

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

RULES COMMITTEE

Held at the David Trask, Jr. Office Building, 2145
Kaohu Street, Room 205, Wailuku, Maui, Hawaii,
commencing at 2:00 p.m. on October 25, 2001.

REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

COMMITTEE MEMBERS:

Mike Nobriga, Chairman

Jonathan Starr

Kent Hiranaga

Orlando Tagorda

STAFF PRESENT:

David Craddick, Director

Mike Quinn, Fiscal Officer

Howard Fukushima, Corporation Counsel

Fran Nago, Board Secretary

MR. NOBRIGA: Call the Rules Committee to order. In attendance we have Jonathan Starr, Kent Hiranaga, committee members and board members.

Also in attendance we have Director David Craddick, board secretary Fran Nago, fiscal officer Mike Quinn, Maui News reporter Harry Eagar, and members of the public.

There are no minutes to approve.

Rules Committee is reviewing recommendation on a proposed water meter issuance rule for the Upcountry water area. Is there any public testimony to be given at this time? Dick Meyer followed by Audrey followed by Vanessa.

MR. MEYER: I spoke the other day at your meeting and I read a statement which I hope will be incorporated within the record today. Basically I'm concerned that the Upcountry Community Plan be followed as I think is prescribed in law that you have to follow it. And in that plan it says very specifically that first priority goes to Hawaiian homelands and agriculture. It does not indicate which of those two would go first, but those two should be given definite priority over any other uses.

The concern that I have is the meter list that might be generated which may take rights away from the two priority areas. And so I would hope that in writing up the rules, that you will designate a portion and a fairly substantial portion that will be set aside for Hawaiian Homes, that there will be an allocation for them as they develop; and secondly for the agricultural uses, that you make it clear to the agricultural community and to the Hawaiian Homes community that they have a priority allocation and

they should come in and make use of it.

The concern also I have which I expressed was existing residents that no way should additional meters be given out that would in any way make it more difficult in the future for existing residents in the Upcountry region to get water, that they would also have some kind of a priority situation, that we don't put ourselves just in a larger pool of people all on stress.

MR. CRADDICK: What are you saying there?

You're saying just because you have a meter now that you want to have a priority to do whatever you want to do --

MR. MEYER: No, not whatever you want to do, and that would be something the board may want to consider. But by issuing -- let's just take a number, say you issued 300 more meters or 100 more meters or whatever the number would be, that we don't want to be put in a position next summer when there is a drought that immediately now it's the existing residents plus

another 100 people, when in fact if that 100 meters had not been allocated, the existing residents would have had enough water.

Now, how you exactly word that, sit down with the committee and perhaps we could come up with something, but the point is that I don't think we should just keep issuing meters because at certain times there is a lot of water available when oftentimes in Upcountry we've had a pattern of a drought situation. In fact, I would say probably in the last 10, 15 years, probably more years with some kind of restrictions or concern than years without concern at present.

MR. NOBRIGA: Any questions? Committee? I would like to note the arrival of committee member Clark Hashimoto and our esteemed counsel, Howard. Yes, Mr. Starr.

MR. STARR: You mentioned the set aside of water for Hawaiian Homes. We already have a set aside

for the 400-and-some-odd lots at Waiahole and I believe there is something for Keokea as well. Are you talking about in addition to those?

MR. MEYER: Yes. I think that what we recognized is that Hawaiian Homes -- this is only the very first increment, that over a 20- or 30-year the Hawaiian Home Lands people have come to our community association and told us they have a series of phases. I don't know what the schedule of those phases are, but they plan to have increments as they begin to -- they already built I think something like four or five, six miles of road. So the roadway is all in for these additional units; it's not something hypothetical. And I think water is certainly right now one of the limiting factors in terms of developing further units. So I would not want anything to be done to jeopardize that Hawaiian Home Lands development which those people have been waiting in many cases much longer than the people on the Kula meter list for meters and for homeland areas.

MR. STARR: I agree with those sentiments. I feel it's premature. I wish Perry were still here because Perry was at our earlier meeting, the head of the residents association for Waiahole. And I for one would love to hear from them about what their future plans are. But I think without -- it's difficult without getting anything from the Hawaiian Homes commission or even the future residents.

There's another organization for those who want to be residents but haven't been accepted yet. Maybe we can actually get some documentation to the board that talks about what their expectations would be.

MR. MEYER: Vanessa Medeiros is here, she is from Hawaiian Homes area. But I would also say it's not just the Hawaiian Home Lands. It's also concern for farmers who have come close to being in jeopardy at times in the past and now that more water seemingly is available to be given out, I would hate to see that their agricultural pursuits -- this is something

absolutely bedrock in the plans of the county to make sure that agriculture stays ongoing and particularly in the upcountry plan. I think we're talking about the general plan as well, just to make statements about agriculture.

MR. NOBRIGA: Thank you. I'd like to recognize the attendance of committee member Orlando Tagorda. Yes, Kent.

MR. HIRANAGA: Just to clarify your statement, you're advocating that people who wish to upsize their meters for ag purposes should have priority over people who wish to receive a 5/8 inch meter for residential purposes?

MR. MEYER: I'm saying that's what the community plan indicates. And unfortunately, I left it in the car, but the statement that I gave to you the other day said that the water should be highest priority for agricultural uses and for Hawaiian Home Lands. I'm sorry I didn't bring that statement with

me. So I think that's in the plan. It's not a question what I think, but whether it's in the community plan which should guide the water board.

MR. NOBRIGA: Thank you. Mr. Craddick?

MR. CRADDICK: It's good guidance, but Upcountry where all the land is ag, everybody is going to be ag. So I don't know how you're going to distinguish between ag and ag.

MR. MEYER: I think it was meant for ag uses as opposed to the subdivisions so-called -- because our plan also discourages the subdividing of land for gentleman estates. So I think we're talking about for ag uses. And I think -- I don't know, you must have your own definition of people who come in for ag use to get the water rates. I would suspect it would be people who would qualify for ag use rates.

MR. CRADDICK: And basically you basically

have to be on ag land, that's it. And if you put that provision in there, everybody will be applying for ag rates.

MR. MEYER: Then perhaps that rule may be modified to indicate that it is used for and even required perhaps that a lot that has a house on it and so-called farming, that two separate meters will measure the two different uses. That could be something you could do so that we use ag rates just for ag uses.

MR. NOBRIGA: Mr. Tagorda, do you have a question?

MR. TAGORDA: I was just kind of hearing about that community plan upcountry, Mr. Meyer. Don't you think that -- I agree with you when you said that this -- the priority for ag and DHHL, but I think to me that Makawao community plan needs to be revisited. Am I right? They are kind of --

MR. MEYER: They're in the same district.

Kula, Makawao and Pukalani are all one plan. So this is a plan for the whole upcountry, those three major communities in addition to Ulapalakua, that's all one plan. And periodically every 10 years those are updated and I suspect after the general plan is revised probably in the next two years, the community plans will be done probably within the next three or four years.

MR. TAGORDA: Do you think when that community plan will be updated, the priority will not change?

MR. MEYER: I mean, you're asking me to predict. I think they probably will not change. I think the recognition was that the Hawaiian Homes have long waited -- not for a decade or two, but for decades have been waiting for their right to get into that land and water will be absolutely essential.

