

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Held at the HGEA Conference Room, David K. Trask, Jr.,
Office Building, 2145 Kaohu Street, Room 207, Wailuku,
Maui, Hawaii, commencing at 9:00 a.m. on January 31st, 2002.

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

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

BOARD MEMBERS:

Peter Rice, Chairman

Clark Hashimoto

Kent Hiranaga

Orlando Tagorda

Adolph Helm

Howard Nakamura

Mike Nobriga

STAFF PRESENT:

David Craddick, Director

George Tengan, Deputy Director

Ed Kushi, Corporation Counsel

Fran Nago, Board Secretary

CHAIRMAN RICE: I would like to call to order the Board of Water Supply meeting, regular meeting, Thursday, January 24th, 9 a.m. We're in the HGEA conference room, Number 207.

Present are Board members Clark Hashimoto, Mike Nobriga, Kent Hiranaga, Orlando Tagorda, Adolph Helm, and Howard Nakamura, Director David Craddick, secretary Fran Nago, staff, Corp Counsel Judy Williams.

Let the record note the public members who are present, if they signed to testify, and proceed. First item on the agenda is the approval of minutes.

MR. NOBRIGA: Mr. Chair, I would like to move that the minutes of the Special Meeting of December 6, 2001, both Department of Hawaiian Home Lands and Iao Aquifer, be received subject to 30 day review, at which time if there are no corrections, minutes to be filed.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Motion and second that the minutes be received subject to review and they be filed. Is there any discussion? Comments? All in favor, significant by saying aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

At this point on the agenda we have testimony from the public. Is there any testimony that the public would like to give at this time? I should note that we will allow you to speak on the issue as it comes up on the agenda if you want to stay around, but if not -- I see Ron. Go ahead. We'll start from the right this time and move left.

MR. STURTZ: Mr. Carroll is waiting downstairs. Did you want to meet with him first before we start the public testimony?

MR. CRADDICK: I think he's coming upstairs.

MR. STURTZ: Good morning. My name is Ron Sturtz and I'm here today as president of Maui Tomorrow to speak to you about Item VII(E) which is request for Board approval of a rule regarding Board

action on matters concerning the distribution of water resources and the acquisition of land to develop water resources. I trust that you have within your Board packets the proposed language of the proposed rule change and my purpose for being here today is just to briefly educate you as to the context of this rule change and significance so when you vote, you'll have a full understanding of what's happening.

This particular matter arises out of a situation last year where the water board found itself in a bit of difficulty concerning the request for the Central Maui Joint Venture settlement agreement and it became necessary for Maui Tomorrow to bring a legal action to deal with that particular situation. Later on your agenda -- I guess it's later on your agenda in Executive Session, you'll be discussing a settlement which has been reached between Maui Tomorrow's board and this board and I will not talk about that now.

But this particular rule change arose out of settlement discussions between your Board chairman, myself, our respective legal counsel, and I believe

it's also been discussed individually with other Board members prior to this point in time.

Basically what we're trying to do here is bring into alignment the policies of this Board with the policies adopted by the county council. Where matters of significance come up for review when you come before the county council, they have two public readings, not just one, before something can be made into law. And the reason for that particular rule is when the agendas come out, oftentimes 10 days before, it doesn't arrive until three or four or five days before, there is not enough time necessarily for the public to be aware and to understand the nature of what's being involved. And so the county, in its wisdom, decided to give a second shot at it, a second reading, at the next scheduled meeting so that people had a chance to in due course in a reasoned manner evaluate the issues and decide if they want to participate in the public forum.

In matters such as what happened with last year's Joint Venture agreement, things happened very, very quickly and had there been more time to weigh and

balance the various issues involved, perhaps it would not have been necessary to have to get into the legal arena to deal with the issues. So the goal here is to, in matters of significance -- and a number was picked of 500,000 gallons, a half million gallons a day -- in allocations, acquisitions of large quantities of water, this particular rule, Section 16.02-25(d), which has been added now, which is proposed to be added, would deal with the circumstance.

And the context in which this came up, again, we were trying not to have the public micromanage what you do or tie your hands in your evaluations and negotiation process, but simply in a situation where there is a significant amount of water involved, there be an opportunity to have two hearings on it.

So the language -- I'll read it briefly, Section (d) as proposed by -- it was written by your counsel and approved by the Maui Tomorrow board, concerning decisions and orders, it says, "Notwithstanding the above or any provisions in this

chapter to the contrary, no decision, order, or action of the board concerning the acquisition of land or resources, allocation and/or distribution of water resources in the amount of 500,000 gallons per day or more, shall occur or be rendered by the board unless and until the subject matter has been noticed on two regularly scheduled board meeting agendas."

It's relatively straightforward language. I believe that -- I see your chairman nodding his head -- there is agreement among the various parties that this language reflects the intention of the parties and is something that you feel the Board can live with and is appropriate within the context of resolving a lawsuit and also appropriate in the context of the public interest.

So I wanted just to share these details with you so when this matter comes up on your agenda -- I can't be here for the discussion of this item later on this morning, it's near the back end of your agenda and I have to leave, so I wanted to share with you now so when it comes up, you'll be aware of its context.

CHAIRMAN RICE: Thank you, Ron. Any questions?

Any other public testimony to be given at this time? I have Council Member Bob Carroll downstairs. Is there going to be any other testimony after this gentleman? Okay. Let's do Mr. Carroll. Recess to downstairs, reconvene in one minute.

