

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

RULES COMMITTEE

Taken at the Kalana O Maui, County Building, Fifth Floor,
Office of David Craddick, Director, Board of Water Supply, 200
South High Street, Wailuku, Maui, Hawaii, commencing at 9:00
a.m., on December 21, 2001.

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

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A T T E N D A N C E

CHAIRPERSON: MICHAEL NOBRIGA

BOARD MEMBERS: KENT HIRANAGA

JONATHAN STARR

ORLANDO TAGORDA

DIRECTOR DAVID CRADDICK

DEPUTY DIRECTOR GEORGE TENGAN

DEPUTY CORPORATION COUNSEL: ED KUSHI

BOARD SECRETARY: FRAN NAGO

FISCAL OFFICER: MICHAEL QUINN

ENGINEERING: HERBERT KOGASAKA

ALSO PRESENT: RICHARD MAYER

ELLIOTT KRASH

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

RULES COMMITTEE MEETING

DECEMBER 21, 2001, 9:00 A.M.

CHAIRMAN NOBRIGA: Ladies and gentlemen, we will reconvene the committee on rules of the Department of Water Supply. We have reconvened in the office of the Director of the department, Mr. Craddick. In attendance we have committee member Jonathan Starr, Orlando Tagorda, and myself, Michael Nobriga, Fran Nago, our secretary of the Board, and other

members that shall be duly noted.

First order of business is we pick up where we left off on proposed amendments to the Water System Development Fee Rule 16-8. Does everybody have a copy of the proposed rule as amended with them?

MR. CRADDICK: This is which one, Mike, that you are doing right now, the meter?

MR. STARR: The fee only portion.

MR. CRADDICK: The one you have is not this one.

The one you have in your hand is not this one, it's this one right here (indicating).

CHAIRMAN NOBRIGA: This is what we are taking up, though.

MR. CRADDICK: That's why I asked you if you wanted to take that one up first.

CHAIRMAN NOBRIGA: The fee schedule was already voted out. Sorry.

MS. NAGO: So we are not going to discuss this fee schedule portion?

CHAIRMAN NOBRIGA: No, that's pau already. That was handled in Kent's committee.

MR. CRADDICK: What did you say, the meter or the development fee?

MS. NAGO: The development fee he's going to go on.

CHAIRMAN NOBRIGA: Amendments to the Water System Development Fee Rule 16-8, Title 16. Board of Water Supply, County of Maui, Chapter 8, Water System Development Fees, that one.

Okay, on the first page of the document we start with a table of contents, followed by Section 16-8-1 titled "Purpose," Section 16-8-2 called the "Definitions." Moving to page 2 toward the lower center of the page we have an additional proposal entitled "Distribution System," which

reads, "Means the water pipelines used to bring water from the transmission system or storage tank to an individual water service lateral and public fire hydrants. Transmission systems that currently provide this function shall not be construed to be distribution systems."

I am not sure if we need the S to systems in the last sentence.

MR. TAGORDA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: Those highlighted darkened sentences or letters, are those the new changes to the Water System Development Fee?

MR. CRADDICK: Yes.

CHAIRMAN NOBRIGA: Let me preface to explain that sections normally that are within parenthesis are considered deleted sections. Sections that are underlined and in bold print in most cases are proposed additions. Mr. Tagorda?

MR. TAGORDA: I'd like to follow up my point of clarification, Mr. Chair.

CHAIRMAN NOBRIGA: Yes, sir.

MR. TAGORDA: Is this definition of distribution systems in the Water System Development Fee Rule in concurrence with our Department of Water rules and regulations?

MR. CRADDICK: It doesn't have a definition in there.

MR. TAGORDA: It doesn't have a definition in the rules and regulations?

MR. CRADDICK: This was recommended by Corp Counsel to put this in because we talk about it all the time, and it wasn't in there so we put one in. It does talk in the rule about distribution.

MR. TAGORDA: I just want to make sure that we have

those definitions all defined well in all the different rules that we have.

CHAIRMAN NOBRIGA: Thank you. We will note that so that when the Rules Committee reviews the full rules section we will make a note to add this as well to our overall rules.

MR. TAGORDA: Thank you, Mr. Chair.

CHAIRMAN NOBRIGA: Thank you, Mr. Tagorda. Mr. Starr?

MR. STARR: Yes, am I correct in that there was no previous wording there that has been removed?

MR. CRADDICK: No, it wasn't, it just never was.

All in the rule that it talks about is mains. You are talking about a main distribution system or a main transmission line. You could never distinguish.

CHAIRMAN NOBRIGA: I'd like at this time to note the attendance of our esteemed Counsel, Mr. Kushi.

Okay, moving on, ladies and gentlemen, to the --

MR. TAGORDA: Mr. Chair, can I interject a little bit, Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: Not taking so much of our time here.

The transmission system in that last sentence there, would you prefer to omit that so you don't confuse the definition of the distribution system?

MR. CRADDICK: No, we have used transmission systems as distribution systems, and we don't want people to say just because that occurred therefore it makes it a distribution system. The entire Upper Kula line has services directly off the transmission line. They should have never been given -- we can't cry over spilt milk, they're there, but just because that happened doesn't make it a distribution system, it's still a transmission system.

CHAIRMAN NOBRIGA: There is a definition for

transmission systems.

MR. TAGORDA: That's why not to confuse a lot of people we just have to get rid of that transmission system that currently provides "this function shall not be construed to be a distribution system." You define distribution system very specifically on that rule. Why do you have to put in a word that will confuse?

MR. CRADDICK: Because people have, for whatever reason, have allowed connections to transmission systems. The rules don't really allow it. It has to be connected to a distribution system, that's what the rules say. Why they did that before in the past, I don't know. They did it, it's a big problem.

MR. TAGORDA: Thank you.

CHAIRMAN NOBRIGA: Toward the bottom of the page, ladies and gentlemen, there is a proposal to include under Source Development. It currently reads, "Means the construction of any structure to capture, convey, store, and

treat currently utilized non-potable surface waters; the construction of facilities for" -- and insert the words "currently unutilized groundwater and its treatment; including pumps, motor control stations, pump control tanks; the construction of desalination facilities," inserting the words "or any other technique which provides or recaptures State Department of Health acceptable water," and then continues, "and any easements required for the improvements."

Any comments or discussion on this proposal?

(No response).

Very good, can we move on to page three.

MR. CRADDICK: There's one other one, Mike, the peak hour.

MR. QUINN: That's on page three.

MR. CRADDICK: To make sure people don't confuse that with max day. Max day is not peak hour demand. Peak hour demand is usually around three times average day.

CHAIRMAN NOBRIGA: I'm sorry, I just do not see that

at all in here.

MR. CRADDICK: Storage tank.

MR. QUINN: The very top on page three, the first sentence on page three.

CHAIRMAN NOBRIGA: Okay, okay, I'm sorry. I have got it now. The top of the page under the terms "Storage Tank." Currently it reads, "Means a reservoir to store water for peak flow," proposing to insert the word "hour" after peak. So the definition shall read, "Storage tank means a reservoir to store water for peak-hour flow, and any easements required for the improvements." Yes, Mr. Starr?

MR. STARR: If we are going to change the definition of storage tank, why don't you add in chlorine disinfection contact time as well, because a lot of times that's what you are using them for.

MR. CRADDICK: That actually would be like a pump control tank or a clear well. So out in the storage system or

out in the distribution system where these storage tanks are, you would never have that.

MR. STARR: We know a lot of them serve a dual purpose, a lot of the tanks serve a dual purpose, like at the Kapakalua well.

MR. CRADDICK: That's right. But let's see here. See this right here, this portion right here, pump control tanks. That would be where you would put in what you are talking about, pump control tank or disinfection tank is part of the source development.

MR. STARR: Okay.

MR. CRADDICK: Do you want to put that in here? I mean it's a good idea, I don't mind.

MR. STARR: Sure.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: That's all right.

CHAIRMAN NOBRIGA: Very good. Thank you, Mr. Craddick.

Hello, Mr. Hiranaga. May the record reflect the arrival of committee member/board member Kent Hiranaga. Kent, we are currently on page three of the Water System Development Fee Rule 16-8, proceeding page by page, reviewing the proposed amendments as well as any proposed deletions and substitutions.

On page three this was a change previously recommended and went forward, but toward the middle of the page under Water System Development Fee it reads, "Means a monetary charge," which is suggested to be removed and the word "rate" replacing that word, "imposed on any applicant to fund a portion of costs to construct water system improvements," et cetera.

MR. CRADDICK: Where is that, Mike, that you are reading?

CHAIRMAN NOBRIGA: Under "Water System Development Fee means a monetary charge," which was removed, and State's definition of an impact fee and that this fee is a recoupment, just so it's very, very clear, you know, and nobody has any questions about it?

MR. TAGORDA: I think it's just a state law, in fact. We should just apply.

MR. CRADDICK: No, but let me ask this, Orlando. Do you understand a recoupment fee is a recoupment of money already spent, do you understand that?

MR. TAGORDA: Recoupment?

MR. CRADDICK: If you don't understand that, I'll guarantee you the rest of the community doesn't understand that.

MR. TAGORDA: How are you going to define recoupment, are you going to define that one too?

MR. CRADDICK: We can.

MR. TAGORDA: On HRS. That is being considered already in the HRS state law. Why do you have to put some new definition there?

MR. QUINN: Should we site that authority?

MR. STARR: I actually like that, because I mean that's what they're doing, is they're paying back the money that we spent in advance.

CHAIRMAN NOBRIGA: I like that too. Should we put that in definitions?

MR. QUINN: It's the definition right out of the state, exactly word-for-word.

MR. KUSHI: Mr. Chair, hold on.

CHAIRMAN NOBRIGA: Yes, Mr. Kushi.

MR. CRADDICK: We are on page three on the definition, Water System Development Fee.

MR. KUSHI: Right.

MR. CRADDICK: You're looking at the schedule, I think. We are not dealing with that one at all.

MR. KUSHI: Well, see, the problem is what went to public hearing.

MR. CRADDICK: This hasn't gone to public hearing. This is this one right here, it hasn't gone to public hearing.

MR. KUSHI: You want to put this return of fees section in, the proposed return of fees section?

MR. CRADDICK: No. We are talking about on the definition here of the water development fee, putting in the fact that this is an impact fee under HRS Chapter 46, and

whatever it says there under impact fee.

MR. KUSHI: Well, Mr. Chair, if I may.

CHAIRMAN NOBRIGA: Yes, Mr. Kushi, please continue.

MR. KUSHI: This is coming out very verbal, there's no draft that I prepared or was requested to prepare and I would recommend you don't act on it.

MR. CRADDICK: Ed, this is to go to public hearing.

