

County of Maui Water  
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Community Center, Uhu Street, Kahului,  
Maui, Hawaii, commencing at 9:00 a.m. on November 20, 2001  
pursuant to Notice.

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

A T T E N D A N C E

Members present:

Peter Rice, Chair

Clark Hashimoto

Howard Nakamura

Jonathan Starr

Orlando Tagorda

Adolf Helm

Kent Hiranaga

Staff present:

David Craddick, Director

Holly Perdido, Fiscal

Fran Nago, Board Secretary

Others present:

Tony Durso

TRANSCRIPT OF PROCEEDINGS

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CHAIRMAN RICE: My watch shows nine o'clock. I'll call to order the regular meeting of the Board of Water Supply, Tuesday, November 20th, 9 a.m. We're at the Kahului Community Center.

Present are board members -- on my right we have Jonathan Starr, Clark Hashimoto, Howard Nakamura, Orlando Tagorda, Fran Nago and Director David Craddick.

We want to welcome AKAKU to our meeting. I hope you enjoy it. I wish everyone a happy Thanksgiving. There's a lot

to be thankful for here on Maui.

Let's move on to the Approval of Minutes of the regular meeting on September 26th and public meetings on October 23rd and 24th. They were distributed with your packets. Board members?

MR. STARR: I move they be accepted and held for 30 days and if no one has any changes or corrections in the 30-day period, then they be accepted.

MR. NAKAMURA: Second.

CHAIRMAN RICE: Motion on the floor to accept minutes open for 30 days and if there's no changes or comments, they be accepted and submitted. Duly seconded. Is there any discussion? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

Testimony from the public. We welcome any testimony from the public, written or oral. Tony?

TONY DURSO: The original item is not until later.

Should I speak now?

CHAIRMAN RICE: You can wait until later, Tony.

Let's move on to Director's Report 01-51.

MR. CRADDICK: This is the East Maui Watershed Protection Agreement with the Nature Conservancy. The budgeted funding that we have in our budget, and you can see the matching funds in here that our funding will be matched with. This is already in our budget.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I move that the request for funds for watershed protection be approved.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Both been moved and seconded to

approve the director's request for participation in the watershed protection agreement. Is there any questions or comments from the board? Mr. Starr?

MR. STARR: My only wish is that I wish it could be more -- because our watersheds are certainly suffering, and I think board members have heard this before, my belief is that the agreements from the state should be adjusted to take care of the needs of the watershed, but that's not our kuleana. That's a state Board of Land and Natural Resources issue.

In the meantime, I'm happy to help fill the gap, but I definitely noted as far as in East Maui where a lot of water comes from -- I'm happy to help out.

CHAIRMAN RICE: Any other comments? Mr. Craddick?

MR. CRADDICK: Just for your information, if you look down on the last paragraph on the bottom of the page there, the nature conservancy is asking for more funding and on a longer term basis than year by year, so they can do long range planning type issues. But we'll deal with them when our budget comes up. That is there for your information. They let

me know.

CHAIRMAN RICE: For the board members' information, when I was on Molokai and Lanai for the watershed signing, we did discuss a potential long-term agreement. So I asked them to submit a proposal for our review. It may be the next budget year; it may be this year.

Any other comments? Questions? Ready for the question? All in favor of the motion to approve the request say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

Mr. Craddick, Director's Report 01-52.

MR. CRADDICK: This item was out of a request from somebody, but because it can be handled within our rules, I made a director's report of it. Basically what happened is somebody made a reservation and got the two six-month extensions, and due to some things beyond their control were

unable to complete the project in the length of two years. And they are asking that the board allow an additional six-month reservation extension.

And under the board's rule 1688 F, the board may do this provided that the strict application of the rule would not cause an absurd, unfair, or an unreasonably harsh result. The applicant's circumstances or conditions are unique or exceptional and the board would grant the same request made by every similarly situated applicant. In cases of exemption -- or reduction of the fee, the resulting financial impact upon the department of future customers acceptable.

In this case they are not asking for an exemption, just an additional six months.

CHAIRMAN RICE: I understand, Mr. Craddick, there's no issue on the fee -- that was unpaid and that would be approved.

Are there any questions from the board? Do you feel like acting on this, board members, or shall -- do you feel comfortable going with committee? It seems a fairly reasonable request to me.

MR. TAGORDA: I have no problem for the request, Mr.

Chair, so I move to approve the request for another six-month extension.

CHAIRMAN RICE: Motion to approve the six-month extension. Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN RICE: There's a second. Any discussion?

Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman -- I have a conflict on this and I will vote on it. I would like to disclose that this particular parcel was sold to the applicant by Wailea Resort Company, but we have no further involvement in the property and so I will vote. Although I feel it's appropriate to disclose that.

CHAIRMAN RICE: Thank you, Mr. Nakamura. Any other comments or questions? All in favor say "aye."



(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

Mr. Craddick, Director's Report 01-53.

MR. CRADDICK: These items here, if you recall here about a week or so ago the governor, as a result of the emergency legislative session, approved the bill that allows projects to basically be awarded with a reduced level of need and following the procurement laws. So what we did is we got a bunch of projects on the agenda here that we feel we could get out quickly, if it were so approved by the board.

CHAIRMAN RICE: Do we have approval from this committee?

MR. NAKAMURA: I think that's --

CHAIRMAN RICE: No objection on the -- I'll refer it to the capital improvement committee.

Mr. Craddick, 01-54.

MR. CRADDICK: This is the actual request for funding from the board. The board has dealt with the resolution -- the council and the past resolution for the revenue bond funding. So everything is in place to go to bid except the actual money and we're asking that the funding be approved.

It is for -- not for pipelines that are on Maui Ranch Estates, but on the area outside of Maui Ranch Estates to provide the area with adequate storage and fire protection. The other funding that's there will replace the lines that are on the Maui Ranch Estates property.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, when this matter was discussed by the board and the committee earlier, there were a certain number of questions regarding the scope of the project, as I recall, particularly from Mr. Starr, and I think it may be appropriate, if time is not a major factor, to refer this back to the committee.

CHAIRMAN RICE: If there's no objection from the members of the board, I'll refer that to the committee on capital improvements. So ordered.

Moving to Communications. Let the record show Kent Hiranaga just walked in. We'll squeeze over and make room. Communication 01-35, it's communication from Council Member Bob Carroll regarding a request for information. This is for your information. And, Mr. Craddick, I trust that you will comply with Mr. Carroll's request and provide him with any information that he needs.

MR. CRADDICK: Yes.

CHAIRMAN RICE: Any other comments from the members of the board? Communication -- yes, Mr. Starr.

MR. STARR: I would like to see what -- a copy of what the director sends Council Member Carroll. I have a problem with not seeing a lot of the communications from the director that have later consequences on us. Including we had requested that his correspondence with the water commission be sent to us whenever that -- as well. Not only this, but any

consequential communications. The board members have a right to see what he is telling people.

CHAIRMAN RICE: Mr. Craddick, please. Thank you.

Communication 01-36. Request from James Judge for the permission utilizing an existing easement, etc. Anyone here representing Mr. Judge? If there's no objection, I will refer that to the committee on rules.

Communication 01-37. Request from Gregg Blue for waiver of the department's requirements for a bed & breakfast. Mr. Blue is not present. I will refer that to the committee on rules.

Communication 01-38. Request from J.P. Schmidt for an appeal. Mr. Schmidt is present.

J.P. SCHMIDT: If the board --

MS. NAGO: Could you move up here, please?

J.P. SCHMIDT: If the board wishes to refer this to committee for discussion, and that's fine. If you have any

particular questions or wish to discuss it now, I'm happy to answer any questions.

CHAIRMAN RICE: Are there any questions from the members of the board at this point? I'm inclined to refer it to the rules committee.

J.P. SCHMIDT: Fine. Thank you.

CHAIRMAN RICE: So ordered.

The last communication is 01-39 from Walter Weber, Jr., that the improvements to the Piiholo Road be accelerated. Mr. Weber? Anyone representing Mr. Weber present? No. Any comments from the members of the committee? Chair apologizes for letting the cell phone ring. I'm going to refer Mr. Weber's request to capital improvements committee.

MR. CRADDICK: That's finance capital committee.

CHAIRMAN RICE: Finance capital committee.

Regarding the waterline project, I think it has improvements. We'll move on to Committee Reports, Finance

Committee. The finance committee did meet and we did talk with representative -- Mr. Erdman, and I think Tony is here. You want to say anything at this point, Tony?

TONY DURSO: I would like to, yes. Tony Durso for Ulupalakula Ranch. Good morning, Mr. Chairman and members of the board. Thank you for the opportunity to say a few words.

I'm just following up on -- staying in touch with you folks on this issue, hoping that the conversations that were done during the committee meeting continue and some action be taken on this. At that finance committee meeting, I'm sure Mr. Chair will bring that to light, but basically what was recommended, that a study be made to assess the impact and that that study be expedited. Also some money be provided for leak detection.