Agriculture similarly is something that's been long-standing there and has great needs. In fact, you

consider them great needs by giving them lower rates, so that's part of your prioritization to help them.

The question, though, is how much of the water and I would think as you indicate -- as you give out meters, you still must maintain in the regulations that agriculture and Hawaiian Home Lands have priority. How you do that, the way you do that, that is what the board has to wrestle with.

MR. QUINN: Mr. Meyer, does the community plan define an agricultural use?

MR. MEYER: No, I think probably in various other places in the county ordinances, ag lands are certainly -- we have state ag uses, we have the ag districts, we have in your regulations ag uses. I don't think -- the plan does not define them.

MR. CRADDICK: Yeah, that was my point.

Everything is ag except Kimo Road, essentially. And furthermore, Upcountry really has no water except to come from like the Haiku community plan which says

we're not giving water to anybody until we get ours.

MR. MEYER: Actually, Upcountry has -- probably most of the rural lands in the state are in Upcountry. It's not just ag lands. It's urban, up around Kula Lodge and down near the Holy Ghost church. It's rural lands throughout most of those housing areas in the community. And those would be probably of lower priority than what the plan said was ag. This was very specifically done. It was a plan that was approved by the citizen advisory group, by the planning commission, by the county council, the mayor signed it, so this is not something that's out of my head, it's really part of the law.

18 MR. NOBRIGA: Thank you. Next Ms. Audrey Antone Black, followed by Virginia Medeiros.

MS. BLACK: I'm assuming that this meeting is for the rules of the Board of Water Supply that was posted online, the draft.

MR. NOBRIGA: Go ahead. Talk.

MS. BLACK: Okay. I'm trying to be a little formal here.

MR. CRADDICK: Chapter 106.

MS. BLACK: Yes, Chapter 106. I have about four or five comments, the first one being that it would be great I think if they could get the person who was going over the list that was going to update it that spoke earlier. I don't remember his name. If he could maybe somehow do that a little earlier or a little sooner so that they could delete those that already got their meters and add the people on who he needed to add on so we can get a closer look of where we stand. Me, I would like to know. And if that could happen.

And then in this -- the rules that is a draft, it says that they're only going to allow one meter per person on the list. And I would just like to point

out, and I was accused of being selfish this morning, but I just want to point out that when a family goes through the expense of subdividing their land, it can run up to about \$15,000 just in the costs and the paperwork and the attorneys, et cetera. And if you have the potential, if you're sitting on rural land and you have all your zoning in place and all your infrastructure in place and you have the potential to subdivide your land, if you're requesting two meters and you only get one, first of all, I don't think you're going to get a final subdivision approval because you're lacking one meter. And the other problem is so then you're just going to spend all that money and you're going to cut your property -- I'm sorry, maybe it sounds selfish, but I'm just trying to give you perspective of what families will be going through because they are going to get just one meter, they are going to spend \$15,000 now to do their subdivision, and then more than likely five years from now if water meters become available they are going to have to go through that expense all over again. Just

wanted to point that out.

MR. HIRANAGA: Can I ask a question before we
move on?

MR. NOBRIGA: Yes, Kent.

MR. HIRANAGA: If the infrastructure is
adequate, you already should have a meter, right?

MR. CRADDICK: No. Her subdivision came up
after 1993.

MR. HIRANAGA: It's a preexisting lot.

MR. CRADDICK: And she already has a meter on
it.

MS. BLACK: I have one meter. But we're
trying to -- we have rural land, so we're trying to
subdivide a two-acre lot into three lots because rural
is half-acre lots.

MR. HIRANAGA: You need two additional meters.

MS. BLACK: We're requesting two additional to do our subdivision.

MR. TAGORDA: They're saying they're only going to give --

MS. BLACK: Right. They're limiting everybody to one. It's hardship. It's going to be -- I'll take what I can get at this point, trust me.

MR. HIRANAGA: So if someone is doing a 10-lot subdivision, they are going to get one meter?

MS. BLACK: Yeah.

MR. HIRANAGA: Or is it one meter per lot?

MR. CRADDICK: I think Mike has some suggested

changes.

MR. NOBRIGA: We have some amendments that we will be proposing at the meeting that might clarify some of this, but because amendments were not made public before we started the meeting, we need to take testimony based on what we had.

MS. BLACK: Thank you. Because that was a point of hardship. I'm also asking -- I'm also pointing out that because you're -- and I know you folks were talking about this earlier, but because you had mentioned a 60 days to take your meter or accept your meter once your number came up, I felt that 60 days was way too short a period.

MR. NOBRIGA: It's a reservation. You have 60 days to tell the department yes, you want --

MS. BLACK: To pay.

MR. NOBRIGA: No.

MS. BLACK: No, because your rules allow for --

MR. CRADDICK: This provision of the rule and the way it works is it's for people who aren't on the list, not for people who are on the list. People who are on the list --

MS. BLACK: I read that 60-day provision is for the people who had lots before 1993. But for those of us on the list, if our number comes up, basically we're going to follow the one year and then the six month/six month extension.

MR. CRADDICK: That's the way the water development fee works. If you're not ready to take the meter, then you'd get a reservation.

MS. BLACK: But if you pay for your meter and you're not ready to install it -- because the next point I'm going to bring up is if your roadway was

paved, as mine was two months ago, I'm not able to break up the pavement for one year, that's a county law, to install my lateral. And without a lateral, I can't really install a water meter.

MR. CRADDICK: Should have installed the laterals now.

MS. BLACK: I should have?

MR. CRADDICK: Yeah.

MS. BLACK: Why should I have gone through the expense, David, when I'm on a waiting list for eight years and I don't know whether or not I'm going to get a water meter, excuse me. That was my thinking. The suggestion came to me to install the lateral, but I'm sorry, I don't have faith in you, you know. I didn't want to go through that expense because I felt that I would be probably be putting up a water catchment system in the next two years.

So anyway, I didn't install the lateral and

there is a lot of other people who didn't install laterals on my street and they are going to have to tear up the road in order to install their laterals to take service of their meter. So can you please consider that, there is a one year for that.

MR. NOBRIGA: So one year and two six-month extensions.

MS. BLACK: That would be beautiful. That way people could -- and also I believe there is provisions in the county codes that says you can do a payment plan on your water meter. I think you can break it into four payments over a certain period of time. So if somebody takes -- they want that meter but they can't afford it all at once, then you have to allow them to make payments which is going to take -- I think a two-year period is a really good -- I know you were discussing that earlier. I think two years people can -- because also I think a lot of people on the list don't realize this and I think this is

extremely sad, that it's been 10 years that people have been on this list and they haven't been told that they don't have proper zoning to buy a water meter.

MR. CRADDICK: What do you mean, proper zoning?

MS. BLACK: There are people on the waiting list who have requested water meters who do not have the appropriate state zoning to subdivide their land. And they have been on this list and they have been on this list and you have stated yourself publicly, David, that a lot of people on that list don't have the zoning or the infrastructure to accept these meters. And I think that's extremely sad that nobody bothered going through that list, notifying these people -- as you requested earlier. I think it's sad that it's taken all this time for a board member to say, "Who's on the list? How are they on the list?" You know, it's sad, you guys. Anyway. Okay. So I think there is a lot of people who are not going to be able to accept their meters because they don't have

the proper zoning for their subdivisions.