MR. KUSHI: Mr. Chair, again, if you don't know what it says and I don't know what it says, they sure don't know what it says, okay. If you want to bring it up again, fine. I understand the problem, I understand the impacts between the state law and what you are trying to do, but I am not prepared to just write it out right now.

MR. CRADDICK: We are copying it right out of here.

MR. KUSHI: If it's in there why do you put it in

your rules?

MR. CRADDICK: That was Orlando's point.

CHAIRMAN NOBRIGA: It is the Chairman's ruling, because we are in committee, that we will request Corporation Counsel to provide us a suggested verbiage to identify the committee's desire to reference Hawaii State statutes concerning collection of fees.

MR. KUSHI: Return of fees.

CHAIRMAN NOBRIGA: Right. Sorry, thank you.

MR. CRADDICK: No, no, it's not the return of fees.

This is to define what an impact fee is and what the water development fee is, that it's an impact fee. It has nothing to do with the return of fees, nothing at all.

MR. QUINN: Well, it does eventually, but the definition leads you to what you do with those. You don't

return these fees.

MR. KUSHI: Mr. Chair, if I may.

CHAIRMAN NOBRIGA: Yes, Mr. Kushi.

MR. KUSHI: Would you want that prepared by the Board meeting next week Wednesday or Thursday?

CHAIRMAN NOBRIGA: Not necessarily. But to clarify, we want a provision relating to our authority to charge these fees. Not for the reimbursement back to the public of the fees, but our authority, I guess, yeah, to charge these fees.

MR. CRADDICK: That's HRS Chapter 54. That has nothing to do with Chapter 46. 46 is a state law generally about impact fees, just generally, that apply to everybody in the state.

CHAIRMAN NOBRIGA: So to clarify, we want language that brings in HRS 46.

MR. QUINN: Mr. Chairman, do we want to specifically address the recoupment? That's what is driving this conversation. We consider this fee a recoupment type of an impact fee, and that's kind of important because it references the entire way we develop the fee, and also it addresses that issue that is also covered in the impact fee statute about collection of interest and return of those fees after six years. So I think those are the issues that I guess Corp Counsel understands.

MR. KUSHI: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Kushi.

MR. KUSHI: The Director is saying under the definitions of Water System Development Fee the authority portion to add in reference to section 46 dash whatever it is, that's fine. I can get the correct section. But if you want -- if you are saying that or if the thought is to say that this fee is a recoupment --

CHAIRMAN NOBRIGA: No.

MR. KUSHI: That's up to an interpretation.

CHAIRMAN NOBRIGA: I don't think so. I think all we want to do is reference the 46, or whatever it is. Am I correct, Members?

MR. STARR: I think there was wording in 46 we were trying to find that basically stated that an impact fee is a recoupment. In other words, we're getting paid back money that we spent.

MR. CRADDICK: Mike, this is now a really important issue, because even Corp Counsel now is saying they don't understand this is a recoupment. So what we need is we need to get an opinion from them whether this is or is not a recoupment, is what I see going on, because even they don't understand now that this is a recoupment.

MR. KUSHI: Mr. Chair?

CHAIRMAN NOBRIGA: Yes. Mr. Kushi.

MR. KUSHI: If I may respond. Personally, he may be right, but the final arbitor of whether it's a recoupment or not may be a court of law. You may say it's a recoupment, I may say it's not.

MR. TAGORDA: May I interrupt?

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. KUSHI: What I'm saying, Mr. Chair, if I may.

MR. TAGORDA: I have with me that Chapter on the Hawaii Revised Statute on impact fees.

CHAIRMAN NOBRIGA: One moment, Mr. Tagorda. Can I have Mr. Kushi finish his statement, please?

MR. KUSHI: All right. So just by putting the authority down referencing that section I feel is enough.

MR. STARR: May I read from the book here?

CHAIRMAN NOBRIGA: Mr. Tagorda has the floor.

MR. TAGORDA: You go ahead. I will give you the floor, Mr. Starr, since you have the book. I have a duplication.

MR. STARR: I think we are about to read the same thing. But anyway, "Impact fees means the charges imposed upon a developer by a County to fund all or a portion of the public facility capital improvement costs required by the development from which it is collected, or to recoup the cost of existing public facility capital improvements made in anticipation of the needs of a development." So I believe that is the sentence that we were talking about inserting. That's from 46-14-1 definitions.

MR. CRADDICK: Right.

CHAIRMAN NOBRIGA: I don't think, correct me if I am

wrong, I don't think Corp Counsel is arguing what we are trying to say. He's just saying that we shouldn't proceed and take this out of committee without having given them the opportunity to review the document.

MR. CRADDICK: Well, that's a given, that's a given. But what my point is is this is a recoupment. Now, somebody can challenge that, whether it is or isn't a recoupment, but we should say in here that this is a recoupment, because it is, by definition of how we calculated the fee. If you want to go over that, if everybody is not clear on that, how we calculated the fee to make sure in their mind that it is a recoupment, we can go over that. But there is no doubt that this is a recoupment because there's no future projects out there, it's based on the current system that's already built.

CHAIRMAN NOBRIGA: In the interest of covering the material at hand, we'd like to see recommended language from the Director and the Corp Counsel. We will take this up at the following duly noticed meeting. Yes, Mr. Starr?

MR. STARR: Mike, can we just send it to the full Board and get it out of the Board next week?

CHAIRMAN NOBRIGA: If we can get the proposed language.

MR. STARR: I mean I'd be happy for the Chair to accept the Chair seeing that before it goes to the Board.

CHAIRMAN NOBRIGA: I'll take it under advisement.

Thank you.

Mr. Kushi, you will need to provide something before next Thursday.

We will move on to page four under 16-8-5, Water Service, subsection B, the addition at the end of the sentence to say, "Water meter size contained in the schedule of fees." The words "of fees" are added.

MR. CRADDICK: You missed one, Mike, under 16-8-4 under Exceptions.

CHAIRMAN NOBRIGA: Back to 16-8-4, Applicability.

The words "except as exempted" are stricken and substituted with the words "with exceptions." I view that as a housekeeping change and I don't think it da kine.

MR. MAYER: If I can make a suggestion on that CPI wording, I think it may end up causing some problems.

CHAIRMAN NOBRIGA: What CPI thing?

MR. MAYER: Under the fee schedule, the first two lines with print over it.

MR. QUINN: Up at the top of the page.

CHAIRMAN NOBRIGA: You can say something, but that's not under our discussion.

MR. MAYER: You put down on an annual basis, but it doesn't say as of what date, and I think there may be some confusion there. I would suggest that you cross out the words "on an annual basis" and write down the word "annually on

April 1st, based on the changes in the preceding year." Just to clarify so that the Department of Engineers or whoever is assessing this will know when and what date, basically.

CHAIRMAN NOBRIGA: Thank you, Mr. Mayer.

Back to section 16-8-5, subsection C, the addition of a sentence saying, "The Applicant is not entitled to a reduction in the source portion of the fee." Then moving forward to subsection F. Yes. Mr. Starr?

MR. STARR: I don't understand what that does, because we're just stating that "shall not be entitled to any reimbursement." So if they're not getting any reimbursement why do we need to talk specifically about the source portion there? I'm trying to understand why that is there.

CHAIRMAN NOBRIGA: Yes. Mr. Hiranaga?

MR. HIRANAGA: I agree, the thing is redundant.

MR. CRADDICK: Good point.

CHAIRMAN NOBRIGA: Good catch, Mr. Starr. So that will be stricken. Subsection F, again, replacing the word "fee" with the word "penalty." And then further on in the same sentence -- is this an addition, Mr. Craddick, "less any portion of the WSDF"?

MR. CRADDICK: Well, what we are trying to do here is if you have paid for the fee -- wait a minute. This is not right, is it, Mike? I think this got stuck in the wrong spot here, didn't it, Mike? That should remain fee and not penalty. That's wrong, Mike.

MR. QUINN: Okay.

MR. TAGORDA: Or you probably could put additional fee shall be imposed.

MR. QUINN: It's been a discussion in the past, it is a penalty.

MR. CRADDICK: Try that again.

MR. QUINN: One of the questions that's come up in the past is this references the same schedule as the fee.

MR. CRADDICK: Oh, for a meter removed, okay, wait a minute.

MR. QUINN: This is the penalty, that's why "penalty" is in there. But the bigger issue that the Board should understand is that's a big penalty. Some of these get challenged and may come to the Board on appeal. And typically what happens in, for instance, a foreclosure situation, we don't know who to charge. The meter is just sitting there over time. We have the right to remove that meter. And according to the current rule, after sixty days if nobody has come in and had us reinstall that meter and paid the fees, they get hit with a very stiff penalty. Currently it's \$3,350 plus an installation fee, which is essentially the way this rule reads now it's going to stay about the same.

Just to let the Board know, that has been a bone of contention, especially among the real estate folks and banking folks who get involved in foreclosures. You have a situation on the mainland where a bank holds the mortgage, it goes into

foresclosure, nothing happens to it for a year or two. We have pulled the meter, like on closing day or after closing day somebody finds out there's no meter.

MR. CRADDICK: So what we're trying to do is if they paid the fee on the current schedule that that gets credited to them, because the new fee is now \$6,000. If this gets credited to them, all they're going to pay is \$3,000 for penalty, or slightly less than \$3,000. That's what we're trying to do, so that it remains still around \$3,000.

Now of course, if somebody has not paid any portion of the fee then of course they'd get the full \$6,000. But this is to get ones that have paid the fee to let that be credited.

MR. QUINN: It also covers the issue if somebody has paid before we are giving them credit for that, because one could argue the way the rule reads now we charge them the full fee regardless of whether they paid it before.

CHAIRMAN NOBRIGA: Okay. So subsection F is to read, "A penalty shall be imposed on any applicant granted

water service for a meter removed in accordance with Rules and Regulations of the Board of Water Supply, County of Maui, in the amount set forth in the Schedule less any portion of the" -- I guess that's "Water System Development Fee as enacted April 26, 1993."

MR. CRADDICK: I threw in the word "that."

MR. STARR: That needs to be put in there after 1993.

CHAIRMAN NOBRIGA: "That has previously been paid for the size of the meter replaced unless exempted pursuant to Section 16-8-8(d)." Is that correct?

MR. CRADDICK: Yes.

MR. STARR: I want to see the penalty schedule.

MR. CRADDICK: The penalty schedule is the -- I see what you mean now, because now we are not calling it the fee anymore. A penalty equal to the fee. So it should say after penalty, "equal to the fee."

MR. STARR: A penalty equal to the meter fee or equal to the water -- what do we call this?

CHAIRMAN NOBRIGA: Water System Development Fee.

MR. STARR: A penalty equal to the WSDF. So we want to insert after penalty.

MR. CRADDICK: "Water System Development Fee less any portion already paid."