(Brief recess.)

CHAIRMAN RICE: Call the meeting back to order. We're here to take public testimony and Mr. Carroll is here joining us from council. Thank you for attending our meeting, Bob, and we'll go ahead and hear you.

MR. CARROLL: Thank you. I would like to thank everybody for coming down. I realize that the lift is working now. However, I rode that lift one time and I like many other people are scared to death of that thing. It's a real experience. You don't believe me, if you're not in a wheelchair try step up

in that and use it sometime, for the people that can't walk down.

And I just want to say a few words about this before I get into my regular testimony, that the liquor supply used to meet up here and I had complaints about that and we went over there and made it known that it was not acceptable. I had people, older people come and see me that, I'm sorry, it's just detrimental to your board because you're not getting people over here that should be here because they don't want to -- they can't walk up the stairs because they're older and that lift over there is just too frightening. And it's also dangerous if you can only stand, because not everybody is in a wheelchair. It has to be for people that have other infirmities, too, they can't use steps.

I did write a letter to you. I would hope that you would take into serious consideration having your meetings in a place that is accessible.

I think the county and the boards need to take the lead. We demand that private industry and private companies make their places acceptable and accessible,

but we should be the one, especially something as important as you, should do everything possible to make sure that anybody can come at any time. And I would hope that you would take that under consideration and find a place that would be acceptable.

CHAIRMAN RICE: Actually, Bob, you should know that before this series of meetings started this calendar year, 2002, I asked Fran to look at other places for us to meet for the very reason. And our alternative was council chambers and apparently the problem with that is that if someone decides at the last minute that they want us out, they can kick us out. So you might bring that back is if it's scheduled and if it's currently open and we can schedule it, as long as we don't have the threat of being kicked out at the last minute, we would love to do it in a different place. And also the same thing goes with the other meeting room that's there, and it has happened, I know it's happened to planning before,

so. Besides that, we are looking, so.

MR. CARROLL: And if I find anything, I promise I'll let you know.

CHAIRMAN RICE: Okay, thanks, Bob.

MR. CARROLL: Now, as to what I would like to give testimony to your agenda item, it's what I gave testimony before. At the last meeting, I brought forward about the waterline, number one, and the concerns about fire protection. Since then, you've had several letters, one from Harry Hasegawa that should be in your binders, Neal and I think you have several more that have expressed concerns.

I took this back to the community and I told them that I am not going to say yea or nay. What you wish, I'll support. And they gave me their concerns. Most of their concerns was some didn't think it was a good idea. Some wanted it. All were concerned about fire protection. But they had -- when I gave them everything, they noted it called for removal of stone

walls, some other things, and even the ones that are really wanted inside, want to know what the project would really entail. They were hoping that they could at least, if the Board didn't move over, that you could make a workshop over there, have somebody go and explain to them exactly what the project entails, the construction, how it would affect the traffic over there, if it would encroach on properties, if walls would have to be moved, so they can make a decision if they really want it or not. Otherwise it's just -- how are these people supposed to decide what is good? And they're all concerned about fire protection.

Last time I told you one house burned down and that is a matter of record. And also there was another large fire over there that they had real problems with and lucky a house didn't burn down in that one, where it caught in haula over there, which is highly flammable, and they didn't have water to fight that one either. And it was just luck that the wind was blowing in the right direction. So fire concerns are utmost in everybody's mind.

And the other thing I found disturbing from the minutes in the last meeting, you had one of your Board members who I tried to contact and I asked him to meet me on it, but he is not here, Jonathan Starr, told this Board that the people in Hamoa did not want the land. Not only is this not true, it is very disturbing. He contacted not one person in Homua. No one. This is unacceptable for a board member. And I would strongly urge that the Board take some action. It is your reputation, it is your responsibility to the community to represent them and honestly. And that reflects on everyone even though it was only one man. And I would hope that you would take some action.

We also have someone else from Hana is Ahia has come over today and he will give testimony later upstairs. So we can let you all go. Is there any questions anyone has for me before I return to my building across the street?

MR. HASHIMOTO: Is there a subdivision, a plan at the end of the --

MR. CARROLL: There is one lot to be divided in half. That's all. It's a family subdivision, from one to make two. That is the only thing and I've checked the records, there is no plans, there is nothing in the pipe anywhere, any other development or even homes to be built down there. That is the only subdivision and it is one lot to be made into two.

MR. HASHIMOTO: Because during our committee meeting, I thought there was -- where is Mike? Was it you that you said there was going to be a big subdivision plan at the end of that -- no.

MR. CARROLL: There is not. I really appreciate your bringing that up, that's what I heard, too, and I'm remiss, I forgot to bring that up. There are no plans, I checked, there are absolutely no plans, not even for a house down there, except for that one subdivision. And like I say, that is one lot divided into half. So although we use the term

subdivision, that can be very misleading. Any other questions?

MR. TAGORDA: I heard that you was saying that you met with the people in that area and they are divided in this issue whether they like or not that waterline.

MR. CARROLL: Yes.

MR. TAGORDA: So what you asking this Board or this department is for staff to give them more information about the project?

MR. CARROLL: Yes, because the ones that are concerned about putting it in -- some want it in no matter what. But some are concerned. I mean, they don't want -- in the report that I gave them, it talks about removing walls and things. So they're concerned, I mean, is it going to encroach on their property, is it going to -- are they going to make the road two lanes. They have some real concerns about

how the project is going in. But most of them would like the water because they're concerned about fire protection, too, their insurance rates and everything else, besides the lifesaving.

