, very sizeable bills, back in April and June. Apparently somebody mentioned to her that the department had had trouble with these pipes in the past, and that might have triggered her concern. I'm not sure what we could have

done. Certainly I think we would have taken on our own liability if we had put an ad in the paper or something saying that this manufacturer created bad pipes. I am not sure how we can --

MR. CRADDICK: You have no idea what the application is. It may be way down a hill somewhere, and just the pressure alone would blow the pipe out when it gets hot. You have no idea what her application is of the pipe.

CHAIRMAN NAKAMURA: Mr. Deputy Director, any comments?

MR. TENGAN: I had a conversation with her, and basically it was what Mike covered, I believe. The concern that I had was of liability also.

CHAIRMAN NAKAMURA: Okay, comments or questions from members of the committee?

MR. NOBRIGA: It would appear to me that if it's a question of product liability, that question lies with the manufacturer of the Driscoll pipe and not with the department.

MR. QUINN: And these leaks took place on the consumer side of the meter which, according to our rules, are the consumer's responsibility. The department doesn't have any responsibility for the meter on the consumer's side.

CHAIRMAN NAKAMURA: The past practice has been for the department to work with the consumer in the event of hardship to try to establish some sort of a payment schedule, is that correct?

MR. QUINN: That's correct. We can certainly do that.

MR. HIRANAGA: Mr. Quinn, your initial comment was maybe the department should have notified the public about this problem, but then you're saying it's really the liability of the manufacturer.

MR. QUINN: It was her position that the department

should have notified all consumers of the possibly of defective pipe.

MR. HIRANAGA: But that's not the department's position?

MR. QUINN: No.

MR. HIRANAGA: Has the department ever recommended Driscoll pipe be used for water purposes?

MR. QUINN: I don't know.

MR. CRADDICK: It was in our standards, and I guess it actually is still in our standards, but we don't allow it anymore. And again, what's causing our stuff to break I cannot really say. So what's causing hers to break and what's causing ours to break may be two totally different reasons.

MR. HIRANAGA: So as far as what type of pipe material to use beyond the service meter is really up to the owner's discretion?

MR. CRADDICK: That's right.

MR. FUKUSHIMA: And the building codes.

MR. HIRANAGA: And the building codes allow Driscoll pipe?

MR. CRADDICK: I don't think the building code would cover from the meter to the house.

MR. FUKUSHIMA: Or the plumbing code.

MR. CRADDICK: Even the plumbing code I don't think would cover that.

MR. STARR: There's a lot of Driscoll pipe on this island, and it's frankly the best of all the black plastic pipes. Driscoll is probably the best of them and, you know,



it's usually the joints that break, you know, or the connections. I've never heard of the pipe itself being considered defective, but the joints that people make, whether they use a heat well joint or a compression fitting, at the joint it gets weakened.

I don't think certainly we have any liability or it has any bad reflection on us if the customer uses that, it's generally the installation that's done wrong or it's stressed or something that causes a problem.

CHAIRMAN NAKAMURA: The department has used Driscoll pipe in the past.

MR. CRADDICK: We have probably got six or seven million dollars worth of work in replacing all of those ahead of us.

MR. STARR: You are not putting other plastic pipe in, you are getting rid of plastic pipe completely?

MR. CRADDICK: Getting rid of the high density polyethylene, anyway.

CHAIRMAN NAKAMURA: Okay, what is the pleasure of the committee?

MR. NOBRIGA: I am unclear as to the request of Miss Takahashi. I am trying to read her letter again to find out exactly what she's asking us for. I would move to deny, but I don't know what I'm denying.

MR. QUINN: She's asking for some consideration, I believe. In the next to the last paragraph, "I believe the DWS should bear some of the responsibility allowing me some consideration and relief from the water use charges."

CHAIRMAN NAKAMURA: So Mr. Nobriga, is your motion a motion to deny?

MR. NOBRIGA: Yes. I recommend that the Board, I don't know, I don't see where the Board of Water Supply would

be responsible for the break in her side of the line.

CHAIRMAN NAKAMURA: So my understanding is, based on the fact that the Board is not responsible for the lines inside the water meter, that the recommendation is for denial of the request?

MR. NOBRIGA: Yes, thank you.

CHAIRMAN NAKAMURA: However, the department is willing to work with the meter holder in establishing some sort of a payment schedule, is that correct?

MR. QUINN: That's correct.

CHAIRMAN NAKAMURA: Okay, any second to the motion?

MR. HIRANAGA: Second.

CHAIRMAN NAKAMURA: Moved and seconded. Any discussion, further discussion? If not, all those in favor? (A chorus of ayes).  
All opposed?  
(None).

The motion is carried. Any other business to come before the committee? If not, the meeting is adjourned. Thank you very much.

(The proceedings were concluded at 10:00 a.m.)

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