The ranch is extremely happy that those steps would likely be taken, but we still do have concerns. We concur with Mr. Nobriga's statements made at that meeting, that many studies have been done in the past; they have not necessarily led to action despite the time and money invested. So we want to make sure we go somewhere this time.

What we respectfully request, perhaps in addition to the study, is that a time line be developed in conjunction with and made known to the concerned parties. That's all the members in this community, the department, the board, the public in general and the ranch. We would like to be able to participate in that and then have something more concrete just in terms of then setting out a general time when the study is completed.

To update you on a situation on how this is affecting the ranch, just today one of our cowboys came down and said, Hey, look, troughs are not filling up, we have a herd in our corn-land pastures and they are currently in the paddock rotation, which they are in corn-land 3.

Although our water need is only 26 percent of that meter that feeds that trough, the trough was empty. That's the situation we're in. The troughs that we have, even though we need only 26 percent of what we should be able to draw on that meter, we're not getting anything.

So the emphasis on that is just to say this is a problem, we really would like to see the situation expedited as far as the study, and then moving towards -- as quickly as possible towards finding some sort of long-lasting solution.

CHAIRMAN RICE: Thank you, Tony.

Any other comments from the public? Members of the board? Mr. Starr?

MR. STARR: Mr. Chair, I want to, first of all, apologize, I was not able to attend that committee meeting. I had a personal obligation to be somewhere else. I did want to make a comment relating to it in that I would also like to see this project go as quickly as possible, but I feel that we should do it right.

I think we should keep in mind that Kahikinui is out there. There's about 120 families that are homesteading out there on Hawaiian Homelands and we should keep in mind the possibility at a later date of being able to provide some kind of service, probably not maybe full fire protection and everything else, but at least some amount of service to those people.

In doing that, you know, if we need to go on the larger size when we design this line, we should take Kahikinui into account. Because I'm sure at some point the board will



want to provide water service out there. I'm not sure if the consultant is taking Kahikinui into account or not in doing their job.

CHAIRMAN RICE: Any other comments, members of the board?

Tony, you are at the meeting and we realize the critical nature of your situation. We also realize the need to do this study to take into account things like Kahikinui. So we are going to move with due haste on the study, and I think your request for a time line is appropriate and we can provide that for you.

In the meantime, we did discuss the fact that there were many occasions that leaks occurred in that line, and the other request from the committee to the board is that we consider funding whatever department may need to do more regular checks of that line. Because if there is a leak and it goes down, it takes awhile to get it repaired.

So there's no action needed at this point, but the staff knows that they need to come back to us with some kind of proposal on what that cost might be so the appropriate committee may consider it. Anything else on that, members the board?

We had a few glitches in our committee meetings; we had a few unexpected situations come up and several meetings did not take place, so those issues will get handled within the next month, along with the referrals from this meeting.

I'm going to move on to Old Business, the Water System Development Fee Rule. We have got two steps here, we've got the schedule of fees and got the rule itself.

Mr. Craddick?

MR. CRADDICK: On page 49 there's the fee schedule that we had been working on and went to public hearing on. If approvable (sic) to the board today and in light of the changes that are being made on the other rule, we are ready to go out, send this to the mayor for further action.

One section that has been changed is, if you noticed we now have the table of contents on the front and there's an item "return of fees" added in there, and that's on page 51. And I would have to ask that this be -- if the board sees fit to approve it today, subject to one final review by corp counsel.

Because this return of fees is not under HRS 54;

it's under the impact fee portion of the Hawaii Revised Statutes. Where it says we have to return the fees and under what conditions they have to be returned. And I will leave it at that. So this action that you see all in bold on page 51 has all been added in, but it is required by law.

CHAIRMAN RICE: On the actual rule itself, Mr. Craddick, I think one of the changes to the fee schedule that was unproposed, there was public testimony and we made adjustments to the actual rule based on that public testimony; is that not correct?

MR. CRADDICK: Yes.

CHAIRMAN RICE: Those changes were?

MR. CRADDICK: Basically to defer the payment for one time through the list for everybody Upcountry. That's on the priority list.

CHAIRMAN RICE: Mr. Starr, you raised your hand.

MR. STARR: Yes. I have a little bit of a problem with this. One is that some very major language has been added in without the rules committee having seen it after it had gone to public hearing, and I'm not sure if it's substantive or not, or if it's something the director is trying to stick in without anyone really taking a good look at it. So I think whatever it is, if it is mandated by law, I think we need to take a look at it and make sure that it is consistent.