And according to my research, the Department of Water Supply R & R, rules and regulations, Section 2-7 says that you can -- under Laterals it says one service lateral -- that you may install two meters on one service lateral that will service two lots. And I just want to make sure that that's correct. Because if I can't get another lateral, I want to be able to install my meter on the existing lateral. Am I reading this correctly?

MR. CRADDICK: That lateral has to be adequate for two meters to do that.

MS. BLACK: Is that listed somewhere, the size of the lateral? Okay, it says "as provided for." Okay, I'll look it up. And I think that's it. Yeah, that's it.

MR. NOBRIGA: Thank you. Any questions?

Okay. Vanessa Medeiros.

MS. MEDEIROS: Real short and simple because I only got a call a few minutes before the meeting started. Basically I'm with the Department of Hawaiian Home Lands, the Maui district supervisor, and based on what I've heard in a very short amount of time, I just want to ask the water board to make sure to consider the fact that the Hawaiian Home Lands has at least a priority listing so that if they are going to be giving out meters -- and I know there is a massive cry for meters from the Upcountry -- that it's not going to be done in such a manner that it will impact upon our future developments of our homestead lands.

As you may or may not realize, there is 6,000 acres of Hawaiian Home Lands in the Kula area, of which a very, very small portion, the size of my fingernail, is going to open up fairly soon. And so there is lots of room for expansion and it would certainly be a shame for all the water meters to go out to other people who may not be on the list as long as those who have been waiting.

MR. STARR: Are you talking about meters for the 400-and-some-odd in Waiohuli and the 70-some-odd in Keokea, or you are talking about beyond those?

MS. MEDEIROS: I'm talking about beyond them because I believe that the meters for those have already been taken care of through an agreement. But I'm also looking at future development of that area down the line. And again, to maintain, you know, in the back of the minds that they're priority, that we may be doing development and there will be a need for additional meters going to those people.

MR. STARR: As far as I understand, the water for the lots that have been planned, that that is set and there is no question about those having priority in allocation.

I have to say that I'm happy to hear you talking about projects beyond those 470 or I forget the exact number. Especially regarding ag water for

Keokea. And I hope that the board and as our Water Use & Development Planning goes and our planning for more source Upcountry, because we know we're going to need to have more wells beyond the one we're drilling, that we're able to get a better understanding of what's going to be needed for the Hawaiian Home Lands program.

In fact, I went as a private citizen and met with the commissioner some weeks ago when they had a meeting on Maui and encouraged them to try to move forward with their Maui planning and to make people aware of what's going to happen with all this land so that we did plan for it.

I frankly am hoping also that a way can be found to extend the lines out to Kahiki-nui at some point because I know there is people settling out there who have real dire need of water and there once was a pipeline that extended from Keokea to Kahiki-nui. So I hope we could serve them. But for us to do our job, we need to hear and understand what the plans are going to be.

MR. NOBRIGA: Mr. Hashimoto?

MR. HASHIMOTO: Can you give us a quick update on what the status is on what's holding up the water and stuff, to update the board members?

MS. MEDEIROS: As far as the Waiohuli? My understanding of Waiohuli is that they did a test last week I believe of the water lines. I'm assuming that it passed because I have not heard anything negative at this point.

I do know the department is moving towards the next step which is getting the people ready to be able to go on the lands and check their pins and actually occupy.

MR. STARR: Can we ask the director? What's happening with the water for Waiohuli, David, is the system up and working?

MR. CRADDICK: It's up and working as it is,

but it will not work out to the time the full allocation of water goes to Hawaiian Homes.

MR. STARR: Why?

MR. CRADDICK: Well, it's not working because either the water for Hawaiian Homes will be starved or the Upcountry line would be starved in the event we have to pump water up through the upper line, one or the other. So you would have to make a decision which one is going to get cut.

And the problem is that the suction for the two booster pumps, Hawaiian Homes booster station is ahead of ours and when our booster station starts running, their booster station did not provide for that flow.

MR. STARR: Which site are you talking about?

MR. CRADDICK: At the Kula Kai tank. Let's put it this way. We put in a booster station at Lower Kula. Our booster station pushes out 9 million

gallons a day, adequate for the community plan and any good increment of future demand.

Hawaiian Homes designed the pump station to just barely take care of the water that they were getting. And I guess they couldn't get an easement from Haleakala Ranch or it was going to cost a few dollars for the easement to put the booster station downstream of ours. They chose to put it inside our tank site to get the land free. And as a result, we've got this problem of starving the pump. The water cannot be supplied to the pump fast enough when our pump starts running, it starts to cavitate. And it will work because we know everybody is not going to move in to Hawaiian Homes next week or one week after they say go in there. We'll be lucky if 50 move in the first year and probably 10 thereafter.

MR. STARR: I don't think that's our call, David.

MR. CRADDICK: Then we say that they have to

put it in right now if that's the case. If you're telling me that, then they need to put the line in right now if that's not our call to say that when it doesn't work that there won't be any water going out there. Because that's a function of the system, not my call or even your call. That's just what will happen when the system starts running.

MR. STARR: This is the first I've heard of this and I think it's something the board should deal with. I would guess the Chair would agree with me it's the wrong place and time, but I think it's something we should make note of and deal with.

MR. NOBRIGA: You asked the question; I have to allow the answer.

MR. STARR: That's the first I ever heard of that, though. We better find a solution.

MS. MEDEIROS: Basically all I wanted to talk about was your rules as it is here and the future.

With regards to the Waiohuli, it was my understanding that the situation of the booster pump was taken care of. If it isn't, then definitely there is something that we're not aware of.

MR. CRADDICK: What happened was we had a meeting in the mayor's office. A representative from Hawaiian Homes, Gerald Lee, says they recognized this problem and we don't want to -- we don't need to handle it now because we know everybody is not going to move in next week. So we said yeah, you're right, and we'll do it when it's required. And I even offered to do a pro rata share of it based on what our needs were and what their needs were.

But when that time comes, it needs to be done.

And they can't be trying to leverage moving people in on whether that needs to be done or not done. It needs to be done. You can come to the board. The board can say it's waived and then of course when the time comes, somebody is not going to have water, either upper line is not going to have water or

Hawaiian Homes is not going to have adequate pressure, one or the other. So waiving it isn't going to solve the problem.

MR. NOBRIGA: It's a function of the pumps and not availability of source.

MR. CRADDICK: Right. It's a function of the design of the pump station, right.

MR. STARR: How many households will it handle like it is?

MR. CRADDICK: It's going to depend of the demand, how much of the demand goes to Keokea or how much of it goes to Waiohuli.

MR. NOBRIGA: We're getting completely off the subject. Anything else, Vanessa?

MS. MEDEIROS: No.

MR. NOBRIGA: Thank you. Anybody else wishing to submit public testimony? Mr. Pierce.