CHAIRMAN NOBRIGA: Okay, we will put that in then.

MR. STARR: It also should be WSDF before the word schedule in the middle of the paragraph, just so that they're not looking for a penalty schedule.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Is that acronym WSDF defined anywhere prior to its use?

MR. CRADDICK: We will write it out or do whatever we need to do.

MR. QUINN: I think that's correct, it is not in there. It should be included in the definitions.

CHAIRMAN NOBRIGA: Thank you, Mr. Hiranaga.

MR. HIRANAGA: If someone could explain to me if someone -- for nonpayment after sixty days you pull the meter, is that it?

MR. QUINN: That's what the current rule says, yes. I'm sorry, after we have pulled the meter. The 60 day clock starts once we have pulled the meter.

MR. HIRANAGA: When normally do you pull the meter?

MR. QUINN: Usually now about six months after the delinquency. The delinquency goes to a collection agency.

MR. HIRANAGA: During that six-month period, as you said, is use usually still accruing.

MR. QUINN: Not usually. The service charge is what is charged, because the meter is there and we charge monthly service charges of \$5.60 per month.

MR. CRADDICK: The people are there, it's still being used. They're just not paying the bill. That can occur too. Usually the problem arises in a foreclosure. There's no responsible party. We keep sending the bill, nobody responds, eventually the meter gets removed.

MR. HIRANAGA: I'm just wondering if it's more equitable if you just set a dollar amount, like a thousand dollars plus interest accrued or whatever, versus tying it to the fee schedule. Because when you go into bankruptcies or foreclosures sometimes it takes a year, year-and-a-half. Well,

first of all, you go through the courts, then they finally put it up for foreclosure, and then you have got to sell it. That could take six months. Sometimes it sits there for two years.

MR. CRADDICK: Actually, what's happening now, Kent, is people in the banks are being a lot more aware and they make sure they start paying the meter charge.

MR. HIRANAGA: In bankruptcy there are no funds. The trustee generates funds by selling assets. If the house is the only asset the trustee has no funds. There's no bank involved. So it could sit for two years. So as these fees escalate with these CPI's I'm just wondering if we should just create a set amount because the meter is there.

CHAIRMAN NOBRIGA: I kind of like that idea, gentlemen. Now, currently this as proposed, what would be the collection for a regular five-eighths inch meter?

MR. QUINN: Today?

CHAIRMAN NOBRIGA: If we enacted the new.

MR. QUINN: \$6,030.

CHAIRMAN NOBRIGA: That would be the total penalty?.

MR. QUINN: It's a big penalty.

MR. CRADDICK: But only if the house has never paid any fee. If it's paid a fee, it remains at \$3,000.

CHAIRMAN NOBRIGA: So that's the difference between the current and the new would be the penalty.

MR. CRADDICK: What's really going on here, this is a thing that basically says, "We're no longer going to reserve water for you." That's what's going on here. And it is a very high penalty because we are telling them we are no longer reserving water for you.

MR. STARR: In other words, they could lose their meter and not be able to get another meter if there's a

shortage.

MR. CRADDICK: That's very correct, Jonathan.

MR. STARR: That's draconian.

MR. CRADDICK: It's draconian, but what are you going to do? For everybody who has ever had a meter this liability is going to be out there that they always can sashay in any time they want and ask for a meter? That won't work at all.

MR. HIRANAGA: Make it longer, like three years.

MR. QUINN: When you think about it, we are giving -- for reservations we already, we allow people to reserve water in this rule that we are going to be looking at for two years, plus extensions. So to be consistent, maybe, I don't know, maybe we shouldn't impose this penalty until --

MR. CRADDICK: Kent's idea is a good one, make it two years, something that a foreclosure can handle.

MR. QUINN: We have it in this rule, then you are consistent. There's some logic to when you are going to give up the source. You are going to give up the source after two years.

MR. CRADDICK: That's what he was saying.

MR. QUINN: But I'm saying use the same definition as you have in the rule.

CHAIRMAN NOBRIGA: I would like to see language proposed before we go ahead with that change. Yes, Mr. Hiranaga?

MR. HIRANAGA: I'd like to recommend a period of three years. I've seen bankruptcies take two-plus years to be resolved.

CHAIRMAN NOBRIGA: And do you think \$1,000 penalty is sufficient, being that they're now looking at a \$3,000-plus

penalty.

MR. HIRANAGA: I hadn't really -- that was just out of the air, so it could be discussed.

CHAIRMAN NOBRIGA: For discussion purposes should we set it at a penalty of \$3,000, et cetera, et cetera?

MR. STARR: What if it's an eight-inch meter?

MR. QUINN: My suggestion would be to leave F as it is, but change subsequently you're going to come up to the time limit, which is what Board Member Hiranaga is talking about.

MR. CRADDICK: It's in another section.

MR. QUINN: His three years is equivalent to the two years we will hold the reservation, so it's consistent with the rest of this rule, and that way this doesn't have to change.

When we get on to the next point we will change the time limit. I think that will satisfy what we are talking about.

In essence, we're saying after three years if

nothing is done you lose the right to that meter and to any source without paying the fee again. I think three years would be more than adequate.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: So you're proposing that if someone was to reinstall, have the meter reinstalled within three years they would still pay the difference?

MR. CRADDICK: No, after three years they would.

MR. HIRANAGA: So what happens in that three-year period if they haven't reinstalled?

MR. QUINN: If they haven't reinstalled?

MR. CRADDICK: Then somebody just has to pay the back bill.

MR. QUINN: That's the only other issue, should they

pay the back service charges. They should.

MR. CRADDICK: That's something we have to deal with
in the rates.

MR. HIRANAGA: So there is no penalty within the
three years, it's just back charges plus interest accrued.

MR. CRADDICK: That's what it would be if we do your wording.

MR. HIRANAGA: I think so.

CHAIRMAN NOBRIGA: I would still need to see some language.

MR. CRADDICK: It comes, Mike, in the next, in
Section 16-8-8 in section D. "Any application for water
service within," we changed 60 to 120 days "after removal due
to delinquency pursuant to Rules and regulations of the Board
of Water Supply shall be exempt from the fee." And now what we
are going to do is change that to two or three years, something
like that, which would be all right. I mean to reserve it for
two or three years I don't think is going to create that big a

problem.

MR. QUINN: Well, and it's consistent with how we are reserving for source if somebody is a new applicant too, so I think there's consistency in the rule.

MR. CRADDICK: The only problem is if nobody paid the fee in the first place then what do you do. You're reserving the water for them and nobody has ever paid the fee in the first place, because there are a lot out there like that.

CHAIRMAN NOBRIGA: I'm confused then, because the primary discussion, we were discussing taking the calculations and setting the rule by a flat penalty. We are not talking about that any more or are we still going to talk about that? I stay lost.

MR. STARR: I think what we have here is good, it should be based on the size of the meter. But we are able to accommodate the concern about it happening quickly when we get

to 16-8-8 by making it a three-year period. So my suggestion is that we accept the current wording for F, it's okay. We had to add the word "that" and "WSDF." And now we need to define WSDF, the definition.

MR. CRADDICK: Right, I have got that.

CHAIRMAN NOBRIGA: Can we move to page five. The top of the page there are some words in parenthesis and some words underlined reading, "Director's estimate as to the size of service required for the structure (except as exempted)," underlined "unless exceptions."

MR. CRADDICK: This is the same wording as before.

CHAIRMAN NOBRIGA: It says exceptions.

MR. CRADDICK: Yes, exceptions, right. I think the 16-8-8 is to change all the wording from "exemptions" to "exceptions."

MR. KUSHI: Mr. Chair, if I may.

CHAIRMAN NOBRIGA: Mr. Kushi?

MR. KUSHI: What is the reason for that?

MR. CRADDICK: Corp Counsel said to do it previously when we were going over this.

MR. KUSHI: Is it the same intent?

MR. CRADDICK: Yes, same intent.

MR. QUINN: So go with exceptions?

MR. CRADDICK: I will leave it up to Ed. We have got a new Corp Counsel. It's clear to me either way, but then we have to go back and change that other one that we already passed by.

CHAIRMAN NOBRIGA: I guess it's a housekeeping issue. Okay, Section 8-8, again, you have the "exceptions"

proposed to be deleted and " exemptions" inserted. "From the rule" I guess inserted and "payment of water system development fees" deleted.

MR. CRADDICK: This is it here, Ed. By changing this Chapter section then we had to change the wording in all the other sections to be consistent with this, because I guess they had problems with this title here.

CHAIRMAN NOBRIGA: Section 16-8-8, subsection A.

Mr. Starr?

MR. STARR: Yes, I have always wondered why that's one half. My feeling is that they should pay the same rate. They're not getting half a meter, they're getting a full meter, so my feeling is that all of A should be struck.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Is the logic there that the usage for the second meter will probably be significantly lower because it just exceeds the capacity of the first meter?

MR. CRADDICK: The logic there was when we went through this the first time there were 70 people crowded in this room about this one item.

MR. STARR: That was at a time when building ohana units was really big. They were just looking for a break.

MR. CRADDICK: Whatever, yes. I mean that's the issue. Supposedly it's last, that's why you have the second part in there. If they later go on and subdivide it out they have to pay the balance of the fee, that's why. They don't just get away.

If the usage is real small they can increase their meter size to three-quarters to take care of it, or they pay half the price of the meter. Either way it's roughly about the same, the dollar amounts are about the same. So when you say -- it just saves this problem of us having to keep tract administratively if they later go on and subdivide and somebody has to catch it and they have to pay the other half of the fee, we may not catch it.

But there's two things that were going on. One, we were trying to get it to where every structure has to have its own meter, and that way you can enforce conservation, because there's a meter reading that's going to that structure. Now, if you buy that, this is maybe kind of important to leave it in there, that you can get a meter for it. If later on you can have a consolidated meter system and have one large meter feeding to them, it kind of defeats that purpose. But that was the issue going on here. A lot of people came in and testified because it's a smaller demand, and quite frankly, it is.

MR. STARR: It's based on fixture units, and it costs us the same amount to develop the source transmission and storage for the fixture units for an ohana as fixture units for a main dwelling. My feeling is that's part of the reason why we're behind the curve, we're basically giving a break there where we couldn't really afford to. So my feeling is we should strike it.

CHAIRMAN NOBRIGA: Okay, the discussion right now on the table is to strike subsection A of 16-8-8. Mr. Hiranaga, your views?

MR. HIRANAGA: What is involved in upsizing the meter from a five-eighths to a three quarter?

MR. CRADDICK: If you have got adequate water, there's nothing, just say the extra fee. Sometimes you would have to upsize the lateral if the lateral is too small. But essentially nothing.

MR. HIRANAGA: So the cost to put the second meter in is actually anticipated to be more than upsizing because you have to put in a new lateral.