Second of all, as I remember it, there was a lot of comment at public hearing about the Upcountry list people, and I think we kind of -- it was kind of said over and over again that we would not have support in the council or probably anywhere else if we don't take into account the people who have been waiting on the list.

Now, that has not been -- that's not been taken into account in this rule here; that was going to be taken into account on the other portion of the rule which we were not able to act on yet. So what will happen, we're setting ourselves up for failure or the director is setting us up for failure by trying to get us to pass out this portion without the other portion. Even though he says it's in here, it's not in here.

And basically if this goes to council it will fail.

Because this has been explained to us by at least one council member, all they have the ability to do is pass or fail; they don't have the ability to alter. So I really think we ought to hold on to this until the other portion of the wording is in place so that everyone knows that we intend to make an adjustment for the waiting list people. And also this -- half the wording in this thing is brand-new. I never even seen it before, this return of fee stuff.

CHAIRMAN RICE: Just a point of clarification, Jonathan, return of fees was added by Howard Fukushima.

MR. STARR: I don't care if it was added by God.

CHAIRMAN RICE: I'm just saying that the --

MR. STARR: The committee and the board members should have the opportunity to look at it.

CHAIRMAN RICE: It doesn't appear -- the whole text of the rule is not here.

MR. CRADDICK: No. This is just what went out to public hearing under the development fee. The other portion I don't think the committee completed their work on it, and the reason this is here is again the timing issue.

If the other rule has not gone out to public hearing, it would be minimum 60 days, probably 90 days before the board finishes with that. 90 days will take us well into the next year, in which case the council will probably not be able to deal with this. The quicker we can deal with this, the more likely we are of getting it approved.

CHAIRMAN RICE: I don't know. I think Mr. Starr's point is a good one. We heard that there needed to be provisions for the Upcountry list people before we can get it approved. So if we have language to that affect that the committee worked on, it would seem to make sense to include it with the submittal. That's my opinion. I don't know what the rest of the board members think.

MR. TAGORDA: Mr. Chair, may I speak?

CHAIRMAN RICE: Yes.

MR. TAGORDA: This is a lengthy addition to the rule and I think it should be referred back to the rules committee. Because the fees, I don't think we even discussed this. It's a new insertion by the director.

CHAIRMAN RICE: Corp counsel, Tracy Villarosa.

MS. FUJITA VILLAROSA: Thank you, Mr. Chair. If this section, this return of fee section, is in fact taken out of Hawaii Revised Statutes, then it's not a substantive change, because the Hawaii Revised Statutes would apply regardless. The rules can't deviate from HRS.

So I believe if what Mr. Craddick is saying is true, then I believe we need to double-check the site at the bottom of this new language, the authority on the implementation citation, to make sure that is accurate. But if it is in fact taken out of HRS, then I believe Howard just added it in for convenience for the public so they would not have to refer back to the Hawaii Revised Statutes when looking at the rules. So

whether it's in here or it's not in here, it still applies.

It's sort of -- we often will add in sections from the Hawaii Revised Statutes into our administrative rules just for ease of public use, but if it's not in here, it still applies. I would not consider it a substantive change, but it does need to be reviewed by our office to make sure that that citation is correct.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: There is one thing I would like to change -- it says the applicant must petition the Department of Finance for the refund, I'm not sure it should say that the applicant must petition the Board of Water Supply for the refund.

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

MR. STARR: Mr. Chair, I can't believe that this is something taken out of HRS directly when it talks about the water system development fee and so on. I think that even if



it is required, we need to look at it. And just as the director said, he just found a mistake in it, that the wrong entity would be petitioned for a refund.

But more substantively, we do need to take into account the Upcountry list people. It could be done as part of this or it could be done as part of the other rule. But if by passing this out or sending it with the other one many months behind it, we would be making a statement that we're not going to take care of the list people, which I think we need to do. So I would like to recommend this go back to committee one more time to see if we can hash this out.

CHAIRMAN RICE: Gentlemen, everybody is nodding their head. So ordered.

We're moving on. Source adequacy Upcountry.

MR. NAKAMURA: Mr. Chairman, I would like to apologize to the members of the board for not being able to attend the last Committee of the Whole meeting when this was scheduled to be discussed; consequently, there was a lack of quorum. There were some compelling reasons for that.