CHAIRMAN RICE: Any other questions? Okay.

Thank you, Bob. Let's recess and start again in a minute.

(Brief recess.)

CHAIRMAN RICE: Public testimony, we're still in public testimony. Those giving public testimony, if they would come up the mike next to Fran and give us your name and the issue you're testifying on.

MR. HAGER: My name is Walter Hager, I'm with the Department of Water Supply, Water Treatment Division, and I would like to speak to Item F under Section VII, the discussion regarding the board's recommendations to the Charter Commission for charter

amendments. I would encourage the Board to recommend to the Charter Commission that the semiautonomy of the Board be the route to follow. And the reason being it will give the Board the power it needs to make those necessary rules and decisions relative to their operation and it will also give the Board the ability to serve the community on a better leg that it can right now because it's kind of, in my words, hamstrung by having to have the approval of the council and such. I recommend that that's the avenue that the Board would follow.

CHAIRMAN RICE: Thank you, Walter. Any questions of Walter? Board members? Thank you, Walter. I know there is other testimony. Jacky.

MS. TAKAKURA: My name is Jacky Takakura and I'm here to make a few comments on Section VII, Item F, regarding the County Charter amendments. In looking at whether the department should go back under the mayor and council or be further semi-autonomous, please consider that in the 10 years prior to

semi-autonomy, 1980 to 1989, the dollar value of projects per year on average was \$4.6 million. In the decade following semi-autonomy, 1990 to 1999, the average value of projects per year jumped to \$14.5 million. That's an increase of 217 percent.

Some of the things those dollars contributed to include a 50 percent increase in storage for Central Maui, a 100 million gallon increase in raw water storage Upcountry, and 4.5 million gallons per day treatment facilities in West Maui.

In the year 1989, the Department of Water Supply provided 8.8 billion gallons of water. In 1999, that number was 13.5 billion gallons. This is a 53 percent increase in water provided to customers. With that increase, the number of customer complaints has decreased. Since 1993, there has been a 40 percent drop in customer complaints. These numbers are taken from the audited annual reports.

The Department of Water Supply should be fully semi-autonomous so that it can continue the work of protecting Maui's resources and providing water to

customers. More work needs to be done, and it can be better accomplished if the department is run as a utility, just as the phone company, electric company and cable company are.

That's all I have to say. Thank you very much.

CHAIRMAN RICE: Thank you, Jacky. Any questions of Jacky, members of the Board? Thank you.

MR. HILL: My name is Kenneth Hill. I am employed with the Department of Water Supply in a technical position. I'm also a Kula homeowner. I'm here to comment on the provision for Section VII -- on discussion of the Charter Commission for charter amendments, the autonomy of the Board of Water Supply.

My agenda is that I support the highest ethics and standards that our commission members can give us. And as the proposals stand, one of the key facets for high ethics is high transparency and availability of information to the public. Also on that same vein is direct election of members. Neither of these proposals provide for direct election of members.

However, I do acknowledge that our current member board has term limits.

So that my belief is that neither of these proposals could -- it supports the highest level of ethics and openness to the public at this point. So that my belief is that we need to come up with further proposals to put on as a charter amendment because neither proposal actually satisfies all the requirements to be more open and to be of highest ethical standards. Thank you.

CHAIRMAN RICE: Any questions? Thank you.

MR. SEITZ: Good morning, my name is Paul Seitz. I believe most of you probably know me. I'm here to speak to again Item VII, Section F, and I would like to share with you my perspective. I support the fully autonomous or the semi-autonomous position. I've been in the water industry for well over 20 years. I've seen it both ways; I've seen it go back and forth. And water issues, as most of you

probably know, are the planning and the implementation can take a career. It can take a lifetime get some of these things through.

We've been back and forth under the administration several times now. If you look at the number of times that the director has changed prior to this last bout of the semi-autonomy, it's changed roughly 12 or 13 times. The average life of a director at that time was about three to three and a half years. And every three to three and a half years, our direction changed. And with a lifetime of the water issues and that sort of thing, it's not enough time -- there's no continuity. And I believe that that was one of the reasons why we were in trouble.

I've been a member of the American Waterworks Association for 20 years -- well over 20 years, actually. And in the early days, I can honestly tell you the Maui Board of Water Supply was a bad joke. I always told everyone, yes, I was in the water industry, yes, I was from Maui, but I wasn't part of that group. Things have changed. Now we're a leader.

We're respected. We participate.

Regulation and the legislation don't always follow politics, unfortunately. If you take a look back when we built the Piiholo plant, the administration at that time at the ground breaking ceremonies said that they weren't in support, that it was a waste of money. The dedication at the Kahakapau, the administration at that time came out and said that it was a waste of money. In hindsight, I look back, if we didn't have that facility, if we didn't build a Kahakapau, these last couple droughts that we've been through, since I was the one that was operating those systems, I can honestly tell you I don't know what I would have done.

So it's very, very important that we have water people making water decisions. And we have to have the continuity in order to do that. And having the Board make these decisions I think is paramount for the community and for the good of everyone on the island.

So if anyone has any questions, I would be

happy to entertain them.

CHAIRMAN RICE: Board members. Thank you,
Paul. Larry Winters.