MR. CRADDICK: If you are going to put in a separate meter and there is no lateral, you would definitely have to put a lateral in.

MR. HIRANAGA: The odds of two laterals servicing a lot is very slim. Because the cost involved, if you look at the proposed fee, it's cheaper to go to an upsized meter. So what's the point, I guess. Everyone is going to upsize if you

take it away.

MR. CRADDICK: I know, that's right, everybody is going to upsize, and then you lose your conservation goal of having one meter to every structure.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: Well, I agree with Kent, you know, with the cost of putting two laterals in one lot, are we able to give two meters to one lot now? With this concept are we able to give two meters for one lot now?

MR. CRADDICK: As long as the distribution system, storage, all those kinds of things are adequate, we do it. Let's put it this way. There's nothing in the rules preventing it.

CHAIRMAN NOBRIGA: So the consensus is we just leave this intact, we don't touch this, am I correct? Okay. So subsection B, proposed insert the words "from the Board's system," delete "additional water service" and insert

"that they have already paid the fee" and delete "from the Board's system." This is in reference to, "Any applicant for a building permit for any structure shall be exempted from paying the fee, upon proof presented, that the structure or the premises on which the structure is located does not require water service." Yes, Mr. Hiranaga?

MR. HIRANAGA: Mr. Chair, is it the Board's system or the Department's system?

MR. STARR: The Board.

CHAIRMAN NOBRIGA: The Board owns everything, I guess, yeah?

MR. HIRANAGA: What does the Department do then, operate and maintain?

MR. STARR: I have been trying to figure that out for a long time.

CHAIRMAN NOBRIGA: Then subsection D, we switched out "sixty days" to "120 days."

MR. QUINN: That's where the three years that we just discussed comes in.

MR. STARR: We can put it at 36 months.

CHAIRMAN NOBRIGA: So we are going to change 120 and 60 to 36 months, yeah? Yes, Mr. Kushi?

MR. KUSHI: Mr. Chair, what if it's the same applicant, same meter owner, and he just didn't pay his bill for a year. It doesn't matter?

CHAIRMAN NOBRIGA: No.

MR. STARR: He is not going to have water.

MR. CRADDICK: Well, he won't be able, if it's the same person coming back, they are going to have to pay the back bill, that's what they have to do.

MR. KUSHI: Not under this.

MR. QUINN: Well, we get them under the regular rules. They have to pay the back bill plus this.

MR. STARR: They will still turn off the water, they just won't physically remove the meter.

MR. CRADDICK: What happens, Jonathan, first of all you're right, the service gets shut off. Then if the person is not paying their bill and comes back and turns it back on, the meter is then removed.

MR. STARR: You can still do that.

MR. CRADDICK: If they tamper with the system the penalty is removal of the meter so the meter gets actually removed. Now, if they come in and say, "I want my meter back in this 36 months time" we are going to say, "Okay, pay your back bill and we will reinstall the meter."

Now, the only issue there is a guy could, say, let his meter go for three years, he is not paying the monthly standby charge, and therefore no depreciation of anything, and yet he's still got this right to water. So what we need to do in our other rules is put in there where the guy has got to pay the bill as if the meter had remained in, with just no consumption.

MR. STARR: How often does that happen, has it ever happened?

MR. CRADDICK: Yes, yes.

MR. QUINN: We do charge them the service charges, in that case.

MR. CRADDICK: Not legitimately.

MR. QUINN: We have never had anybody question it.

CHAIRMAN NOBRIGA: We are going to take a recess at this time.

(Whereupon a brief recess was had).

CHAIRMAN NOBRIGA: Call the meeting back to order.

Question for the Director: Subsection 16-8-8, subsection B, what about provisions for matters that we previously discussed in this committee on Tuesday, where there's a subdivision request, similar instance, where no water service is requested? You know when they're just moving the lines and stuff. Would we be able to handle that in this rule or should we handle that in the other rules, the main rules?

MR. CRADDICK: I'm still not sure what you are talking about.

CHAIRMAN NOBRIGA: In subsection B it basically is a provision that if somebody comes in and they want to put up another structure, they're not going to put water to the structure they're not going to have to pay the fee, right?

MR. CRADDICK: Right.

CHAIRMAN NOBRIGA: What about one subdivision approval where they stay appealing the Board because --

MR. STARR: Like they're moving a property line, they're not going to build anything.

CHAIRMAN NOBRIGA: It really has no jurisdiction on the fee, though. I answered my own question.

MR. CRADDICK: There's a section in here about subdivisions.

CHAIRMAN NOBRIGA: Okay, no problem. I answered my own question. Portugee, I tell you.

MR. CRADDICK: Mike, Ed looked in the charter there, and under this B here he said it is the department's system, so we will change that.

CHAIRMAN NOBRIGA: You were correct, man.

MR. STARR: The Board doesn't own it, sorry.

MR. CRADDICK: The Board is part of the department.

MR. STARR: I always thought the department was part of the Board.

MR. CRADDICK: No.

CHAIRMAN NOBRIGA: Okay, page 6, section 16-8-9, subsection A, Applicant ready for water service. There's a proposal to insert at the end of the line --

MR. CRADDICK: Mike, this part here is part of the rule that's already gone to public hearing. It's in there. That's why it says, "from the fee schedule change."

CHAIRMAN NOBRIGA: That's supposed to be deleted or is that supposed to be in parenthesis?

MR. CRADDICK: Well, I just put in here "from the fee schedule change" to let you know. See, because we are going out with the fee schedule change, if you actually look at

that --

CHAIRMAN NOBRIGA: It's not actually going to be in there, then? Those words are not going to be in there?

MR. CRADDICK: It will just be like everything else, like it's part of the existing rule if the other one passes.

CHAIRMAN NOBRIGA: Right. Yes, Mr. Kushi?

MR. KUSHI: Mr. Chair, excuse me. Can you back up to the previous section, section E about the churches. That's going to be exempted, is that my understanding?

MR. CRADDICK: Well, we have just deleted the whole thing down here to F. It goes all the way down to F, so that just bumps up to E there.

MR. TAGORDA: You deleted the E?

MR. CRADDICK: E is not deleted. All provisions under E are deleted, and even F is deleted, so that whole

provision becomes E, bumps up to E.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: On F should we insert the two-thirds majority, with a two-thirds majority?

MR. TAGORDA: We agreed on that before.

CHAIRMAN NOBRIGA: Shall we?

MR. TAGORDA: Yes.

CHAIRMAN NOBRIGA: We will have that in there, please. Thank you.

MR. QUINN: It's the same language you proposed in the next rule that we are going to talk about.

CHAIRMAN NOBRIGA: Mr. Hiranaga, very good. Okay, we will go to page six.

MR. HIRANAGA: I am not sure if that's the appropriate location. The Board with a two-thirds vote may waive.

CHAIRMAN NOBRIGA: No need the entire Board, this is the Board by two-thirds vote may waive or modify requirements, right? That's all we need, huh?

MR. HIRANAGA: The Board. It's in the wrong place, the Board with a two-thirds vote.

MR. STARR: Two-thirds is a super majority.

MR. HIRANAGA: The Board with a two-thirds majority vote. We already have language in here.

MR. TAGORDA: Yes, we already have that.

MR. HIRANAGA: Just make it consistent.

CHAIRMAN NOBRIGA: Do you trust the Director to

finish that up properly? Do we move on or do we want to watch him type? He stay blind as a bat. I don't know why he continue to try to type, he no can do it.

MR. STARR: Get a magnifying glass.

MR. HIRANAGA: Let's move on.

MR. STARR: If you hit view and text size, you can get it in.

CHAIRMAN NOBRIGA: We will move on to six. So the total payment of service was already discussed. "Applicant not ready for water service." Earlier in our meeting we did propose to change "one" to "two," and "one" to "two," so that should be okay. Payment plans we discussed previously. We added "two" percent from "one" percent, and "sixth" instead of "half," and "in" equal "monthly" over three years. Okay.

MR. STARR: Sounds good.

CHAIRMAN NOBRIGA: Now we go to page 7.

MR. CRADDICK: Wait, this is right here, the way it is?

CHAIRMAN NOBRIGA: Yes.

MR. QUINN: Mr. Chairman?

CHAIRMAN NOBRIGA: Yes, Mr. Quinn.

MR. QUINN: A question came up at your last committee meeting about --

CHAIRMAN NOBRIGA: What page?

MR. QUINN: Right up there, 16-8-9 (b), the issue of whether the interest should go, the penalty should go into -- not the penalty, but the lapsing of the fee should go into the operating fund or the water system development fund. I believe Mr. Tagorda questioned that.

MR. TAGORDA: Yes, I had what you call that, a

proposal that it should go to the fund that the purpose of which it was collected.

MR. STARR: WSDF.

CHAIRMAN NOBRIGA: I'm okay with that. The second paragraph under subsection B reading, "If within two years, or longer with extensions, the applicant is not able to accept installation of water service, unless for good cause shown and approved by the Board, the application and the reservation of the allocation shall expire and the fee paid shall be deemed a penalty, and forfeited, to be applied to the Board's" instead of "operating," replace operating with "WSDF fund."

So it's replacing operating fund to WSDF. You can delete "Board's," "operating" and "fund" and replace "Board's," "operating" and "fund" with "WSDF." Thank you, Mr. Quinn.

MR. CRADDICK: Mike, are you looking at this here, how I have done this?

CHAIRMAN NOBRIGA: Delete "Board's" "operating" and

"fund."

MR. STARR: Get rid of the word "Board" also and then the word "fund."

CHAIRMAN NOBRIGA: It's in the minutes. I know you cannot do it there, but I'm sure somebody is capable of doing it.

MR. QUINN: Mr. Chairman, one more question.

CHAIRMAN NOBRIGA: Yes, Mr. Quinn.

MR. QUINN: I know your committee discussed this too under 16-8-10, the payment plan. There's no -- as it reads, I guess we are not going to charge interest over the three years, even though we are increasing the fee by the annual CPI. My only question there is that really there's no incentive to anybody to pay the fee up front if they qualify here. Everybody is going to choose the three years. So maybe if you added interest.

MR. TAGORDA: I had in my proposal to charge them the current interest rate.

CHAIRMAN NOBRIGA: I thought the committee was in favor of not charging interest.

MR. QUINN: It was discussed, yes.

CHAIRMAN NOBRIGA: Interest would be applicable.

MR. QUINN: It would be an incentive for them to pay it up front if they could.

CHAIRMAN NOBRIGA: I have no objection to interest being inserted. Mr. Hiranaga?

MR. HIRANAGA: What is the current interest rate we would charge?

MR. QUINN: We would charge the rate that we would be earning I guess in the County's treasury.

MR. HIRANAGA: What is that, approximately?