I did have some thoughts on it. I had discussed

this matter with David in the context of his analysis.

However, it may be more appropriate, since the rule is still being worked on, to consider this in the Committee of the Whole. Although if it's the desire of the board to discuss it today, we can do so. I have no choice, I would rather -- no preference one way or the other.

CHAIRMAN RICE: Well, what we're talking about here is a three-step process for Upcountry: one is to deal with the drought emergency declaration; one is to deal with adequacy Upcountry; and then of course that would lead us to issuing permits to everyone Upcountry in dealing with the list. Getting rid of the list, actually. What's the pleasure of this body? I think these three steps need to be followed.

Mr. Starr?

MR. STARR: The last form that I saw the paperwork on this, I had a problem with it, because it took into account the Hamakuapoko wells. And I was looking forward to having a shot at it in committee, because I would like to proceed with it and I think we're pretty much all on one page as far as the

way the system really is in terms of what water is available.

But to me it's very important that we not take Hamakuapoko anywhere into consideration in our findings. So I think maybe we better put it back to committee unless we want to have that all out here today.

MR. NAKAMURA: No objection to going back to committee, Mr. Chair.

CHAIRMAN RICE: Any other comments? Okay then, we'll have this referred back to the Committee of the Whole. Let's get a day we can all meet and hash it out. Yes, Mr. Starr.

MR. STARR: Mr. Chair, while we're on the matter of source of adequacy Upcountry. I really feel that it's time for us to end the declaration of drought emergency, and I would like to once again make a motion to end the condition of drought emergency that we have been in for quite a few months.

MR. TAGORDA: I second.

CHAIRMAN RICE: It's been moved and seconded to move out of the emergency drought declaration. Is that the correct terminology, Mr. Craddick?

MR. CRADDICK: Yes, that's correct.

CHAIRMAN RICE: You want to make any comments on that?

MR. CRADDICK: I don't know if he is saying he is taking Hamakuapoko out of the mix.

CHAIRMAN RICE: That's a different issue. That's an issue we'll take up with the Committee of the Whole.

MR. CRADDICK: Well, the reservoirs -- 94 percent, Waikamoi, Kahakapao are about 97 percent. Actually, I take that back, Kahakapao is at that. Waikamoi is 60 percent. And the ditch is running about 47 percent. 94 million gallons a day. Not having any definition of what the drought is under the MOU, we're certainly not in a situation where we need to use Hamakuapoko wells.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, just to comment. I believe that it will preclude our use of Hamakuapoko wells. However, if we need to declare a drought emergency again, if we have a drought emergency I would be happy to be the one to make that motion and we can schedule a special emergency meeting or something.

But I do feel that it is wrong to remain in a state of drought emergency when everything is full. We have a hundred million gallons -- the reservoirs are full. I feel that does not allow us to declare an emergency. If we have an emergency, it's crying wolf. I would rather not be able to say drought emergency unless we really are.

I hope that we can end the drought emergency for now and then if we need to at a later date because we have a drought, we can go into a state of emergency, but not remain in the state of emergency even when there's no more drought and everything is full.

CHAIRMAN RICE: Yes, Clark.

MR. HASHIMOTO: May I make a comment. The watersheds might be full, but the Ulupalakua, Kula, those regions are very, very dry. I would have a little bit of a reluctancy to call it. Because if you look at Rice Park it's brown. We're having rain maybe at the watershed, but in the areas past it, it's still very, very dry.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: I tend to agree with Mr. Hashimoto. Further, since we're discussing the whole issue of adequacy of source Upcountry back in committee, where we'll have an opportunity to review Mr. Craddick's -- some of Mr. Craddick's findings, I do think it's premature.

Secondly, I would like to ask corp counsel if it's appropriate to take this action, being that it's not on the agenda.

CHAIRMAN RICE: We have discussed it on this issue several times. Any other comments? Kent?

MR. HIRANAGA: Mr. Chair, I guess for me I would prefer that some type of quantitative or objective criteria be provided that defines when there is a drought versus when there is not a drought. If we have those, that those be made available. I presently don't know when there is a drought and when there isn't a drought.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: This goes back to when the -- the board still has not rescinded our drought guidelines resolution, but we had the restraining order that was threatened to be filed on the board and we basically have not been using those drought lines under advice from corp counsel anymore, so there is no criteria for a drought right now that the board has set for us.

I would wholeheartedly agree with board members on all those comments, that we have some kind of guidelines that would help us -- we have the MOU which is kind of an agreement where we have some kind of drought guidelines in there, when we are supposed to run the wells and stuff like that, but it

really --

CHAIRMAN RICE: That's the third part.