MR. WINTERS: Good morning. I'm Larry
Winters, staff engineer with the department of water.
I want to also speak on Item VII F on the Charter
Commission recommendation. I would also reiterate the
prior speakers' recommendations and their reasons. I
just want to add one additional comment.

Having worked under the prior situation where
the department was under the administration, I object
to the use or the ability to use the department's
money for general fund projects. I know that in the
past under the administration, there was money
allocated to general fund projects such as housing and
things like that. I would definitely prefer the
department's money used for water projects.

Just one other comment. In discussing with
other staff members at the department engineering
office, they likewise support staying VII

semi-autonomous or fully autonomous. Thank you.

CHAIRMAN RICE: Any questions? Thank you.

Any other public testimony?

MR. KAHALEHOE: Good morning, Board, I'm John Kahalehoe. I'm an employee of the water department, County of Maui. I would like to speak on behalf of Item F, Section VII, Charter Commission recommendation. I'd like to say throughout my 30-somewhat years as an employee of the department, I feel that we should have our department continue semi-autonomously. We have accomplished a lot from what they were in the past and where they're at now today meeting the infrastructure demand of Maui County. That's all I have.

CHAIRMAN RICE: Any questions of John? Thank you, John.

Any other public testimony at this time?

Okay. Hearing and seeing none, we're going to move

into the section of the agenda Director's Reports.

Mr. Craddick, request to allow Kauai Water Department to keep the drill rig for one year. I believe that Mr. Craddick has informed me that this issue is one of quid pro quo. They allowed us to keep the drill rig for a longer period of time and they're asking for the same consideration. Is that true?

MR. CRADDICK: That's correct. It's not a money issue for us; it's just they extended a favor to us and are asking the same in return.

CHAIRMAN RICE: Board members, how do you feel about this? Something you want to take action on now or --

MR. NOBRIGA: Mr. Chair, I'll move that we accept director's recommendation.

MR. NAKAMURA: Second.

CHAIRMAN RICE: It's been moved and seconded.

Any discussion?

MR. TAGORDA: Mr. Chair, I just have a few comments about this drilling rig program. Was this drilling rig already used by Maui County, Board of Water Supply, to your knowledge, Mr. Craddick?

MR. CRADDICK: We joined in the program in 2/01 and I think our fiscal year '01 budget, we purchased Honolulu's share. The program was a 10-year program with Honolulu, Kauai, and the Big Island, and Honolulu wanted to drop out of the program because the federal government stopped putting in their share towards the program.

One of our senators, congressional senators, suggested to us that if we participated in the program, they would fund a project over on Molokai which was needed for the Kualapuu aquifer. That project was fully funded with federal dollars, with us buying I believe it was a 60-some-thousand-dollars share in the drilling rig. So, with that amount of

money, we got well over I believe it was about eight or nine hundred thousands worth of work done and a monitor well over there. Then Hawaiian Homes -- then our turn was over and what happened was Hawaiian Homes asked the other counties if they could basically use Kauai's turn. And it was allowed them to do that. And they subsequently drilled a well up in Waiohuli which was not a production hole, it's just a well to determine the water level. And that also was good information for us here on Maui which didn't cost us anything. So although we own a share of the rig, we have not put any money into any drilling program yet except I believe we had some share of the Kualapuu well over in Molokai. I think we kicked in I believe about a hundred thousand dollars or so.

MR. TAGORDA: Excuse me, the \$67,000 that we pay for this rig, did we benefit in some kind?

MR. CRADDICK: Well, just depends what you think the value is of having --

MR. TAGORDA: The latest drilling rig that was conducted by DHHL and GS, was that part of a county project?

MR. CRADDICK: No, DHHL.

MR. TAGORDA: Department of Housing --

MR. CRADDICK: No, Hawaiian Home Lands.

MR. TAGORDA: Department of Hawaiian Home Lands.

MR. CRADDICK: What about it now?

MR. TAGORDA: Was there a project conducted by this agency, separate and distinct from Maui County project?

MR. CRADDICK: Yes. Well, the Molokai one, we did participate. I think it was we allowed up to a hundred thousand dollars. And I think I'd have to ask

Mike whether that was ever used. I don't know whether all of that was ever used. The one up in Waiohuli, we did not put in money.

MR. TAGORDA: So if we left Kauai get another six months for that drilling rig, when is it going to come back to Maui County?

MR. CRADDICK: Well, I put in my report here that I thought possibly the Big Island would also ask for it, to be able to use it for one year. I talked to the manager there Monday. He indicated they did not have the money and they would only be looking six months. So we would probably be looking at mid next year when we would be getting it back.

MR. TAGORDA: Could you use that drilling rig to accomplish your project up at Pookela?

MR. CRADDICK: No. You cannot do any production wells with it. It can only be used for exploratory information.

MR. TAGORDA: Thank you.

CHAIRMAN RICE: Any other questions? Okay.

Call for the question. All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

Next, Mr. Craddick.

MR. CRADDICK: Actually, all the rest of the director's reports we would ask that they be referred to committee.

CHAIRMAN RICE: Okay. One thing. Director's 02-04, request approval to appropriate funds, that's

actually going to be deferred to the next meeting.

It's something that I've been working on with Maui

Tomorrow and they couldn't get the presentation

prepared, so I'm going to put that on the next agenda.

If there is no objection to the director's
recommendation, I'll refer these to committee.

Miconia to finance, and matching funds to finance. We

don't want to act on the procure services of a

legislative liaison?