MR. CRADDICK: It should be what you would be charged if you issued a bond, not what we can get from the bank here. Because what's happening is if you have issued bonds on this money that you are collecting, you want that interest to be at least equal to whatever bonds you would have to pay. So I would say in here it would be whatever the prime rate is.

CHAIRMAN NOBRIGA: So the question is, what is that rate now, what is the rate now?

MR. QUINN: It varies consistently. It's below 5 percent.

CHAIRMAN NOBRIGA: Does that answer your question, Mr. Hiranaga?

MR. HIRANAGA: Yes.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: My feeling is we are talking about fairly low price housing, below \$300,000, and this is something that really came from the people of Molokai. My feeling is we ought to give them a break and let those who are having to pay 6 thousand bucks for a meter on a \$300,000 or less house get the benefit of it. We're making a pretty stiff increase.

MR. QUINN: Either way. I just wanted to bring it up for discussion.

CHAIRMAN NOBRIGA: Okay, so do we want to include interest and do we want to identify the maximum amount of interest or the minimum amount of interest, or do we want to not fool around with interest? Let's say we put in interest. Let's say we put in interest not to exceed 5 percent per annum.

MR. HIRANAGA: Mr. Chair, are you talking about \$250 a year for three years? Someone who purchased a home for under \$300,000, that is, I would think, a fairly significant amount. So I would be a little hesitant to charge interest.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: I guess he's got a point there. But again, I had a question about the equal monthly instead of annual installment over three years. I don't want to really impose an obligation on those people there to pay monthly.

MR. STARR: It goes with the bill. It's a lot easier than having a once a year payment.

MR. TAGORDA: They get the option to come in and pay the full amount.

MR. CRADDICK: Change that to bi-monthly, that might be good, and maybe we could do it with the bill.

MR. TAGORDA: Bi-monthly, good.

CHAIRMAN NOBRIGA: It is agreed to bi-monthly, and we are going to leave it as is with no reference to interest rates. Mr. Hiranaga?

MR. HIRANAGA: The second line, should it be real property tax assessed value versus taxed assessed?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga, I would like to see that as such.

MR. HIRANAGA: Actually, it should be real property assessed value, take the word "tax" out.

CHAIRMAN NOBRIGA: Just delete the word "tax." Real property assessed value. Okay, any further discussion on page six?

MR. CRADDICK: Is that still correct there? I still don't think this is right. When the fee, and we are talking about the water development fee for water, for any owner-occupied residential premises exceeds two percent of the premises value. Okay now, what we are trying to do is make it to where exceeds two percent of the value, so \$300,000, two percent is \$600,000. Then you get this.

MR. QUINN: \$6,000.

MR. STARR: \$300,000.

MR. CRADDICK: We are trying to base it on a \$300,000 home that you get the payment plan.

MR. STARR: That's fine. The only problem with this is what if someone comes in for their multi-million dollar house and buys a 2-inch meter, and then they have got the same plan? I think we should limit it to a five-eighths meter. Let's limit it to a five-eighths meter.

CHAIRMAN NOBRIGA: I concur. Yes, Mr. Tagorda?

MR. TAGORDA: So how are you going to approach those larger meters, then?

MR. STARR: They pay it, cash on the line.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: That's good.

MR. CRADDICK: I have got to think about that one,
where to put that in.

CHAIRMAN NOBRIGA: We will move to page 7. Except
for the fee which is already passed through, any other comments
on page 7? I don't see anything, that's why. Does anybody
else see anything? Okay, moving on to page 8, we're on the
last page.

MR. QUINN: I have a question, Mr. Chairman.

CHAIRMAN NOBRIGA: Yes, Mr. Quinn.

MR. QUINN: 16-8-12, fees collected plus interest at
the average rate invested for the preceding year. Why not
invested at the prevailing County treasury rate?

MR. CRADDICK: That's what we are talking about.

MR. QUINN: It says the preceding year's interest.

Why would you -- I don't understand that one.

MR. CRADDICK: Well, that was the intent then, to get whatever the County's interest rate is.

CHAIRMAN NOBRIGA: I will go along with the change.

Anything from the committee? That's okay? Let's go along with that change to "prevailing" instead of "preceding" year. Okay, so that's that for that one.

MR. STARR: All right, good one.

CHAIRMAN NOBRIGA: Let's take up the water Upcountry.

MR. TAGORDA: My one suggestion is maybe we can change the numbering to be in accordance with the County ordinance. The ordinances, like 160, something like that.

MR. CRADDICK: I don't know whoever picked this number, 106. I mean if they're doing it in sequence with our numbers it would be like number 10 or 11 or something like

that, not 106. We only have about 10 rules right now. I think that Iao Rule was Chapter 9, and so this should be Chapter 10, not 106.

MR. TAGORDA: I don't know. I am not a lawyer so --

MR. CRADDICK: I don't understand the numbering system and nobody has ever been able to explain it.

CHAIRMAN NOBRIGA: That shall be duly noted.

MR. CRADDICK: And whatever the number is. Maybe that 6 should just be deleted off of all of them, 16-10.

MR. TAGORDA: Ed can work on it.

CHAIRMAN NOBRIGA: Let's move on to proposed rule, it's stated as Chapter 16-106. I don't know if that's true or whatever we are going to call it, but it's the Rules of the Board of Water Supply pertaining to water meter issuance rule for the Upcountry water system.

In the first page, schedule of table of contents, we have the addition of section 09 entitled Partial Deferral of Water System Development Fee. Moving to page 2, general provisions. The Chair has proposed an addition to section 2, purpose. Under 16-106-2, purpose. Basically, I wanted to see language in purpose relative to the Makawao/Pukalani/Kula community plan priorities of water provided for agriculture and Hawaiian Homelands.

I have two proposals, but I really would like, before we actually -- I will defer to Corporation Counsel to clear it up. There's two ways of saying the same thing.

MR. STARR: Can I suggest a possible third way?

CHAIRMAN NOBRIGA: Yes, please.

MR. STARR: Just we don't know what the future community plan is going to do, maybe they're going to give priority to space exploration or something. But anyway, I would put application for water service, Upcountry water system in accordance with the priorities of the Makawao/Pukalani/Kula community plan.

CHAIRMAN NOBRIGA: In accordance with any community plan.

MR. STARR: Yes.

MR. CRADDICK: That would include Haiku, because Haiku is part of the Upcountry system right now.

MR. STARR: In accordance with the Haiku/Makawao/Pukalani/Kula community plan.

MR. CRADDICK: How about the community plans that serve the area?

MR. STARR: Or the prevailing community plans.

CHAIRMAN NOBRIGA: I like Mr. Starr's suggestion.

MR. STARR: So it will read "in accordance with the priorities of the prevailing community plan."

CHAIRMAN NOBRIGA: Not on the scope, David, on the purpose. Any comments from the committee? Mr. Hiranaga, do you have any problem with that writing?

MR. HIRANAGA: I'm just wondering if that's the appropriate place to put that statement.

CHAIRMAN NOBRIGA: Mr. Tagorda?

MR. TAGORDA: I have a problem with the wording on the purpose. But can we go back to scope, Mr. Chairman?

CHAIRMAN NOBRIGA: Sure, let's go back to scope.

MR. TAGORDA: I don't know if it's appropriate for us to put a sunset provision on this rule, because this rule only intends to address the priority list and if we put a lapse time I think --

MR. CRADDICK: It does have it at the bottom, the very, very last.

MR. TAGORDA: Should that provision on the bottom of this rule go on the scope and terms?

MR. CRADDICK: "Effective date: This rule shall become effective ten days after it is filed with the County Clerk of the County of Maui. This rule shall sunset when there is an adequate supply of water such that no premises or applicants remain on the priority list." And where that goes, whether it should go there or up at the top, it's taster's choice.

MR. TAGORDA: I wanted to interject that proposal, that we should lapse this or sunset it.

MR. CRADDICK: It's no longer needed once that list no longer exists.

CHAIRMAN NOBRIGA: Going back to page 2, any other comments? I will defer it to Corporation Counsel as far as the proper place to insert our amendment about community plan. To me, purpose is the purpose of the rule, so that's why I chose

to put it in purpose, but it could be someplace else. Mr. Hiranaga?

MR. HIRANAGA: The purpose of this rule is to provide some methodology for the issuance of meters to people who are currently on the priority list.

CHAIRMAN NOBRIGA: Yes.

MR. HIRANAGA: And it says in here the list is created -- you are placed on the list by the date received. So if you are first on the list and you are not involved in agricultural activities or in Hawaiian Homelands, does that mean you are not going to be the first to get your meter, you are going to be number eight or nine possibly? Because number two is ag and number three is Hawaiian Homes. So somebody is going to start making that determination? There seems to be a conflict here.

MR. CRADDICK: Well, first of all, Hawaiian Homes has their water, so that's a non-issue. If you are going to start deciding that somebody with ag gets it over urban and rural, that's what you are talking about, because everybody

will just say they're doing ag at that point.

MR. HIRANAGA: So I think what needs to be defined is what is the controlling condition in order to get your meter. Is it time, date received or is it the proposed use? Because then it's going to be arbitrary or subjective. It's going to be subjective.

MR. CRADDICK: And not only that, you may be on ag land and not planning to do any ag. So what does that mean? It doesn't mean anything.

CHAIRMAN NOBRIGA: So actually, the purpose that's currently stated may be slightly skewed erroneously. The purpose of this rule is to provide uniform handling of applicants for water service from the priority list, not from the Upcountry water system.

MR. HIRANAGA: Right. I am not sure if any mention about Hawaiian Homelands or community plans is appropriate.

MR. STARR: We are subject to the community plan anyway, so I don't see any way that that hurts. And if that was a consideration from the community, that wording should be included. I don't see any reason certainly not to. It's subject to it in any case.

But my own feeling is that as far as practicalities, you know, at this point we have to kind of unlock the logjam by how long people have been waiting. You know, as far as our development of water and development of outlook, it should be the community plan priorities. But right now I think we have a structured list that we need to follow.

MR. HIRANAGA: So did you agree with what I said or disagree?

MR. STARR: I agree.

MR. HIRANAGA: I think it muddles it.

CHAIRMAN NOBRIGA: Mr. Mayer?

MR. MAYER: Mr. Hiranaga's point is well taken. It would leave it unclear if you pass on the priority list on the

assumption that there is also the community plan provisions, because the person issuing the meters will be in a quandry as to what to do. So you can say it's covered on the priority list, and if that's all it does, then somebody else will have to decide when ag and Hawaiian Homelands.

And I would disagree with Mr. Craddick's point about the Hawaiian Homelands having adequate water. I don't think that's been determined, given the thousands of lots they are planning to put on those lots that water is available for those lots.