MR. CRADDICK: That's correct.

MR. TAGORDA: Few comments, Mr. Chair. Ending of drought declaration to normal condition depending on report of the director and levels of reservoirs, and not dependent on Hamakuapoko wells. If the ditch are high, if I remember right, and your reservoirs are full or 90 percent capacity full, then the drought emergency ends.

So like Jonathan said, a special meeting can be convened for the board to declare a drought emergency. But it looks like for the past months now, we are so dependent on Hamakuapoko wells and that should not be the case. This is becoming a determinant whether the Board of Water Supply could end the drought declaration or not.

Let's remove that notion from our mind that Hamakuapoko wells is not going to help us. We're just borrowing that water, Mr. Craddick.



So I think at this time, Mr. Chair, we should be ending the drought emergency and back to normal condition because of all those factors that I mentioned. Ditch level is high. I think we get enough rain behind East Maui mountain. Waikamoi is 90 percent full. All reservoirs Upcountry are 90 percent full, so that's your determinant, and not because of Hamakuapoko wells.

CHAIRMAN RICE: The only problem I see, Mr. Tagorda, it doesn't appear you have enough votes. I would appeal to the maker of the motion to consider that this be discussed in the next Committee of the Whole under Upcountry and we take some action on it.

MR. STARR: I prefer to call the question, because I feel we're doing the wrong thing by staying in the state of emergency. To me an emergency is an emergency. And we are in a drought, I don't disagree with that, there are dry conditions. But emergency -- I feel that emergency in martial law is starting to be taken a little too lightly to be able to do anything, you know, overrule a court's decision and so on with it.

I do feel we should not be in a declared state of emergency when our reservoirs are full. That makes us look rather foolish to the rest of the community. So I'll be happy to lose the vote, but I would like to see it come to a vote.

CHAIRMAN RICE: Any other comments? Okay, we're going to have to call the vote. Those in favor of the motion to end the drought emergency raise your hands.

Those opposed? Motion does not carry.

Resolution confirming the committees of the Board of Water Supply. There was a handout that came later. Fran, everyone got this in the mail; is that right?

MS. NAGO: I believe so.

CHAIRMAN RICE: Committees have been established.

This is just a formal resolution identifying the committees as we have already identified them. And is there anybody who has a problem with this? Mr. Starr?

MR. STARR: I just would like a clarification. It

wasn't too long ago when corp counsel told us that resolutions weren't worth the paper they were written on and we were receiving advice regularly that we shouldn't do anything unless there was rule making.

I just would like clarification over whether this is a meaningful act we're doing or whether corp counsel is going to come back and tell us that we should have done rule making to make the committee -- which to my mind that would be foolishness, but I would like to hear what corp counsel's comment on this is.

CHAIRMAN RICE: It's similar to my question, because it's my understanding, according to Roberts Rule -- the chairman signs the -- he has done so.

MS. FUJITA VILLAROSA: Resolutions from the board are, I guess, formally from what I understand in the past, that membership of the committees have been unclear, and so Howard Fukushima discussed this with me and said that the reason for the resolution was just to clarify the membership and to, I guess, add a little bit of formality to it.

But this is an organizing document of the board. It

doesn't need to be done by a resolution. The chair can just state it on the record, and that's how other boards of commission operate. I guess for some reason, maybe because you have more committees than other boards and commissions, for some reason the membership has been unclear in the past and even -- I guess it's misstated on the record, it was still unclear.

So Howard thought the resolution might be a good vehicle to make it really clear who the membership on the committees are and the term, etc. But it doesn't need to be done by resolution. It is true that if you -- in particular, if the board is trying to inform the public about doing something, that they do need to pass a rule for that.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Mr. Chair, in the Committee of the Whole, there appears to be an omission of a member, because I only count seven members and we have one vacancy.

CHAIRMAN RICE: Jonathan is missing. Okay.

MR. NAKAMURA: In the rules committee, Jonathan's name is misspelled.

MR. STARR: Mr. Chair, apart from the fact that my name is misspelled, I don't like this. I think what this is going to do is limit the periphery of the committees, and I would much rather just have -- the chair is empowered to appoint the committees, and I would just prefer that the chair read the committees on to the record rather than going through the resolution which is not binding; however, it will be used to limit what the committee is going to do. And it's wrong as presented to us as well.

CHAIRMAN RICE: Do we file the action?