MR. PIERCE: Mr. Chair, members of the committee, Tom Pierce. I just wanted to really just point out a couple of things in the rules that I have -- at this point I would guess I would just phrase them as questions and I think that the committee ought to look into them. And most of them deal with really what has happened in the past and how that's dealt with in this rule. And what I'm concerned about is that this rule -- this proposed rule goes a long way towards clarifying some things that have not been clarified. However, I would just like to point out two or three places where I think that it's going to leave a lot of people still in the dark out there and I'm requesting that possibly you could consider some amendments to this proposal that would just make things a little bit clearer and I think possibly keep the department and the board out of trouble in the future.

The priority list is defined -- and I'm just going to read through this to kind of build a picture of where my concern is. It says, "Priority list means the compilation of applications in the order received by the department pursuant to a legal notice published in the Maui News November 2, 1994, for applicants denied additional water service."

And I checked out with Mr. Fukushima just before testifying and he can correct me if I am wrong, but as I understand it that compilation of applications never went through any kind of hearing process. And arguably, the state law requires that because it does affect people's rights as to water meters, arguably back then there should have been a hearing. So anything dealing with that priority list as it stands right now is subject to being challenged because it never went through a proper rule-making process.

Right now you are in a rule-making situation so this would be an opportunity to basically go back, take a look at how that priority list was created, and set the stage to have the rules -- have that

rule-making finally take place. I'm not sure exactly how that could happen because we're looking backwards, but it's important. And the reason that it's important is that if you look over at 16-106-04, subsection (A), that section says, "The director shall continue to maintain the priority list of applicants for water service from the upcountry water system."

So it's essentially validating this prior -- and continuing to use this prior priority list. However, that priority list, as I'm saying, I believe that -- there we go, that's it. So it's part -- it's being made part of this rule, but it never went through the proper rule-making process. So I believe that there is a problem there.

And of course there is several other references to the November 2 date. And then finally Section 16-106-08 talks about waiver or modification and this is basically a second issue I have here which is this provides a way for the board to waive or modify requirements of the rule. And my question is would this include -- it's essentially an appeals

process. Does it include -- and I think that this is something that should be expressly stated if it does -- does it include the ability to appeal any decision by the department or by the director with respect to the priority list. Because once again, one of the things that people out there have had trouble with is understanding exactly how they ended up being number 50 or number 75. And because it never went through a hearing process, no one really understands why they are at a certain point.

So this is something I think right now because you're in this rule-making process could be clarified and potentially make these rules stronger and the priority list stronger. That is all I have.

MR. NOBRIGA: Thank you. Any questions?

Mr. Starr?

MR. STARR: Do you have any suggestions on what the process would be to do rule making as part of this rule for the priority list?

MR. PIERCE: I think what would help is to have the director, you know, and maybe this already exists, but have the director set down on paper how that priority list was created, what are the policies or rules that made a person come in at a certain point, specifically set all that out and then have -- and then have corporation counsel turn that into a portion of the rule, and then have some additional hearings so that people can come in and talk about that part of the rule.

MR. STARR: I assume someone could do that at the same hearing. Is counsel away?

MR. FUKUSHIMA: Would you like me to comment?

With respect to the list not being adopted as a rule, we don't find that particularly troublesome. We believe that this board can adopt the list as part of its rule. It's the same as the board decided well, let's take a list of registered voters in the county and then use that as a list.

I don't believe you have to have a rule for the department to have been keeping a list. The board may want to review that list to make sure that the department did it in an appropriate fashion. But I don't believe a separate rule is necessary to deal with the adoption of a list or methodology regarding the list. The list is in existence. It's been maintained by the department. What the board would be doing is it's in effect ratifying what the department has been doing in the past as far as keeping a list.

MR. NOBRIGA: Mr. Craddick?

MR. CRADDICK: The list was collected in the order the application was received and that's how the list was compiled. So if somebody came in later, they're put on the list later. That's how you get on the list.

Now, Board Member Hiranaga was saying was there adequate notice having one notice in the newspaper. That's something you have to grapple with, but --

MR. PIERCE: Well, Mr. Chair, I'll just make one comment, if I may.

MR. NOBRIGA: Mr. Pierce.

MR. PIERCE: And then I have to run to a meeting, actually, I'm sorry to leave in midstream. But if in fact this is what the committee intends to do, what would it would mean or at least potentially would mean at least from corporation counsel's viewpoint it appears is that no one would ever be able to challenge how they ended up with a specific number after this rule-making process was completed. And I don't think that's what most people understand. And the reason I say that is because I know having talked to people that they will call the department and they will be told where is my number or can I see a copy of the list, the list is constantly changing. Why am I now 53 instead of 32? And then they're just hearing different stories and they're not getting it straight.

So I think at a least if the committee is going to confirm the department's priority list, we should at least have something in writing that's made part of this rule-making process now so that the public has an opportunity to review it and see exactly how people ended up where they are.

MR. NOBRIGA: Thank you. We'll take that under advertisement and we'll be discussing that later.

MR. PIERCE: Thank you.

MR. NOBRIGA: Thank you, Mr. Pierce.

Mr. Santos?

MR. SANTOS: The thing that I have to say is like the other gentleman earlier, they said giving the farmers priority what have you and stuff. I believe that it's unjust to the rest of the people who have small lots or what have you who cannot and who does not farm. And you guys all know that at soon as

somebody farms, somebody gets off the plane, buys on the opposite side of you, they will close you down. Because there is too much dust like Kihei and whathaveyou where the plantations have been raising cane there for years and never killed anybody, but today all these people left their places on the Mainland, came here, and now that dust is so terrible for their health.

I went to St. Anthony school for 12 years right next to the mill with the soot and dust from the cane, whathaveyou, I'm 74 years old. I haven't died from it. So I don't believe that any farmer should have any privilege over anybody else who put their name in for a meter. Thank you.

MR. NOBRIGA: Mr. Meyer, you wish to testify?

MR. MEYER: I just wanted to clarify something, a question I asked this morning about who is on the list and I asked is it persons or property. And Mr. Craddick said it was the property so if

somebody sells it, they're still on the list.

Your rules here, at least on page 106-2 state that an applicant means any person applying for water service or additional service. It doesn't say it's the property; it says it's the person. And I'm not sure, maybe you have elsewhere in the rules that says that that continues on to somebody else, but my reading of this would be that if a person sells their property, they're no longer on the list.

MR. NOBRIGA: We have to review that part, Mr. Meyer. Thank you for pointing that out. Anyone else wishing to provide --

MR. MEYER: Let me just say that would make it simpler because that would mean people waiting the longest would be on instead of somebody buying a piece of property and suddenly jumping up to the top of the list.

MR. NOBRIGA: Yes, very much so. Anybody else wishing to provide public testimony?

Members of the committee. For discussion purposes, we have proposed some amendments to our current rule. First amendment is page 106-5, 16-106-4, section D. In bold. Current Section D was ambiguous. As it originally read "requests for water service shall be limited to a single 5/8 inch meter." Amendment before you at this time rewords Section D to read "requests for water service shall be limited to a single meter size upgrade or a single 5/8 inch meter per lot for subdivisions and first meter on the lot."

Mr. Hiranaga?

MR. HIRANAGA: This proposed language is being -- what is the source?