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: The structure that they have in there can deliver the water that they have provided for, and that's all. So the Water Use and Development Plan says they need 4 million gallons of water. There's no way to deliver it. Does that mean we are going to sit and do nothing waiting on Hawaiian Homes to build the system to deliver that water and develop that water for their use when they have no intention of doing that?

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: My own feeling is that we are getting out of the scope of what we're trying to do here. I think we are trying to deal with a priority list and clear up the logjam. Not create long-term allocations or long-term priorities, but rather deal with the people who have been waiting from way in the past.

So philosophically I agree with Mr. Mayer's point, but I think in practicality I think we should narrow our focus for today, since we have a very specific thing we are trying to do, and we are creating a rule that will sunset once the logjam is unraveled.

CHAIRMAN NOBRIGA: Thank you. I'd like to propose that we strike the words "Upcountry water system" and insert "priority list."

MR. STARR: Okay.

MR. CRADDICK: Say that again, Mike. What are you

saying there?

CHAIRMAN NOBRIGA: Strike the words "Upcountry water system" on the purpose and insert "priority list" because that's the purpose. The purpose of the rule is to provide uniform handling of applicants for water service from the priority list, period.

MR. STARR: We are going to strike the --

CHAIRMAN NOBRIGA: We are going to strike the community plan, because it's already covered. Yes, Mr. Hiranaga?

MR. HIRANAGA: May I suggest from the Upcountry water system priority list.

MR. KUSHI: It's covered in the scope.

MR. HIRANAGA: Is the priority list just called the priority list or is it called the Upcountry priority list?

CHAIRMAN NOBRIGA: I'm not sure what it's called.

MR. KUSHI: It's defined on page three.

MR. CRADDICK: Is says Upcountry water service. It doesn't say priority list at all. It just says Upcountry water service combined listing building permit application, subdivisions and water service requests.

CHAIRMAN NOBRIGA: But then priority list is defined as the same document, yeah. Okay, thank you, gentlemen. Page 2.

MR. CRADDICK: Is that it now, is that what you wanted for water service from the priority list?

CHAIRMAN NOBRIGA: Yes.

MR. STARR: Okay, it says Upcountry in the scope, so okay.

CHAIRMAN NOBRIGA: On page three, it defines priority list.

MR. CRADDICK: There's some slight difference here with this. Well, it says distribution system improvements. It doesn't define distribution system in here, so I guess there's no conflict.

CHAIRMAN NOBRIGA: Any comments on page three? Mr. Quinn?

MR. QUINN: 16-106-04, item A, can a premises apply for water service?

MR. STARR: Or is it an applicant?

MR. QUINN: We have had this discussion before.

MR. CRADDICK: We had applicant before, but the problem is that some of the people that applied on the priority list have died, sold the property, stuff like that, and we are trying to make sure that the request for the service runs with the premises. But very obviously a person has to apply.

MR. QUINN: I'll defer to Corp Counsel on that. Can a premises apply for it?

MR. STARR: I think it would be the owner of a premises.

CHAIRMAN NOBRIGA: Yes, Mr. Kushi?

MR. KUSHI: Why don't we clear it up, and in the paragraphs above under "definitions" we define premises. We say premises means land for which water service is requested and wherever used in these rules also includes the applicant or the owner of the premises.

CHAIRMAN NOBRIGA: Thank you, Mr. Kushi. Okay, anything else on page three?

MR. CHANG: People who want to buy property can say, "I don't want to buy this property unless I'm on the priority list," so we have that type of people on the list.

MR. STARR: You can't buy a meter if you don't own the land, isn't that correct?

MR. CHANG: We want to be as open to the public as possible. That's the reason why we have accepted that type of request to be put on the priority list.

MR. STARR: I can't buy a water meter for your land, I don't think.

MR. TAGORDA: Why not?

MR. QUINN: The meter application has to be signed by the owner. Every meter application has that. I mean if he's willing to pay for it, I'll take the money. He can't have the rights to my meter.

CHAIRMAN NOBRIGA: Do you want to deal with that or leave the definition as it stands?

MR. TAGORDA: Leave it as is.

MR. STARR: I think we're okay with that. I think

we are going to come up to it soon enough.

CHAIRMAN NOBRIGA: It says owner of the land and it says applicant and it says everything else. Okay, anything else on page three?

MR. HIRANAGA: I had a question, Mr. Chair, on 16-106-04, section C.

CHAIRMAN NOBRIGA: Page four then.

MR. CRADDICK: We were just going to page four, I think.

CHAIRMAN NOBRIGA: Please proceed, Mr. Hiranaga.

MR. HIRANAGA: The second to the last sentence it says, "shall not exceed the capacity of the existing meter." Capacity means having a meter on 100 percent of the time, 365 days a year.

MR. STARR: Well, no, it's fixture units.

CHAIRMAN NOBRIGA: "Requests for meters on premises without tax map keys that previous to this rule have been served by one large meter shall be able to apply for five-eighths inch meters for each lot up to the usage averaged over the last five years and cumulatively shall not exceed the capacity of the existing meter after they obtain individual tax map keys."

MR. CRADDICK: What we can do to fix that is with the definition of what capacity means.

MR. QUINN: I think you have to put the definition in.

MR. CRADDICK: How about that, so that they can't just go up to, you know, the fixture units are included in there.

MR. HIRANAGA: But say you have a large meter and it's for ag purposes. How do you put in the fixture units?

MR. CRADDICK: That's why we put the word capacity

in there. We actually went over this discussion with the staff. I had actual fixture units in there, and when you have the house with the constant flow demand on top of that they figure that out. But it varies from property to property depending upon how they do their irrigation system.

MR. STARR: Since we are only dealing with five-eighths, why don't you give us a number, you know, a thousand gallons a day or two thousand gallons a day or whatever you want.

CHAIRMAN NOBRIGA: Should not there be some --

MR. CRADDICK: Should not exceed one thousand gallons. I don't know if you want to do that, because if somebody wanted a five-eighths inch meter simply for ag, let's say they just wanted to do ag on there.

CHAIRMAN NOBRIGA: I believe this subsection refers to some requests that we have had for subdivisions of larger parcels where the current large parcel is serviced by a meter and they are requesting additional meters -- they are

requesting exchange of meters to finalize their subdivision.

Am I correct, Mr. Craddick?

MR. CRADDICK: That's right, basically that's right.

CHAIRMAN NOBRIGA: Should there not be some kind of hint that this is for subdivision approval as opposed to without tax map keys?

MR. CRADDICK: Actually, I guess there's two things in here. One, they may not need subdivision, they may already have the existing lots. And they have always been getting their bill under one tax map key, they may have never applied for a tax map key for the other lots. But we actually have got guys trying to come in now asking to do just that. There's what, about three or four of them right now, something like that.

So what we are trying to do is get it clear on what they can do. This isn't intended to allow subdivision. They have to have already subdivided to be able to do this, and have separate lots. Now, basically what we have been doing is just

accepting a letter from Public Works that there are separate lots there. But this isn't to allow subdivision, because if they were subdividing they would have to get on the list.

MR. MAYER: The first line says without tax map keys. If they had subdivided they would have tax map keys.

MR. CRADDICK: No, they wouldn't, not necessarily.

There's plenty of lots where people have three or four lots and it's all under one tax map key and it's all combined for purposes of getting one bill from the tax office. I mean Daniells was one of them.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Why don't you just put a period after the word "five years."

MR. CRADDICK: Well, we can, but we want it to be real clear that it's not just gratis, anything they want.

MR. HIRANAGA: So the five-eighths inch meter has a

recognized usage, it's not its capacity, right?

MR. CRADDICK: That's right.

MR. HIRANAGA: Is that defined anywhere in here?

MR. CRADDICK: Not the capacity, no. That's why I'm saying maybe we can cover that issue that you're raising by defining meter capacity and we can come up with some language for that. Because even ourselves, we are having a debate amongst ourselves.

MR. HIRANAGA: How do you determine how many meters he's qualified for, five-eighths meters?

MR. CRADDICK: You would basically have to look at the usage in the area.

MR. HIRANAGA: What do you divide it by?

MR. CRADDICK: Let's say you're in Omaopio or Pulehu

somewhere. It's about a thousand gallons a day for the meter if you are not doing any ag. So we would say that if you have got usage of 3,000 gallons a day you get three five-eighths inch meters. That's roughly what the average use is in the area. We would have to determine in each specific case. I mean there's not many cases like this, but they are out there. We need something so they don't come crying to the Board afterwards that we're somehow doing rule making without rules. That's what we are trying to avoid here.

MR. HIRANAGA: It seems like you would want to define that denominator.

MR. CRADDICK: We can do something on that, but we will have to bring it to you. It is not something that I don't think we can sit here and --

CHAIRMAN NOBRIGA: Are we going to add a period after the "five years" and delete the rest of the sentence? I think it reads better that way.

MR. STARR: Yes.

CHAIRMAN NOBRIGA: Okay, shall we proceed in putting a period after "five years" and deleting the rest of that? Mr. Kushi?

MR. KUSHI: Mr. Chair, if I may, on page four, 106-4 at the top where it says, "vested rights shall be allowed sixty days to pay," if I could suggest sixty days from the effective date of this rule.

MR. STARR: I have other questions on that. I was waiting until we finished this C part though.

MR. KUSHI: At least we time it to a specific date. Then also reading on where it makes reference to section 16-8, we could be more specific and put a section there, 16-8 is the entire Chapter 8. David, if you could find the application section.

MR. CRADDICK: It's 9. It's under here where you get the reservation, 9 (b) actually.

MR. KUSHI: So it would be section 16-8-9.

CHAIRMAN NOBRIGA: B or just 9?

MR. KUSHI: The way it reads is just 9, which is the application procedures.

CHAIRMAN NOBRIGA: Very good. Mr. Starr?

MR. STARR: I just want to make Corp Counsel aware of the very contentious issue, and this is an area where I know I really differed with our previous counsel because I didn't feel that a lot of the vested rights for which we were giving people meters, while we were still in the shortage, existed, and that it was just kind of a loophole that was being abused for people to skip the line. You know, especially the empty lot provision.

I just want to be sure that this is really going to, you know, kill the thing once and for all. That everyone now is going to be on a level playing field after this, and that there won't be any exemptions to following the priority list.

MR. KUSHI: Yes, I recently became aware of the problem. I hope it does what you think it will do. Maybe we will go through some pain and suffering.

MR. STARR: Is there anything else we need to do though?

MR. KUSHI: No, I think I am aware of it.

MR. STARR: There's nothing else we need to do though, that's my concern.

MR. KUSHI: I think we're starting the process.

MR. TAGORDA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Tagorda.

MR. TAGORDA: Can I add to Mr. Starr's comments?

CHAIRMAN NOBRIGA: Oh, sure, Mr. Tagorda.