MR. CRADDICK: Sorry, I would like to --

CHAIRMAN RICE: One second. So if there is no

objection, I'm going to recommend Director's 02-02 and

Director's Report 02-03 to be referred to finance

committee. Hearing and seeing none, so ordered.

Director's Report 02-04 is deferred for the next

meeting.

Director's Report 02-05 is to procure the

services of a legislative liaison, the amount being

\$3,000, the same as we had expended last year and the

same that's in the budget for this year. Do you want

to add anything to that?

MR. CRADDICK: No, that's what it is.

CHAIRMAN RICE: Members of the Board, what is your pleasure?

MR. NOBRIGA: If Mr. Nakamura has no problem with it, I would have no problem voting in favor of that motion.

MR. NAKAMURA: No.

MR. NOBRIGA: I move that we appropriate the \$3,000 for the legislative aide for this current legislative session.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: It's been moved and seconded.

Is there any discussion? Okay. All in favor, signify by saying aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Director's Report 02-06.

MR. NOBRIGA: Mr. Chairman, in the absence of your Operation Review Committee chairman, I would like to take action on Director's Report 01-58 -- sorry.

CHAIRMAN RICE: Do you want that to revert to committee, Mr. Craddick?

MR. CRADDICK: Yes. And just for clarification of the record, we can put it on here when it goes to committee, but this is Bob Yonahara.

CHAIRMAN RICE: Okay. And that was formerly in finance committee anyway, wasn't it? I believe so.

And they're valuing the land, I believe. So I'm going to refer that back to finance, then, if there is no objection.

MR. CRADDICK: What happened was he changed his mind on what he wanted to do and we did another -- well, anyways, bring it up in committee there.

CHAIRMAN RICE: No objection? Refer to finance. Okay.

Before we get into committee reports, I would like to jump ahead. Corp counsel has some other commitments, so I would like to jump ahead to the Other Business section and I think we need to go into Executive Session to consult with our counsel.

MR. NOBRIGA: Where are you, Mr. Chair?

CHAIRMAN RICE: Under Old Business. Right here. VII A.

MS. WILLIAMS: I can announce the case in open session if you like.

CHAIRMAN RICE: Go ahead. Thank you, Judy.

MS. WILLIAMS: Briefly, I'm requesting authorization to settle the matter of Elizabeth Garcia vs. Cary Constantino and the Board of Water Supply and this relates to an incident that occurred on November 26th, 1996.

I've been in discussion with opposing counsel.

I believe we may have reached a settlement. I would like to discuss the issues in Executive Session and that's all.

MR. NOBRIGA: Mr. Chairman, pursuant to HRS 92-4 and 82-5(a)(4) in order to consult with our board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities, I move we go into Executive Session to discuss -- corporation counsel, can I group all of these matters as one motion or we need to take separate action for each?

MR. KUSHI: Board Member Nobriga, I would suggest one at a time.

MR. NOBRIGA: Thank you. To discuss the matter of Elizabeth Garcia and Gary Constantino.

CHAIRMAN RICE: Motion has been made.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: There is a second.

Discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: We're in Executive Session.

[Executive Session held.]

CHAIRMAN RICE: Out of Executive Session. And then we're going to go right to -- we're going to stay in that area. We'll go to Thomas Craig.

Board members, on the issue of the Elizabeth Garcia and Terry Constantino. Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I move to accept the attorney's recommendation for settlement in the case of Elizabeth Garcia vs. Terry Constantino, Board of Water Supply.

MR. TAGORDA: Second.

CHAIRMAN RICE: It's been moved and seconded.

Any discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. We're going to move on to Craig vs. Craddick and County of Maui.

MR. KOBAYASHI: Mr. Chair, Blaine Kobayashi, deputy corporation counsel. On the matter of Thomas Craig vs. David Craddick and the County of Maui, I request that we go into Executive Session to discuss the settlement proposal which has been provided to us by Mr. Craig's attorney. And because this is a matter pertaining to the board's powers, duties, immunities and liabilities, the discussion should be held in Executive Session.

CHAIRMAN RICE: Thank you, Blaine.

MR. NOBRIGA: Mr. Chair, could we also hear from the attorney handling the next item on the agenda?

CHAIRMAN RICE: Certainly.

MR. MINATOYA: Good morning, Mr. Chair and Members, Richard Minatoya, deputy corporation counsel.

I'm here to discuss with you the matter of Maui Tomorrow vs. The Board of Water Supply and the individual board members. We would also like to request that this matter be discussed in Executive Session regarding the board's powers, duties, privileges, immunities and liabilities with regard to a settlement offer reached with Maui Tomorrow.

CHAIRMAN RICE: Thank you.

MR. NOBRIGA: Mr. Chairman, the next item on the agenda is noticed Personnel Matters and going into Executive Session. Is this matter still before this body?

CHAIRMAN RICE: Mr. Craddick? Section D, Personnel Matters.

MR. CRADDICK: Why are you asking me?

MS. NAGO: Peter, this is something that you asked me to put on every agenda.

CHAIRMAN RICE: Nothing for this meeting.

MR. NOBRIGA: Mr. Chairman, if I may, for the matter of discussion of settlement proposal for Thomas Craig vs. David Craddick, pursuant to HRS 92-4 and HRS 92-5(a)(4), in order to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities, I move we go into Executive Session.

CHAIRMAN RICE: Is there a second?

MR. TAGORDA: Second.