MR. NOBRIGA: The source?

MR. TAGORDA: Of the proposed language.

MR. NOBRIGA: Myself and -- source?

MR. TAGORDA: From the department or is it
from you or --

MR. NOBRIGA: It's from me.

MR. TAGORDA: Okay. Just wanted to know.

MR. NOBRIGA: I'm not sure if that's legal --
I'm not sure if it's how you say it, but --

MR. STARR: The document that we're amending,
this was a document that was created by staff and corp
counsel about two months ago, right?

MR. FUKUSHIMA: Probably longer than that.

MR. STARR: Okay.

MR. FUKUSHIMA: Five or six months.

MR. CRADDICK: This was April, I think.

MR. FUKUSHIMA: Just a question, Mr. Chairman.

Does that mean if I have an existing 5/8 inch meter, I can come in for --

MR. CRADDICK: Three-quarter. One meter size.

MR. FUKUSHIMA: One meter size.

MR. NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Do you have to justify your request for a meter upgrade or you can just come in and say I would like a bigger meter?

MR. NOBRIGA: Keeping in mind the rule only addresses applicants on this priority waiting list that have not been able to get meters, so try again.

MR. HIRANAGA: Well, usually to get a larger meter, you normally have to justify some type of ag use.

MR. CRADDICK: No.

MR. NOBRIGA: I don't think so.

MR. HIRANAGA: Maybe you have a large house that requires -- because of the number of fixtures, you need a bigger meter.

MR. CRADDICK: Might. And it could be on agricultural land for some farmer who's got a big family.

MR. FUKUSHIMA: Mr. Chairman, if I may, I believe that that language that's being used leads to some ambiguity. "A single meter size upgrade" could mean different things. I believe that that should be -- if that is the intent, to go up one size on the schedule that we have in our rules with respect to meter sizes, I believe that we could draft language that would make that a little clearer. Meter size upgrade of one size, I mean, it could mean different things. So I would suggest if this is the intent,

that perhaps we could draft something that would clarify that a little bit better.

MR. NOBRIGA: I would very much appreciate that and I would like to ask corp counsel to assist us in drafting language. Mr. Starr?

MR. STARR: How about we just put in "to the next largest size."

MR. FUKUSHIMA: That's what I was thinking.

MR. NOBRIGA: All we're discussing right now is the intent. The formal language will come from corp counsel office so that there is no ambiguity for this particular amendment.

MR. STARR: To the next size. "Up" becomes "to."

MR. NOBRIGA: Are you okay with this? Yes,

Mr. Hiranaga.

MR. HIRANAGA: What does that "first meter on the lot" mean?

MR. CRADDICK: Let's say you have an empty lot with no meter. What size are you going to get? You're not upgrading it from anything. You don't have a subdivision.

MR. MEYER: Subdivisions can only get 5/8 inch meters.

MR. NOBRIGA: Yes.

MR. HIRANAGA: Why do you need to address existing vacant lots? Because if there is adequate distribution, they should be able to get a meter now so they shouldn't be on the list.

MR. CRADDICK: There may not be adequate distribution now so they may have gotten on the list.

MR. TAGORDA: But if they get adequate distribution, they could just be off of this. They don't need to be standing in line. If they bring their system to adequacy, just --

MR. CRADDICK: Just to cover that possibility.

MR. NOBRIGA: This is just for the people that -- when we get additional water that we're able to issue meters, this clause wanted to -- we wanted to say it was more than just one meter per applicant. Because a lot of the people on the list are trying to finalize family subdivision.

MR. HIRANAGA: Handled by the per lot per subdivisions.

MR. NOBRIGA: Yeah.

MR. HIRANAGA: I guess if you want to have

that language to continue, corp counsel could make that a little clearer.

MR. FUKUSHIMA: I'm a little confused as far as what the intent is. The phrase "or first meter on the lot," I don't believe I understand what the intention behind that is.

It further appears that there is some arbitrariness to this in that if I've got a 5/8 inch meter then I can ask for 3" or the next size larger. If I don't have any meter, I can't ask for a larger meter. You may want to consider that.

But again, what's more troubling is I don't understand what that last phrase "or first meter on the lot" is intended to signify.

MR. CRADDICK: It's to cover the -- if you have no meter there, what size do you put there? Three-inch, 4-inch?

MR. NOBRIGA: But it's already covered though because these are people without meters. We don't

need that last part. We can strike the last part.

MR. FUKUSHIMA: You're saying or a single lot
for --

MR. NOBRIGA: Subdivisions, period. We don't
need the rest of that.

MR. FUKUSHIMA: Well, it may not --

MR. CRADDICK: May not be a subdivision. May
be the first meter on the lot. So you've got to cover
it. Otherwise they are going to ask for two-inch.

MR. FUKUSHIMA: Well, then you could end that
at "per lot" and you could strike "for subdivisions or
first meter on the lot." That's redundant.

MR. CRADDICK: Okay.

MR. FUKUSHIMA: Or a single 5/8 inch meter per

lot. I think that that serves the same intention that the Chair was --

MR. NOBRIGA: You guys okay with that? Have a vote. All those in favor, signify by saying aye. Opposed, nay.

Second amendment is E, for meter requests, after the first time the property is offered a meter, we will require the applicant to submit a new application to get on the list again until the list is not needed.

The intent of this is for applicants that need one bigger meter.

MR. MEYER: What happens if somebody has an ohana on it, small meter now, and wants to build their main house with a second meter? Would they be allowed to do this under any provisions, or not allowed?

MR. CRADDICK: They would upsize it to 3/4" then.

MR. MEYER: Could they run both houses off of that?

MR. CRADDICK: If they kept within the fixture units of the 3/4" meter.

MR. FUKUSHIMA: Mr. Chair, may I ask you, what is the difference between that suggested E and paragraph C above it?

MR. CRADDICK: "C above" is people who have a chance to get a meter, they don't want to put in the distribution lines or anything, we don't want them logjamming the top of the list, so they're just off the list unless they reapply. This one here is for people who have taken a meter, they have taken a meter and --

MR. NOBRIGA: If some applicants have not filed subdivision on the list, have one big piece land, they want to subdivide, they haven't subdivided yet. When their name come up, they can get the one meter. But subsequently if they want to subdivide the

land --

MR. FUKUSHIMA: Then the rule comes into effect. I mean, in my considered opinion, I believe that this is redundant. If someone is coming for a meter, he's granted a meter, then he wants another meter, of course under the rules he's going to have to -- he's not on the list so he's going to have to get on the list and submit an application.

MR. NOBRIGA: Strike that then. Strike E.

MR. FUKUSHIMA: I mean, unless I'm not seeing something the Chair is seeing.

MR. NOBRIGA: No, no, I just -- makes sense now.

MR. CRADDICK: Just to make it clear, what happens to them after they are handled the first time, they get back on the list. We don't meet their all needs that first time around.

MR. FUKUSHIMA: But they only get one meter anyway under the rule, right?

MR. CRADDICK: Yeah.

MR. FUKUSHIMA: So how are you going to handle one? Got to get on the list.

MR. CRADDICK: That's true. Just makes it clear, that's all. But you don't need it.

MR. NOBRIGA: Strike E.