MR. CRADDICK: Peter, I think I --

CHAIRMAN RICE: You don't want to give us legal advice? That's probably a good idea.

MR. CRADDICK: It's not to not only name the

committee, but outline what they do. It's a statutory requirement.

CHAIRMAN RICE: That's not what we just heard from corp counsel.

MR. CRADDICK: I think you have to say what the committee is supposed to be doing. However you do that, whether it needs to be done by resolution, but I think that's the part that has not been clear in the past, and this certainly clears it up. Although it may be somewhat restrictive. But if there's additional --

CHAIRMAN RICE: There appears to be sufficient questions about this. Without objection from the members of the board, I'm going to defer this. Gentlemen, no objection on this? Fine.

Okay, moving through the agenda. We're on Communication 01-29. Communication from Attorney Isaac Hall regarding protocol for the test well in Haiku. Board members, for your information, at this point I would like to make it

clear for the director and the board that in a case where we have legal action pending or in process, the communications with legal counsel goes through corp counsel.

I don't want staff to direct their writing, communicating to legal counsel when we have issues at hand. They should be directed to corp counsel. And hereafter we will not write letters to any other counsel, and I would ask that corp counsel take the file and review it and prepare the appropriate response on behalf of the board. If there's no objection from members of the board, so ordered.

Yes, Mr. Starr, you want to make a comment?

MR. STARR: I don't have a comment on the communication, but I just want to be clear that as that well is being drilled, you know, there is a notation of a water level of how much water is sitting in the well at the beginning of the day. I believe that's happening, but I just want an affirmation by the director that that is taking place.

MR. CRADDICK: To my knowledge, that's taking place.

MR. STARR: Thank you.

CHAIRMAN RICE: There was a request by Mr. Starr at the last meeting, I believe.

Okay. That's it for Communications. We're going to move into Other Business at this time. Discussion/possible action regarding Department of Water Supply Draft Audit Report and Management letter. I don't see our fiscal officer here, Mike Quinn. Holly, are you prepared to say anything with regards to this?

MR. CRADDICK: Our comments are on page 57.

CHAIRMAN RICE: Did people not get this? Boards members have not received this yet? No. I thought it was in the packet.

MS. NAGO: That's another draft.

MR. CRADDICK: If it's revised, they misspelled the DBCP and there are some things about claims added in there. It's not substantial changes.



CHAIRMAN RICE: So this is a revised copy. And the changes in here were --

MS. NAGO: The changes are highlighted.

CHAIRMAN RICE: Holly, do you have anything to say?

MS. PERDIDO: I think the only changes in the new audit was for the claims that we got from corp counsel, the final claims that we had to change, and then like Dave said, a few misspellings. Overall, the audit went really well; we're Happy with it. Thanks to all the staff who worked hard for it.

MR. CRADDICK: The first time in ten years we never had any remark from the auditors on any deficiencies or Comments rather. I shouldn't say deficiencies, but comments. So I would like to say good note of accommodation to the fiscal people with dealing with the audit there.

CHAIRMAN RICE: Any questions from the members of the board? Mr. Starr?

MR. STARR: When we worked on the financial, there was a footnote that stated that we know we should be creating a higher reserve for the system deterioration and that we're not keeping up with it. I wonder if there was any comment, or how that was taken into account in the audit.

CHAIRMAN RICE: Isn't the requirement -- what do you guys call it -- the new requirements for the reserve --

MR. CRADDICK: An appreciation is in here.

CHAIRMAN RICE: For this year gone forward, right, it will be in the notes in the subsequent audit; right?

MS. PERDIDO: It will take effect this fiscal year.

CHAIRMAN RICE: Then this audit will take place in this fiscal year.

MR. STARR: We created a note --

CHAIRMAN RICE: For this year's budget.

MR. STARR: This is last year. I'm sorry, I thought you were behind the times there.

CHAIRMAN RICE: Any questions from the board members? I think it would be appropriate to have a motion to accept the audit.

MR. NAKAMURA: So moved.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded to accept the audit as revised. Any questions or comments? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Thank you.

Update on water issues discussed at public meetings,

since the last meeting.

MR. CRADDICK: I guess the most important one what's going on is the designation of the Iao aquifer and the process. The commission voted to continue the process, which means they go to a public hearing within 90 days and during that time, they consult with the mayor, council, and the board on the matter, and after that they would then make a decision to designate or not designate.

CHAIRMAN RICE: Board members? Mr. Starr?