MR. TAGORDA: About the vested rights and all those people that expended some reliance. Do you have some proof to those or does the department have some proof that such persons have vested rights or they expended before the 1994 dates?

MR. CRADDICK: Okay, Orlando, prior to say 1994, let's say -- well, the whole thing that brought this about was really the shortage Upcountry. Let's say two days prior to the shortage you bought a lot in Haiku that you could subdivide, okay, and you intended to subdivide. And all the zoning, everything was there. And all of a sudden we said, "You're short of water, you can't subdivide now."

Buying the lot may have vested you. I mean that's what Corp Counsel said with Groves' subdivision and Basal Milan.

MR. TAGORDA: Do we have records that we can show, or proof?

MR. CRADDICK: They have to produce them.

MR. TAGORDA: And these people that you are talking about are not on the priority list now, David.

MR. CRADDICK: That's right, that's right. But what we are being is real, real loose here and we are trying to shorten the time down. They have got sixty days to come in. The vested rights thing, I mean we may not even look at it at all. We are just putting it there so that if anybody thinks they have any vested rights, hey, by all means exercise them. You have got sixty days to exercise them, otherwise forever hold your peace and get at the end of the line. Whatever it is, we are not trying to be real tight with that, I don't think.

CHAIRMAN NOBRIGA: Mr. Hiranaga?

MR. HIRANAGA: Vested rights is not defined. Vested rights I assume is the lot existed prior to a specific date, is that what vested rights means?

MR. STARR: I don't know if we want to define that.

I don't believe they exist.

CHAIRMAN NOBRIGA: We need one definition then, huh?

MR. CRADDICK: You're right, Jonathan, that's the whole problem.

MR. HIRANAGA: My belief is that if the lot existed prior to a certain date they would have vested rights over a lot that was created after that. That was the intent of the word vested rights. I have a concern about funds expended in reliance. That needs to be defined also. They need to have preliminary subdivision approval prior to that day and continue to have that subdivision active for this entire period. Because to pull a set of plans out and have it stamped by a surveyor, "I spent a thousand bucks to have this thing drawn up," what happens then?

MR. CRADDICK: Those are the kinds of things we are handling. There was some contract with an engineer or surveyor to do the plans and stuff like that that preceded, you have to do all that stuff before you can even apply.

MR. HIRANAGA: But who determines the amount of funds expended? It's actually significant.

MR. CRADDICK: We have gone down I think as low as \$1,000.

MR. HIRANAGA: If the subdivision is for 39 lots you are going to give him 39 meters because he spent \$1,000 to have a sketch drawn up?

MR. CRADDICK: Well, let's give you another example. At Kula Manu, as distinguished from Kulamalu, Everett Dowling and Bill Ellis. They have this right going from 1975 until today. Now, supposedly there's an argument that they got an easement for the Lower Kula line. So whether even this can extinguish their rights in sixty days I don't know. We might have to work with Corp Counsel on that. This may not extinguish their right because there's actually, you know, we got something for allowing them to subdivide and giving them meters.

Now, it should have had a time limit when they could

exercise that, but it didn't, and there's actually a subdivision agreement with Kula Malu with the County.

CHAIRMAN NOBRIGA: I going to call one recess. I think we stay rambling, that's why.

(Whereupon a brief recess was had).

CHAIRMAN NOBRIGA: I call this meeting back to order. Again, we are discussing 16-106-4, subsection B, "premises that are not on the priority list and have funds expended in reliance upon official assurances dated before November 2, 1994." We'd like to insert language giving the Board final authority on the expenditure reliance issue.

MR. CRADDICK: Do you want to deal with those on a case-by-case basis? You are talking about hundreds, Mike, hundreds. No way do you want to attempt to do that.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Mr. Hiranaga.

MR. HIRANAGA: The Applicant has to feel that they have something that they can defend and are willing to come before the Board. If they feel that their position is weak they are not going to come before the Board. I think it's too openended.

MR. CRADDICK: Why don't you put a dollar amount in there then. That's what you do, put a dollar amount in there, and then that way then if they want to come in and grumble about it we just say, "Hey, here is 2000 bucks, go to the end of the line."

MR. QUINN: I would get an opinion from Corp Counsel on vested rights.

MR. CRADDICK: Mike, I don't think you are going to get one. That's why we have had all the trouble with this that we've had.

CHAIRMAN NOBRIGA: Expended funds.

MR. HIRANAGA: How many people approximately are on the list right now?

CHAIRMAN NOBRIGA: Mr. Craddick?

MR. CRADDICK: Are you talking about the shortened list?

MR. HIRANAGA: Whatever list. I just want to know if it's 5,000 or 500.

MR. CRADDICK: Okay, the list that was started, we have taken no names off of it since November 1994, has 931 names as of -- what's the date of this list here, October 31, 2001.

MR. HIRANAGA: I would hazard a guess that 10 percent of those people would come in on the basis of reliance of expended funds.

MR. CRADDICK: No, this is people who aren't on the list, aren't on the list.

MR. HIRANAGA: I would hazard to guess that there would be less than a hundred people that would come in. You don't have that many people that are developers.

MR. CRADDICK: You might be right, there might be a hundred. There could be a hundred. But do you want to take care of a hundred of them?

MR. HIRANAGA: They have to determine if they have a defensible position. A lot of them may not.

CHAIRMAN NOBRIGA: I think the Board should have the final say as to the funds that they claim they spent in reliance, not being on the priority list and now claiming they want meters.

MR. CRADDICK: This list that Fran is passing out here is not what I was talking about.

CHAIRMAN NOBRIGA: I mean everything is going to be subject to Corporation Counsel, but we want to see language in

here saying that based on the Board's approval of funds expended in reliance, okay. Anything else? Mr. Hiranaga?

MR. HIRANAGA: I think the term "vested rights" needs to be defined.

MR. CRADDICK: It will, if the Board is going to do this arbitration it will.

MR. HIRANAGA: The vested rights doesn't have to come before the Board if it fits the definition, but we need a definition of vested rights. I think vested rights is an objective examination versus expended funds, which is the subject.

MR. TAGORDA: It's a very openended thing.

MR. HIRANAGA: So either you -- the vested rights, here is the line, you are either on this side or that side. But the term "vested rights" needs to be defined.

CHAIRMAN NOBRIGA: I agree with you. Mr. Starr?

MR. STARR: My feeling is we are better off not defining it. These are the people who have been sneaking through the cracks for the last several years, and all we are doing is terminating with prejudice their ability to continue to do so, and we are basically just sunseting that process. And if we define it, then we are going to tend to open it up to more abuse.

MR. CRADDICK: Not only that, you are going to be able to take longer than sixty days to determine it because it will take sixty days to get through the Board so they will have sixty days plus another sixty days.

MR. HIRANAGA: I am not suggesting that they come before us for vested rights issues if the word vested rights is defined.

Hypothetical situation: Someone owns a piece of property in Kula for the past 40 years. Because he's heard about this moratorium on meters, he has not bothered to get on the list. All of a sudden he hears meters are being issued and

he wants a meter for it. You are going to tell him he's got to go to the back of the line because he doesn't have any vested rights? Unless vested rights is defined -- the lot was in existence prior to a specific date or --

MR. CRADDICK: That's why I gave the example of just buying the lot as an example. That we have already used vested rights.

MR. HIRANAGA: I wouldn't say buying the lot, it's when the lot existed. It can change ownership. You create lots by subdividing, so if the lot was in existence prior to a specific date. You are not creating more inventory, that's an existing inventory.

MR. CRADDICK: Ed, basically I guess what they're saying is they want a definition in there of vested rights. I will have to leave that one up to you.

CHAIRMAN NOBRIGA: In your mind, what would vested rights mean?

MR. HIRANAGA: The lot existed before a specific date.

CHAIRMAN NOBRIGA: Before the Kula Rule?

MR. HIRANAGA: Somebody needs to draw a line in the sand, and then it's not arbitrary, it is not subjective because you know when the lot was created. If it's a Land Court award you know it existed a hundred years ago.

MR. STARR: I don't want it to go out in public and have it published in the newspapers that anyone with a lot created before this date has a free run at a meter.

MR. HIRANAGA: Why not?

CHAIRMAN NOBRIGA: We are just saying that they can get on the priority list within sixty days.

MR. STARR: No, we're saying that they will bypass the priority list and get their meter before the priority list guys. All we are going to do is just open it up for more

people who haven't already figured it out and abused the loophole.

MR. HIRANAGA: It puts them ahead of newly subdivided lots.

MR. STARR: It puts them ahead of the priority list.

MR. HIRANAGA: The people on the priority list are people who are subdividing lots.

MR. STARR: The people on the priority list are people who did things the right way and didn't try to sneak through a legal loophole.

MR. HIRANAGA: The people on the priority list are also developers who want to create more lots, so are you going to put them ahead of someone who has owned the lot for 40 years but didn't get on the priority list?

MR. STARR: If they didn't apply for a meter that's their problem. They should have applied for a meter.

MR. HIRANAGA: I disagree. What if you lived on the mainland for 20 years and you moved back last year and you have owned this lot but you didn't know what was happening.

MR. STARR: Then I should wait my turn.

MR. HIRANAGA: Behind the guys who want to create a new subdivision who are on the list?

MR. STARR: Yes. I don't want to put people ahead of the waiting list. To my mind, we should not have been issuing meters ahead of the waiting list. We should do everything in our power to go through the waiting list before we issue to anyone else. This is abuse. I have sat in so many meetings where we hear about how many people have gotten meters when all the waiting list people are crying and they have been waiting for 5, 10, 15 years. I want to service the waiting list people. To me, that's fairness. I don't want to create another class of people who are going to be able to jump the waiting list now. To me, that's abuse.

MR. CRADDICK: Ed, this issue here I think goes to the Jim Smith court case, and the things that are being talked about is what we put on the guidelines that the court found were illegal. So without rule making they are going to remain out there until rule making does occur. So Mr. Hiranaga has the idea, you know. What we tried to do, we tried to use the statute of limitations, and I can read you exactly what the court said about the statute of limitations. They didn't buy it.

The court said, I feel that these corrections are in the words of the statute statements of general and particular applicability and future effect to implement interpretive policy and thus the rules. What's the department going to do about that if I issue declaratory judgment to that fact and they already discussed the statute of limitations issue? That's what we tried to use before to extinguish those rights; it didn't work.

Now what we are trying to do is, you know, this definition of vested rights is an empty lot. Why haven't the people come in? Probably because the distribution system is inadequate. Just by us passing this isn't going to make the

distribution system adequate. They're probably still not going to be able to come in, or won't. I think I'm more willing to rely on that, that they're not going to jump in and come in.