Third amendment was inclusion of subchapter 16-106-09 pertaining to water system development fee waiver whereby for the people on the list as of October 31, 2001, we will lock their name at the current rates. We request corp counsel to assist us with language in identifying specific --

MR. MEYER: Why don't you go back to October 1st so you don't just have a big rush the next week?

MR. NOBRIGA: Mr. Hiranaga.

MR. HIRANAGA: What were the rates in 1993?

MR. CRADDICK: What they are now.

MR. HIRANAGA: I guess I have a concern regarding people who are not on the list. There may be a lot of people who don't even know the list exists.

MR. CRADDICK: That's right here. This portion right here.

MR. NOBRIGA: 1606-04(b) and read that.

MR. HIRANAGA: You're going to provide notice to the people before October 31 to people who don't know the list exists? Because they weren't around on November 4th to read the paper.

MR. CRADDICK: Okay. (C), right?

MR. NOBRIGA: "Applicants who are not on the priority list and have expended funds in reliance upon official assurances dated before November 2nd, 1994, shall be allowed 60 days to reserve an allocation of service capacity pursuant to Section 16-8-9(b) of these rules.

MR. HIRANAGA: How are you going to determine if someone has expended funds?

MR. CRADDICK: They bought a lot.

MR. HIRANAGA: What if they owned the lot for 40 years?

MR. CRADDICK: Well, they still own it, they've spent money, somebody has spent money at some point getting it.

MR. FUKUSHIMA: I don't particularly think

that was the idea behind this language. I mean, what this is referring to is it's referring to the legal theory of detrimental reliances, somebody relies on official assurances. There may be vested rights involved or there may be some estoppel issues that may be involved, but we don't particularly think that the problem that the director mentioned, I don't believe that that's going to be a problem.

MR. CRADDICK: Well, that's what we're trying to do. So if we need to get language in here, then we need to get language in.

MR. FUKUSHIMA: But I believe the language is appropriate to take care of those situations where people in fact do have some sort of vested right to water service. And right now I can't think of any situation, but again I'm sure there are situations like that out there. And I believe it should be taken care of when we can in adopting this rule.

MR. NOBRIGA: Mr. Tagorda?

MR. TAGORDA: Looking at that provision,
Mr. Chair, applicants who are not on the priority
list, who have expanded -- just scratch about
reliance. I think if we put this provision there,
it's inappropriate, meaning to say who these people
talk to in the past? There is no agreement. Is it
verbal? Written?

MR. FUKUSHIMA: I'm sorry. If I may,
Mr. Chairman, the question of whether detrimental
reliance exists or not is a question of fact. Each
case is going to have to be examined on its own
merits. It would be a case by case determination.
Perhaps, you know, a checklist could be developed
saying if this is in existence, if that is in
existence, then you are in effect -- and you do have
vested rights to water. That is a possibility. But
again, it is a determination that it's made on a case
by case basis because generally the facts aren't
always the same.

MR. CRADDICK: I added that "or have vested rights" in there. So either detrimental reliance or some kind of vested rights. I don't know if we want to go to the definition and define what vested rights are.

MR. FUKUSHIMA: I believe that there is enough guidance in the case law about vested rights. But it is -- that's how you get your vested rights if there is detrimental reliance. But I don't have a real problem with it the way it's suggested.

MR. NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: I just see this as an administrative nightmare for whoever has to determine whether they should be on the list or not. Because the people who are denied are not going to be happy people. So someone has to provide invoices from civil engineering firms or survey firms or how do you show that you've expended funds?

MR. NOBRIGA: This is for people that are not currently on the list, though.

MR. HIRANAGA: Right. But how do you determine that they in the past seven years have done something versus someone who hasn't?

MR. FUKUSHIMA: Again, as I've indicated, it is a factual determination based upon the facts surrounding each case. Those facts would have to be looked at, they would have to be analyzed to determine whether this legal theory of vested rights or detrimental reliance would apply. And of course that -- it would be with assistance of our office in making that particular determination.

MR. HIRANAGA: So the determination would be made by the director or the board?

MR. FUKUSHIMA: At this time we believe it

would be made by the director. Hopefully we will have the appeal process in place so that any appeals from the director's decision regarding matters dealing with the list, dealing with whether there is detrimental reliance, whether there is vested rights, could be appealed to the board in the future.

MR. NOBRIGA: Yes, Mr. Craddick.

MR. CRADDICK: Just as a point, I have never seen the document, but according to Paul Mancini who was in corp counsel when the Kula Rule was passed, the reason they put in the Kula Rule that any empty lot can get a 5/8 inch meter was because of this vested rights. So simply because the [inaudible] existed, they somehow had a vested right. And he's never been able to produce that, nor has corp counsel ever been able to find it, but it did get written into the Kula Rule that you can at least get a 5/8 inch meter for an empty lot. So if people bought lots like say since 1977 up to the time the Kula Rule lapsed, and didn't get a meter on it, they bought it with the

understanding that they could get a 5/8 inch meter at some point, providing all other rules of the department were met.

So that's why I think it needs to be read very, very loosely. If you simply have a lot, you got 60 days to put up or shut up.

MR. HIRANAGA: Then I would prefer language to state that. If your lot existed prior to this specific date, you have this opportunity to come in within 60 days to get on the list. This expended funds, reliance, official assurances -- to me it's spending a lot of time deciding [inaudible].

MR. TAGORDA: We delete that, Mr. Chair, that provision there? Delete it?

MR. CRADDICK: Can't delete it. You just have to --

MR. NOBRIGA: I think we should reword it to something more along Mr. Hiranaga's thought processes.

MR. TAGORDA: That provision there doesn't really --

MR. FUKUSHIMA: So what is being suggested, if I may, Mr. Chair, is that if we take Mr. Hiranaga's language, any lot before 1993 is entitled to a water meter before we even reach the list. That's the effect. That's the effect. You're not even -- this isn't dealing with the list. And I hope the other members realize that. These are -- these are applicants coming in that are off the list and are going to be served first and then we're going to the list after these people have been dealt with.

MR. CRADDICK: Right.

MR. NOBRIGA: Yes, Mr. Hiranaga?

MR. HIRANAGA: Currently if their lot exists prior to 1993 or '94, they have adequate distribution, they can get a meter today, right?

MR. CRADDICK: Right now, yeah.

MR. CRADDICK: And for whatever reason they haven't done it, and it may be the reason that you say, they never saw the requirement to get on the list, they never did it --

MR. HIRANAGA: They don't need to be on the list. They could just come in today and get a meter.

MR. CRADDICK: Yeah. So what we're trying to do is extinguish that right. That's why you need to have something here. You can't just extinguish it and nobody knows about it.

MR. NOBRIGA: Mr. Starr?

MR. STARR: I'll tell you, I've always really really hated this, you know, that we have been giving meters to people off the list for these reasons. But if this is a way to terminate that, I say good, you

know, let's do it. But I want to make it real clear that this terminates it and I'm not sure that this says that at that point they -- those vested rights are terminated. I would like to add another couple of words there that would say at this point any --

MR. FUKUSHIMA: If that's the idea you want, add language thereafter applicants shall not be -- I'm going to have to think about this, I'm sorry, Mr. Chair.