CHAIRMAN RICE: It's been moved and seconded.

Any discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

MR. NOBRIGA: Mr. Chairman, for the discussion regarding the settlement proposal for Maui Tomorrow, I move that we go into Executive Session pursuant to HRS 92-4 and 92-5(a)(4) in order to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liabilities.

MR. TAGORDA: Second.

CHAIRMAN RICE: It's been moved and seconded.

Any discussion on the motion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. We'll go
into Executive Session.

[Executive Session held.]

CHAIRMAN RICE: I'll call the Board of Water
Supply meeting back to order and we're in Other
Business, discussion of the settlement proposal of
Thomas Craig vs. David Craddick and the County of
Maui.

MR. NOBRIGA: Move that we approve the
recommendations of counsel.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded to approve the recommendations of counsel on the settlement proposal. Any discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

MR. TAGORDA: Nay.

CHAIRMAN RICE: One nay; let the record show

Mr. Tagorda voted nay.

Item C, discussion regarding a settlement proposal of the Maui Tomorrow lawsuit.

MR. NOBRIGA: Move to accept the recommendation of counsel on the settlement financials.

CHAIRMAN RICE: Any second?

MR. NAKAMURA: Second.

CHAIRMAN RICE: Any discussion? All in favor, signify by saying aye. Opposed, say nay.

MR. TAGORDA: Aye with reservation.

CHAIRMAN RICE: I note your reservation, sir. Because it's related, let's go to section E of Other Business and I'm going to go back to Committee Reports. Section E is a request for Board approval of a rule regarding Board action on matters concerning distribution of water resources and acquisition of land. That rule has been distributed for your review. This rule relates to our settlement proposal with Maui Tomorrow and essentially commits the Board to noticing an item twice before taking action on it if the item being taken up deals with the acquisition of land or resources or allocation of water in the amount of 500,000 gallons per day or more. And a draft of a rule has been circulated. That rule would then, based

on the board's approval, need a public hearing and following that it would come back to the Board and then go to the mayor and council. Is there any discussion or comments on the rule that's been proposed?

MR. NOBRIGA: Mr. Chairman, upon reviewing the rule, I concede as the rules chairman, although the language may not be perfect, the intent is very well stated and I would be in favor of passing this through. I move that we accept the amendment on Section D to Chapter 2.

CHAIRMAN RICE: And it be sent to public hearing.

MR. NOBRIGA: And it be sent to public hearing.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Discussion? Okay. All in favor, signify by saying aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Okay. Let's schedule public hearing for that. Okay. Let's go back to Committee Reports.

MR. NOBRIGA: Mr. Chairman, concerning the request for cooperation in watershed protection project entitled Cyanea/Ochrosia Exclosure, Makawao, Maui, the committee recommends approval. I so move.

CHAIRMAN RICE: Is there a second?

MR. CRADDICK: Oh, excuse me. Could I ask if this item be deferred for a meeting? The group was supposed to --

MR. NOBRIGA: Mr. Chairman, I withdraw my motion.

MR. CRADDICK: Thank you. The group wanted to talk with EMI and get an exact location of where they were going to do this enclosure and this group asked us if we could defer action on it until that time.

CHAIRMAN RICE: Even knowing that the committee was recommending approval?

MR. CRADDICK: Yeah, just in cooperation.

CHAIRMAN RICE: Then it goes back to committee.

MR. CRADDICK: Okay.

CHAIRMAN RICE: Okay. Mike? Next item on the Operations Review committee.

MR. NOBRIGA: Next item was a communication from Kawela Plantation Homeowners Association.

CHAIRMAN RICE: No action was taken.

MR. NOBRIGA: Waiting for Mr. Craddick. The committee does recommend that staff proceed and get specific details so that the full board and the committee -- full board can act on a case by case basis upon the recommendation.

CHAIRMAN RICE: And the Board should note that the director has already sent a letter to them. So it's -- Rules then.

MR. NOBRIGA: Rules. Mr. Chairman, request from Hoekstras to allow one meter to serve two lots, the committee recommended denial of this request. I move that we deny the request.

MR. TAGORDA: Second.

CHAIRMAN RICE: It's been moved that the request be denied. Any other discussion? All in

favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: The motion is carried.

Request is denied.

MR. NOBRIGA: Mr. Chairman, on Communication

01-32, a request for waterline along Kekoanui Place for Peahi Hui Subdivision, the request was withdrawn and the communication should be filed. I so move for filing of that communication.

MR. TAGORDA: Second.

CHAIRMAN RICE: Discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

Communication is filed.

MR. NOBRIGA: Communication 01-33 is a request on behalf of Von Tempsky. This one, the request has been withdrawn and the committee recommends that the communication be filed. I so move.

MR. TAGORDA: Second.

CHAIRMAN RICE: Moved and seconded that the request be filed. Any discussion? All in favor, signify by saying aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. Item will
be filed. Finance?

MR. NAKAMURA: Mr. Chairman, on Item C-1,
progress report on Communication 01-21 regarding the
request from Mr. Hans Michel, the committee recommends
that the staff prepare a work plan together with cost
estimates in order to fulfill the board's obligations
to Mr. Michel under the 1994 agreement and I so move
that it be referred to staff and prepare a work plan.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Discussion. All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. Still in committee.