MR. STARR: I would like to make sure that the board members receive copies of any communications from the director with regard to this that it has or will send to the commissioner.

CHAIRMAN RICE: I think that in prior meetings -- I don't know that the board has taken a position on the designation, and I don't know if the board is comfortable with the process whereby the commission would proceed to designate

Iao aquifer. Mr. Starr, I believe, has testified in favor of such a designation personally.

MR. STARR: As an individual, yes.

CHAIRMAN RICE: We have no comment. Mr. Craddick?

MR. CRADDICK: I believe the board set up a committee to review the items dealing with the Iao aquifer, of which you were the committee of one on that. So I would think it would be appropriate to meet and discuss some of the issues that came up in this; namely, the spreading of the pumping.

Because I think everybody kind of was of the opinion that if the pumping did not get spread out they would never be able to obtain 20 of the Iao aquifer. So I believe that is going to be important, giving the commission some level of understanding that we are proceeding in that direction.

CHAIRMAN RICE: Can I recommend -- I don't know if I'm a committee of one. The only committee of one that was created was for me to investigate the source. I think that it probably is appropriate for the Committee of the Whole -- we'll

be meeting and distribute to all board members that information, so that we can have that discussion during the Committee of the Whole. I think that would be appropriate. Yes, Mr. Craddick.

MR. CRADDICK: This is a side issue, not really a public meeting. But we got a letter from the state Department of Health thanking us for our quick and responsive -- quick, positive response, their solicitation for support and participation of their project related to the rainfall frequency -- and with our quick response, they said we will be No. 2 on the list and have the data updated for Maui. Just to let the board members know that.

CHAIRMAN RICE: Also, one other thing, I believe it falls under public meeting. The county council took up our proposal for outside counsel to proceed with our negotiations on the purchase of the Wailuku Ag properties, so we have approval to hire Bill Tam and we're moving forward -- Bill will supply us with contracts. So that's moving ahead.

MR. CRADDICK: And the approved resolution for the issuance of the revenue bond to back the loan --

MR. STARR: Mr. Chair, I'm happy to see that went through the council. I asked for staff to inform me when that was going to go to council. As usual, staff did not inform me. So I would have liked to have been there in support, but staff did not let me know when it came up.

Once again, I humbly request our director and staff to let board members know when items relating to the board go to the council or are involved in other public meetings. I think that's a courtesy that you should extend to us.

CHAIRMAN RICE: Let's get that handled in a more efficient manner, because we seem to have that come up quite often.

MR. HIRANAGA: Mr. Chair, may I suggest some type of a bulletin be e-mailed or created.

CHAIRMAN RICE: That sounds good.

Last item on the agenda is the monthly Division Reports. Members of the board, any questions or comments on

that at this point, to the director or staff?

MR. HIRANAGA: Mr. Chair, I just have one comment.

The first report, field operations, for myself I guess it would be helpful if whoever prepared this report would identify himself on the report.

MR. CRADDICK: Up at the top.

MR. HIRANAGA: Where is this name?

MR. CRADDICK: Field operations division.

MR. HIRANAGA: Maybe he can type his name in.

CHAIRMAN RICE: Yes, Mr. Starr.

MR. STARR: Interesting note here, in August we pumped over 19 1/2 million gallons a day out of Iao. For September, again well over 18. Surprised to keep seeing the big numbers.



MR. CRADDICK: September or August?

MR. STARR: August I see 19 1/2, 19.476. And  
September 18.267 million gallons a day.

CHAIRMAN RICE: Any other comments?

MR. STARR: Can we get an update on what's happening  
with the Waikapu well?

MR. CRADDICK: You'll see something on the agenda  
next month. There's --

CHAIRMAN RICE: Why don't you include that in the  
information and distribute it to the board members for the  
Committee of the Whole meeting and we can discuss it then.

MR. CRADDICK: Committee of the Whole, or -- okay.

CHAIRMAN RICE: Okay. Mr. Nakamura?

MR. NAKAMURA: One other question. David, I notice in the report from water resources and planning, basically the activity that's cited is a review of five discretionary submittals of permits. I would assume there are other planning related activities that have taken place, and I would suggest that those be included. If they have not been taken place, I think that they should be taking place.

CHAIRMAN RICE: Anything else from the members of the board? Are there any other issues to be brought before the board at this time? Hearing none, I'll entertain a motion to adjourn.

MR. STARR: So moved.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: All in favor say "aye."

(A chorus of ayes.)

Opposed?

(No response.)

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

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