MR. NOBRIGA: I understand.

MR. STARR: Thereafter such vested rights shall be terminated -- shall be deemed not to exist. Something like that.

MR. NOBRIGA: Let's leave this section and let's come back to it at the next meeting. Yes, Herb.

MR. CHANG: Can I add one more comment on this? Is this clear that it's limited to the first

5/8 inch meter on the lot? It doesn't seem like it's clear on this paragraph. We're just talking about empty lots. Because you read it as it is now, you can get a second meter -- lot that already has a meter the way it's written right now. It's not clear to me that it only applies to someone who has a lot that doesn't have a meter. Could also apply --

MR. STARR: So an allocation of a single 5/8 inch meter, it should say.

MR. CHANG: Or first 5/8 inch meter on the lot.

MR. CRADDICK: That whole section is down in four or actually it's the next line down. So any requests -- that includes all of them, including those with vested rights or whatever. Because that's all they have been able to get anyways. I shouldn't say that. I guess Haiku --

MR. STARR: I believe that it should be, too.

MR. NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Is it the opinion that this list will continue to exist for many, many years and people will continue to be added at the bottom of the list, assuming that source never ever catches up with demand?

MR. NOBRIGA: Yes.

MR. HIRANAGA: So what you're saying is once this rule is enacted, the people who own lots prior to 1993 have 60 days to come in or else everybody is on a level playing field.

MR. NOBRIGA: Yes. I don't like the way that reads right now, but I would rather to allow corporation counsel time to get something better in that. I want to leave that section and go back to a proposed amendment covering, what's it called, meter fees.

MR. FUKUSHIMA: What section is that?

MR. NOBRIGA: The new Section 16-106-09. Is the committee satisfied with this language? Or the intent?

MR. STARR: I think deferral is the wrong word in the title.

MR. NOBRIGA: Waiver.

MR. STARR: Yeah, waiver of water system development fee increase.

MR. FUKUSHIMA: Partial?

MR. NOBRIGA: Partial waiver, yeah.

MR. FUKUSHIMA: What is the first -- apply to all first requests? Shouldn't it apply to all

requests?

MR. CRADDICK: You're handled one time on the list and your name comes up again on the list -- I guess it's after October 31, isn't it, at that point. So I don't know, maybe it does.

MR. FUKUSHIMA: I don't think the first -- to all requests.

MR. STARR: I think the first is fair.

MR. FUKUSHIMA: I don't think we need "all."

MR. STARR: We just took out "the first."

MR. FUKUSHIMA: You can strike the "all" also.

Requests to all applicants, you don't need "all applicants."

MR. NOBRIGA: Are you guys okay with striking these things in here? Yes, Mr. Hiranaga.

MR. HIRANAGA: Do people have vested rights
have 60 days to come in and apply for their meter?

MR. NOBRIGA: No, apply for the list.

MR. HIRANAGA: Apply for the list.

MR. NOBRIGA: Yeah.

MR. CRADDICK: No, come in for their meters.

MR. FUKUSHIMA: Their vested right. We're
saying okay, if you have a vested right, you have 60
days to come in, you'll get your meter. Assuming all
other -- assuming the other provisions of 3-1 apply or
are met, you know, you're adjacent to transmission
line, you're within the service area, and you're not
going to be -- adding your service won't be
detrimental to other users. So if those three things
are met, you get your water meter. Otherwise you may

have to make improvements to transmission system, storage system, or whatever.

MR. NOBRIGA: They're going to bypass the guys on the list?

MR. FUKUSHIMA: That's right. That's why we're trying to take care of these guys first so we know exactly how much water we have for the guys on the list. So we've got to take care of those people out there that may have rights to water service, get them dealt with, and then we know exactly where we are.

MR. STARR: What's 106-04?

MR. NOBRIGA: That's the one we just discussed.

MR. STARR: Is that the vested rights guys? I don't think the vested rights guys should -- I think they should pay the full rate.

MR. NOBRIGA: Yeah, they should. And that's what this says. No, it doesn't.

MR. STARR: No. This gives them a break.

MR. FUKUSHIMA: You could have vested rights. They could be on the list, too. But I don't particularly understand the distinction if you have vested rights, why shouldn't you get the same benefit as someone that doesn't have a vested right?

MR. NOBRIGA: Because these guys was waiting on the list.

MR. STARR: I think we should take out that last part.

MR. TAGORDA: Putting those covered under 16-106-04(b). Just exclude that for now.

MR. CRADDICK: You've got to watch out because some of those people have been waiting 20 to 30 years to get -- that's why I'm trying to tell you to make sure you understand.

MR. TAGORDA: We have corp counsel here to tell us.

MR. STARR: If they're not on the list, they shouldn't get the break. Very simple.

MR. HIRANAGA: Because they can get the meter now before the rates are.

MR. FUKUSHIMA: Dave, make that on the priority list since priority list is a defined term.

MR. STARR: Question: What happens if there is someone on the list and they're offered their meter and they're not ready to take it.

MR. CRADDICK: They're off the list.

MR. TAGORDA: Got to submit a new application.

MR. NOBRIGA: Section 106-5(c).

MR. FUKUSHIMA: 4(c).

MR. NOBRIGA: 4(c) handles that provision.

Do I have a motion to accept this amendment?

MR. TAGORDA: 106-09? Yeah.

MR. NOBRIGA: Moved and seconded. Any further discussion on this amendment? Mr. Hiranaga.

MR. HIRANAGA: Is there sufficient notice when you say October 31st. Because there are going to be people who don't know that there is an urgency to get on the list.

MR. NOBRIGA: We don't want to have an urgency

to get on the list. Guys like that that's been waiting 10 or 15 years.

MR. HIRANAGA: There may be people who have been waiting who have not been taking an active effort to do anything, feeling that maybe it's --

MR. STARR: Those who haven't been making an active effort --

MR. CRADDICK: That's why we had the other provision in there that we just erased.

MR. STARR: Could we see the part about what happens when people are offered a meter and aren't ready for it?

MR. NOBRIGA: Page 106-5, top of the page.
Right there.

MR. CRADDICK: Right here, failure to respond.

MR. NOBRIGA: So motion on the amendment. Any further discussion on the amendment?

MR. STARR: As I understand it, an application to reserve an allocation, that's when you send in a check, right?

MR. CRADDICK: No. Has to be -- we have to check, we'll check and make sure the line is adequate or something like that, inform them. I mean, if they want to just give us a check and say hey, I want to make the reservation and not know whether the line is adequate or not, then they have the chance of losing it.

MR. STARR: Okay. So what happens now, someone goes in, they make their application for reservation, and then David comes back and says you've got to put in 20 miles of pipeline and then the guy comes back and says I'm not -- I can't do it at this time. What happens to that person?

MR. CRADDICK: Then we would give him his check back and he can go home.

MR. STARR: But is he still on the list?

MR. CRADDICK: No.

MR. STARR: Why not?

MR. CRADDICK: Because it says right here "will be treated as a refusal of water service." Those who do that are off the list.

MR. STARR: Well, I don't think that that's really what it says.