MR. NAKAMURA: Mr. Chairman, under Director's 01-55, committee recommends funding in the amount of an additional \$47,000 from pipeline replacement account to award construction contract and I would so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: It's been moved and seconded to approve the request. All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

MR. NAKAMURA: Mr. Chairman, under Director's 01-56 to request funding for the Paukukao Water System Improvements, requesting authorization from the pipeline replacement appropriation. Committee recommends approval of the request for \$100,000 with the condition that the staff report back to the Board as the excavation proceeds.

This is kind of an unusual situation in that as the Board will recall, it involves the number of burials in the area and that is the reason why the condition that the staff report back so that the project can be assessed as it proceeds. And I would move for approval.

MR. TAGORDA: Second.

CHAIRMAN RICE: Moved and seconded to approve the request for appropriation subject to the staff reporting back to the Board as the excavation

proceeds. Any comments? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

MR. NAKAMURA: Mr. Chairman, on Director's 01-57 requesting revision of the Water Credit Agreement with the Department of Hawaiian Home Lands, there were some questions raised in committee regarding previously approved agreements and the committee members asked to better understand the history and prior agreements and the committee recommended that the matter be deferred and remain within the committee. I don't know if a formal action is required, Mr. Chairman.

CHAIRMAN RICE: Still in committee.

MR. NAKAMURA: So it's understood that the matter shall remain in the finance committee and be taken up at the next meeting.

Under Director's 01-53, requesting approval for funding for design of Makena waterline improvements, this project is at the end of the present waterline service. The committee felt that the cost/benefit ratio was somewhat questionable. It also felt that having the Board fund the entire project was inconsistent with the prior action whereby the Board participated with the owner to improve the line and the committee recommends that the project -- that the request be denied and I would so move.

MR. TAGORDA: Second.

CHAIRMAN RICE: It's been moved and seconded to deny the request. Any questions? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. Request denied.

MR. NAKAMURA: Mr. Chairman, Director's 01-53.

This is the Haneo Street waterline replacement in Hana. Again, there was some question on the cost/benefit ratio. We have received a request from Mr. Carroll that a workshop be conducted by staff to resolve with the affected residents the benefits. The committee had recommended denial of this project. However, I would have no objection to referring it to staff for the workshop as requested by Councilman Carroll.

MR. NOBRIGA: Second.

MR. TAGORDA: No action necessary, right?

CHAIRMAN RICE: I don't think we need any action. Kent?

MR. HIRANAGA: Mr. Chair, I believe because of the remote location of the project, I mentioned previously that maybe a presentation would be informative to the Board.

CHAIRMAN RICE: Very good. I think referral to staff is in order and ask the staff to provide that for the committee when they come back. So ordered.

MR. NOBRIGA: I would also like to enter into the record the receipt of some written testimony that we have received from residents of Haneo.

MS. NAGO: Mike, there is an additional -- there is a letter from the Cashmans that was just delivered.

CHAIRMAN RICE: Let the record show the receipt of all the written communication from the residents in that area.

MR. NAKAMURA: Okay, Mr. Chairman, final report is a status report on Upcountry source development projects. The director reported that the design of the new well at Pookela tank is proceeding expeditiously. It was further reported that the project would be ready to bid by the end of February. Although other parties have expressed interest in drilling in the same area, including the State and Maui Land & Pineapple, the committee believes that the county's project should proceed expeditiously and development of additional sources by others can be encouraged in other areas.

I don't believe any action is required on this unless the director has an update regarding status.

MR. CRADDICK: Wendy is the project engineer working on that one.

MS. TAOMOTO: All I have to say is that since the committee meeting, their consultant did submit their plans and specifications at the beginning of this week. I should be done reviewing it with Herb Kogasaka by Friday, which is tomorrow. But there are comments and things to be worked out, so.

MR. NAKAMURA: So is the end of February still a viable date?

MS. TAOMOTO: It might be, yeah.

MR. KOGASAKA: Yes.

CHAIRMAN RICE: Okay. Thank you to all the committees, committee members and chairmen for the reports. Let's move back to Other Business, Item F, discussion regarding board's recommendation to the Charter Commission for charter amendments.

MR. NOBRIGA: I thought we took action. We did that already.

CHAIRMAN RICE: We took public testimony. Is there any --

MR. NOBRIGA: No, we made a motion on this.

You went to this right after --

CHAIRMAN RICE: Charter Commission. Charter Commission. On the Charter Commission issue, is there a submission that the Board wants to take with regard to the charter amendment? I believe there is two proposals, one being that the Board of Water Supply be placed under the County Council as an advisory committee, and the other is for more and more autonomous operation of the Board of Water Supply.

MR. CRADDICK: And reducing the number of board members to seven and putting public works and the planning director on as voting members of the board.

CHAIRMAN RICE: That's part of the second one.

MR. CRADDICK: That's part of the proposal for more autonomy.

MR. NOBRIGA: I favor the second proposal. I think our appointment by the mayor and confirmation by the County Council already supplies us with checks and balances as far as our integrity and our willingness to serve voluntarily on behalf of the public. As residents of the community, we hear firsthand from our neighbors about the condition of the water resources. It's not like we're totally isolated. And I tend to favor -- because I think we can get a lot more things rolling if we're more autonomous than the current position that we have where major changes must go through the County Council and the mayor on a yea or nay vote.

CHAIRMAN RICE: Okay. Any other comments?

MR. NAKAMURA: One question. I'm not that familiar with that provision about the public works and planning director. Would they be voting members?