There will be some that come in, as Kent said, but we need to go through the proper process to extinguish their rights. If we don't, they're going to remain out there or be able to sue and get their rights. And I mean that's the purpose of rule making, is to try to avoid those lawsuits.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: I guess for myself I have always had a concern that there was only one notice published on November 2, 1994. If you did not see that notice the only way you found out was by word of mouth or by contacting the department and you were told that there is this list. I have concerns for people who own preexisting lots. If you did not purchase a copy of the Maui News on November 2, 1994, you don't know that this list is being maintained or created.

There are people who may live on Oahu or the Big Island that have owned property here for decades who now have decided to return to live or farm their property and are told that they have to be at the back of the list, behind developers who are on the list. That's my concern. I think developers who are creating new lots should be at the bottom of the list. That's just my personal opinion. Their goal is to make money, not for the use of the land.

CHAIRMAN NOBRIGA: I do feel that we have to have a provision for people that have a situation exactly like what Mr. Hiranaga is describing. The definition of vested rights would be in order. The definition of vested rights should include the ownership of the property in addition to just the lot was created. It should be prior the Kula Rule. But the provision within vested rights should include that the lot can be serviced by the current system, that adequacy would exist for that lot.

MR. CRADDICK: Mike, one problem is the Kula Rule allowed the five-eighths inch meter for all the existing lots. So even under the Kula Rule you could get the five-eighths

meter for the empty lot, even though the Kula Rule said the system is inadequate. You could still get the five-eighths inch meter for the empty lot. That's why we are trying to extinguish those rights. Even if people bought the lot under the Kula Rule, they would expect to get a meter. And they may have never lived here, and certainly not during the time November 2, 1994.

CHAIRMAN NOBRIGA: I think our job is to protect the rights of people and not to try and squash them.

MR. CRADDICK: Well, that's what we are trying to do here. We are trying to protect those peoples' rights. Saying here is the chance, here is the meter. If you don't use it, get on the list. That's exactly what we are trying to do, we are trying to protect those peoples' rights.

CHAIRMAN NOBRIGA: I believe we have an impasse, and without some kind of language proposal I don't think we can further -- I don't think we can reach a conclusion I think on this matter of vested rights. Mr. Hiranaga?

MR. HIRANAGA: One quandry about ownership would be if a father transferred ownership of the property to his son subsequent to that date. Are you going to penalize that individual who just inherited the property?

CHAIRMAN NOBRIGA: No. I think the ownership of the property must be within the lineage of ownership, not somebody who moves here from outside acquiring the property and saying that they have vested rights.

MR. HIRANAGA: I don't know what the definition is, but it should be defined.

MR. KUSHI: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Kushi.

MR. KUSHI: In the interest of moving on, I would not want you to try to even attempt to define vested rights. It's a legal term of art. There are cases and cases going back to the Nukolii case about vested rights. This is not the forum

to define it. I have doubts to even say vested rights, just say rights.

And to move on, let's say somebody who feels he's entitled to apply and then they apply to the Director. The Director for whatever reason denies the application. They can always appeal to the Board. That's the next page. And this Board can then decide whether you want to waive the requirements and let them appeal, or uphold the Director's decision. In that case they can go to court.

CHAIRMAN NOBRIGA: Mr. Starr?

MR. STARR: Yes, I think that Counsel is right on here, and I appreciate his way of thinking. We are at the end of a bad era and we want to see it behind us. We don't want to create a new legal -- we don't want to create new rights and a new legal quagmire to wade through. So my feeling is we should just leave it be as it is there.

MR. CRADDICK: Are you saying vested rights or delete the word vested?

MR. STARR: I think that we have been using the term vested rights, so we should probably leave it that way. But I would not have a problem with changing it just to rights.

MR. KUSHI: If I may suggest, Mr. Chair.

CHAIRMAN NOBRIGA: Mr. Kushi.

MR. KUSHI: Instead of "or have vested rights," maybe "or have any pre-existing rights associated with the premises."

MR. STARR: Pre-existing is good.

CHAIRMAN NOBRIGA: Mr. Hiranaga.

MR. HIRANAGA: May I suggest the word "claim" versus "rights."

CHAIRMAN NOBRIGA: Sure.

MR. HIRANAGA: Then you would have to define what

rights. They're making a claim for the right to appeal.

CHAIRMAN NOBRIGA: Any claim to pre-existing vested rights or just any preexisting vested rights?

MR. STARR: Anyone can make a claim.

MR. QUINN: You have to have the rights before you make a claim.

MR. HIRANAGA: You have to define rights.

MR. QUINN: No, because that's what we are trying to avoid, because that's case law. There's got to be volumes of case law on what vested rights or rights are. If it goes through the court, then so be it.

MR. CRADDICK: This is the heart of Jim Smith, so how you do this is --

CHAIRMAN NOBRIGA: I'm done with it. I don't want

to deal with it any more.

MR. KUSHI: Mr. Chair, if I may.

CHAIRMAN NOBRIGA: Yes, Mr. Kushi.

MR. KUSHI: I would suggest striking out or have vested rights, and put in this phrase "or have any pre-existing rights associated with the premises entitling the premises to water service."

MR. STARR: Yes.

MR. KUSHI: And continue on, "shall be allowed sixty days."

MR. STARR: That's as close to a definition as I think we can get.

CHAIRMAN NOBRIGA: Any other discussion about anything else in this document?

MR. TAGORDA: It's going to go to public hearing anyhow.

MR. KUSHI: Correct.

MR. STARR: Yes. Are we getting to E? My feeling is that we should strike the last portion after "request." So it should be, "Requests for water service shall be limited to one meter size upgrade to the next larger meter size or a single five-eighths inch meter per request." We are not going to -- if someone has a hundred lots on a subdivision, that applicant or that premises, what are we calling it, that premises will not be getting a hundred meters the first go round, but they will be getting one meter.

MR. CRADDICK: So Hawaiian Homes would get one meter?

MR. STARR: Hawaiian Homes is not at issue. I thought they -- are they waiting for meters on the list?

MR. CRADDICK: They're on the list, yes. They're exempted from source. If you pass this and you say one meter for a subdivision, then they will get one meter.

MR. STARR: Hawaiian Homes we have to service no matter what.

CHAIRMAN NOBRIGA: This says one meter size upgrade. That means they have got to have one meter to request one upgrade.

MR. CRADDICK: Right. Plus this is also if they're on the list to do a subdivision they get one meter per lot. Not a three-quarter inch meter, not two meters per lot, but they get one per lot, because they got on the list for the purposes of subdividing. So if you are going to say, "Even though you got on the list to subdivide but hey, by the way, we are not going to give you any meters."

And by the way, these are the guides that will fix up the water system for everybody else. And you are going to tell them, "But you can't get any meters once you fix up the water system." I mean we can do it, I know that, but every time we have had this meeting before and this has been discussed that's why all the attorneys came. They're all waiting and watching on this one.

But either way you want to go. People are on the list for the purpose of subdividing. And I mean what is the biggest one that's on there, how many lots, roughly? Mauna Olu college is about 30 or 40 lots, and that one is already kicked off the list because Kent Smith went on his own, supplying his own water. Of course he is not moving ahead, so they theoretically could still come back.

MR. STARR: Leave it.

CHAIRMAN NOBRIGA: Yeah. Page five, partial waiver of water system development fees.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN NOBRIGA: Yes, Mr. Hiranaga.

MR. HIRANAGA: Could we go back to section C, that new paragraph. I'm not sure what that means.

CHAIRMAN NOBRIGA: Are you talking about, "This

provision may not be implemented if any lot with existing structures exceeds the demand capacity of the meter allowed or the meter supplies a private water system that does not meet water department rules and regulations for subdivisions. This provision shall expire in sixty days from the enactment of this rule."

Your question is again?

MR. HIRANAGA: I don't understand what that is trying to say.

MR. CRADDICK: I guess it should say, "shall expire in sixty days from the enactment of this rule and you will have to get on the list to get your meters." But basically people who have a meter that has a large consumption on it and there's existing structures on there and they want to get multiple meters.

Now, some of them may already have the lots there.

Some of them may not have the lots there, they may want to subdivide, like the Hoekstras. They want to use the large meter, break it up for the subdivision that was already allowed. We're trying to say that whatever the capacity is of

the meter that you have, you are not going to be able to get meters that are smaller than the capacity that's required for the structures that are on the property. And that last sentence here, "this provision shall expire," I guess it needs a little more clarity there, you know. "Your ability to do this expires in sixty days, and if you want to do this thereafter you have got to be on the priority list."

The only reason I say that is because there's about four or five lots out there that have done stuff like this from 1993 until now, and is there any right to expect that? I don't know if there is. But we're saying if there is a right to do it, it expires in sixty days. And you have got to get on the list if you want to break up these large meters. And that needs to be added on there.

MR. STARR: Do you understand any of that?

CHAIRMAN NOBRIGA: No.

MR. TAGORDA: We need to go out of this meeting.

CHAIRMAN NOBRIGA: Could you rewrite that to say what the hell you mean and not frickin jibberish? Thank you. Okay, partial waiver of Water System Development Fee. The exemptions will only be up to a maximum of three lots, period. It's not the number of additional lots created in a family subdivision.

MR. STARR: Three lots per. What did we call it, what did we use?

CHAIRMAN NOBRIGA: Three lots waiver. If they have got a fourth or fifth lot they have got to pay the full price regardless of how long they have been on the list.

MR. STARR: Three lots per premises or three lots per application or three lots period? How do we say that, Counsel?

MR. KUSHI: Where are we?

MR. STARR: 106-09. Limited to three lots per application or per premises, or whatever we are calling these

applicants.

MR. CRADDICK: Up to a maximum number of. Change this to three, right?

CHAIRMAN NOBRIGA: You guys want to report this out to the Board meeting or do you want to send it out again?

MR. STARR: I want to send it out.

CHAIRMAN NOBRIGA: What about the development fee rule, you guys want to pass it out at the Board meeting or do you want to hold it up?

MR. STARR: Let's go, Mike.

CHAIRMAN NOBRIGA: I'm done. I don't know about you guys, but I'm just totally done for the day.

MR. STARR: I think we have done our work.

CHAIRMAN NOBRIGA: I would appreciate a motion to adjourn.

MR. TAGORDA: Move to adjourn.

MR. STARR: How about a motion to pass them out first. I move to pass them out.

MR. HIRANAGA: Second.

CHAIRMAN NOBRIGA: Recommendation to pass Board rules out is made and seconded. All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

Motion to adjourn. Is there a second?

MR. STARR: Yes.

CHAIRMAN NOBRIGA: All those in favor signify by saying "aye."

(A chorus of ayes).

Opposed "nay."

(None).

The meeting is adjourned. Thank you, ladies and gentlemen.

(The proceedings were concluded at 11:30 a.m.)

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