MR. NOBRIGA: In order to get one water meter, you still have to fulfill all the rules fairly in effect. So if your transmission line is not sufficient, then you still wouldn't be able to get a meter and you wouldn't be offered the meter by the

department until everything is set up properly.

MR. CRADDICK: Right here, "Applicants on the priority list who are unable to fulfill requirements for service or who refuse water service shall be removed from the list."

MS. BLACK: Define requirements for service.
It's so vague.

MR. CRADDICK: It's in the rules already. You have to have an adequate line, 3.1.

MS. BLACK: Adequate line and what else?
Lateral? What else?

MR. CRADDICK: It's in the rules in 3.1.

MR. NOBRIGA: You guys okay with the thing for da kine?

MR. STARR: Yes.

MR. NOBRIGA: All those in favor, signify by saying aye. Opposed, nay. Motion carries. Okay.

Any other business to be brought before the committee at this time? Okay. The rule will be deferred to the next committee meeting or we define some of the other languages that we were talking about earlier today.

MR. HIRANAGA: I have a couple problems.

MR. NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Like on 16-106-08, waiver modification. I'd suggest making that a super majority rather than just a majority.

MR. NOBRIGA: I'm cool with that.

MR. FUKUSHIMA: Just for point of clarification, Mr. Chairman, we've made all the changes that have been suggested. There aren't any

other changes to be made, I don't believe.

MR. NOBRIGA: You weren't going to help us
work on language for that --

MR. FUKUSHIMA: I thought that we did.

MR. NOBRIGA: We got one more -- we got one
committee meeting before the board meeting anyway, so.

MR. HIRANAGA: You're saying don't make my
comments now?

MR. NOBRIGA: You can make your comments now.

MR. HIRANAGA: That was one comment.

MR. CRADDICK: Is that what you wanted there, Kent?

MR. HIRANAGA: Yeah, something like that. If
super majority is accepted language.

MR. TAGORDA: I have a comment, Mr. Chair.

Before we meet next meeting, I have a concern about this meaning of source development. On page 106-3, this should be coordinated with our Water System Development Fee Rule definitions in this rule. I think by mistake, I guess, the director is trying to put in his idea of retrofitting as a source development and I want it extracted from that provision.

MR. CRADDICK: Where is that, Orlando?

MR. TAGORDA: Right there.

MR. NOBRIGA: I'm not too fond of that myself.

I would suggest we strike that.

MR. TAGORDA: And for this committee to save time and the board to save time, I think we should look into this tabulations here on fixture units. These are really not necessary here.

MR. NOBRIGA: We're striking all that. All that can be stricken.

MR. TAGORDA: I hope it should be stricken.

MR. NOBRIGA: Ultra low flow. It's out.

MR. TAGORDA: Those are very technical things for people not to understand.

MR. HIRANAGA: So Section 16-106-07(b), are you taking that out, too?

MR. NOBRIGA: What was that? The retrofitting part? Yeah.

MR. TAGORDA: And I believe, Mr. Chair --

MR. CRADDICK: Where that was that?

MR. HIRANAGA: 16-106-07(b).

MR. TAGORDA: This is in relation to that 16-106-04(b), I think we should delete that paragraph from up to the 60-day period set forth in Section 16-106 all the way to M, Operation Standards. May I suggest that on the first paragraph which reads "during the period of this rule, additional source for the water system may become available that is not restricted to an applicant providing for additional source development," and I would like to insert that wording or phrase "for specific premise" because you can get your -- assign your -- that's my point why I put that word "for a specific premise." For specific property. Is that all right, corp counsel? Source development for a specific premise.

MR. FUKUSHIMA: I've got to see it. I'm not sure.

MR. NOBRIGA: We have to revisit that after we get some language created.

MR. TAGORDA: I have kind of problem understanding on that Section 16-106-04, Water Service Request. There are two dates that you mention there, March 16, 1993 and November 2, 1994. I think I myself don't know what that complication is all about and I want to delete that to probably just say since then or March 16. Relate that wording instead of two dates you mention there. Because my question is are there applicants within -- from within 1993 to 1994 that's not on that list?

MR. CRADDICK: No.

MR. NOBRIGA: This is a statement of fact, Orlando. On March 16, 1993, the Upcountry water system was found to have insufficient water supply developed for fire protection, domestic irrigation purposes to take on new or additional services without detriment to those already served in the regulated areas. Since November 2nd, 1994, a priority list of applications has been maintained by the department by

date received. That's a statement of fact.

MR. TAGORDA: The date received is a debatable issue. How did the department receive these applications? Is it through telephone, verbal or --

MR. CRADDICK: When we get requests --

MR. TAGORDA: I need to get that specific determination on the date received.

MR. CRADDICK: When we get requests in a letter form, when they come into the office, they're stamped, the time, date that we receive it.

MR. TAGORDA: Is that a standard way of --

MR. CRADDICK: All communication that comes in through the office is done that way -- that comes through my office.

MR. TAGORDA: And not through the dates that's

been on that letter or the application --

MR. CRADDICK: No, it's not the date on the letter.

MR. TAGORDA: I would like to know how you guys determine the date received.

MR. CRADDICK: It's the date when we received it. We stamp them all. They all have a stamp on there and the number.

MR. TAGORDA: So why is it then that on the priority list you have different rates of '93 and go down '94, since you only maintain that list since 1994 up to the publication?

MR. CRADDICK: Because prior to having the list, we still had people queueing up waiting for water.

MR. TAGORDA: Those are all my concerns,

Mr. Chair. Thank you.

MR. NOBRIGA: Okay, Mr. Tagorda.

MR. FUKUSHIMA: Dave, if we could go back to 16-106-08, I don't particularly like the term super majority. It could read "or may by vote of six members waive or modify."

MR. CRADDICK: But if you don't have nine members, then you're going to be in trouble and the charter is meeting now -- charter committee. You could just say two-thirds of those present and that covers the six.

MR. NOBRIGA: No. We don't want two-thirds of those present.

MR. CRADDICK: Well, two-thirds of the entire voting membership of the board.

MR. NOBRIGA: I like the six.

MR. FUKUSHIMA: Because what it is is two-thirds of the members to which the board is entitled to. So if the board is entitled to nine, two-thirds of that is six. That's why I came up with this six members.

MR. CRADDICK: But if it doesn't remain nine, then six would be no good, you would have to go change the rule.

MR. NOBRIGA: That's fine. That would be standard procedure anyway if the board becomes less --

MR. FUKUSHIMA: Maybe that's a good point. May by two-thirds vote waive or modify. Two-thirds vote of its members.

MR. NOBRIGA: Anything else? Are you guys okay with this or you guys want to revisit this on the

13th of November?

MR. HIRANAGA: I would like to see a draft
before --

MR. NOBRIGA: So no further action on this.

The matter is deferred to November 13th to our
committee meeting. Mr. Meyer?

MR. MEYER: Are you going to take up the
question of the agriculture and Hawaiian Homes?

MR. NOBRIGA: Yeah, on the 13th we'll do
something. I have to word another amendment. That's
why I didn't want to pass this out today. Okay.
Meeting is currently adjourned. Thank you everybody.

(WHEREUPON, the meeting was adjourned at 2:47 p.m.)

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