MR. CRADDICK: That's my understanding.

That's my understanding. The other counties are similar. I believe Kauai has public works and planning. Honolulu has the transportation -- state transportation director and public works director. And Big Island also has the public works and planning -- or I mean state transportation. But I'm not positive if they vote over there on the Big Island. They're nonvoting there.

CHAIRMAN RICE: Adolph?

MR. HELM: My concern on that nine-member board with the Department of Public Works and Waste Management Director as part of that board in inclusion with seven other members, my concern would be, you know, if all the districts are truly represented, you know, we can assure ourselves that Molokai has a representative on the board, whether West Maui has one, Central. I think you get better true representation by having somebody that's close to the

community that they're represented. That was my concern.

CHAIRMAN RICE: So your position would be that you would support a more autonomous nature, given that the Board was still comprised of members from the different areas of Maui County.

MR. HELM: Yeah.

CHAIRMAN RICE: I think that's a good point. Yes, Orlando.

MR. TAGORDA: Mr. Chairman, if I may, I didn't have a chance really to go over those Charter Commission meetings. However, from day one, I already made up my mind to recommend that this department should not be treated no other than other county departments like public works and corporation counsel. The main reason I want this department to go under the administration is -- and I wanted a different structure, actually. What I want to see in this

department is to go under the mayor, let's call him a CEO, and then to those nine council members, and they will serve as a board of directors. Thereby doing that, you have an oversight. Although I won't take away numbers or members of the public like board members, but I will cut that probably into five. But they are going to have an advisory capacity to the mayor and the council members. The way I want this department really is the sole -- the primary functions of this department I would like to see is to deal with economic issues, public health regulation, and environmental regulation. And if you want to go more, I would be very strong to probably they can go into a business like utility, like one of those employees said, we can run as a utility, like MECO and telephone companies. However, this is going to have some kind of a business-oriented concept. And the way I see this structure I have in mind is that the mayor and the nine council members who are elected by the community will have the same footing. They need to say they are on the same level. The council members

will sit on different committees in the department that will oversee issues, be flexible with it. And I'm very strong to those kind of structure. The reason why is you get more accountability. We can always take those people out in their position because they're elected, especially there are ways now that the Charter Commission is trying to petition those elected members to step down whenever they make boo-boos. But the person set up now, I have a major problem with it, whether it's become full autonomy or semiautonomous. Because board members like us have no accountability. We have probably accountability by being compassion. But what happened to people who have been aggrieved for many years, Mr. Chair? And the department didn't do anything yet up until now. That's why I want accountability and oversight by those elected officials that we elect in those positions. And I have so many things that I want to share with you how to strengthen this kind of concept that I have. That you develop a long-term plan, that you have to develop business and community support for plan. And then you create -- I think I also like to

see a term limit to the managing director. If you -- if the voters by November will vote for full autonomy, it's to put a term limit on the managing director so he won't be here for life.

MR. CRADDICK: Orlando, you won't have to worry about that.

MR. TAGORDA: No, this is just my feeling and based on my attendance to all this conferences while I was here five years ago. And I see that very compelling reason.

The problem we have right now, I see once in a while, I turn on to Charter Commission meetings, that two department in the county that's been criticized by the people of this community is the Department of Water Supply and the Planning Department. Something got to change, something we need to do to better service this.

MR. NOBRIGA: Mr. Chairman, I find

Mr. Tagorda's comments refreshing and I really would

like an opportunity to explore his option at greater length. Unfortunately, the Charter Commission has two recommended points of view that will be discussed at public hearing very soon. I believe it is in our best interests to act as one board in giving our best opinion of these two options.

I would like to recommend that the Chair write an official letter from the Board, taking into account the board's point of view and the matter of the two positions available to us.

CHAIRMAN RICE: Which position would you prefer? Do you guys want to take a position on one or the other?

MR. TAGORDA: No, I don't think --

CHAIRMAN RICE: Adolph?

MR. HELM: Well, first of all, what's our time limit on there? I mean, what's the time line on this?

MR. CRADDICK: The first public hearing was supposed to have been I think a couple days ago, Tuesday, but it got rained out. So it will start next week. And I guess it goes basically every Wednesday until about March or so, for public hearing input. And then they would I guess sit and have their final deliberations and then I guess make their recommendation.

And I'm not sure with corp counsel, there was some discussion on whether it had to go to the council for their review. I don't know whether that decision has been made yet. But --

MR. HELM: I guess my concern would be as individuals, if we take a position here where we agree in one of these amendments, does an individual have the right from this Board to take another position, say?

CHAIRMAN RICE: Yeah, I think we've already set that precedent. As an individual, you want to go out and say as a member of the public not as a member

of the Board of Water Supply, this is what I think.

You're certainly entitled to that, I think, at any time.

Yes, Mr. Craddick.

MR. CRADDICK: There is two things that this Board does that I think are basically unrecognized in the charter and no matter whether it goes under the mayor or becomes fully semiautonomous, I think those things need to be addressed and the one is the fact that we deliver ag water, nonpotable water. And I think there should be some recognition in here that we do that and we supply the water for firefighting for the county and I believe there should be some recognition in here about that because it is a major function we do and I don't think the fire department could function without it. And I don't know what board members feel, but --

CHAIRMAN RICE: That's just what I was going to ask. That's what I asked Dave. We already heard from Orlando. Howard? Do you want to say anything?

MR. NAKAMURA: I think that it's pretty clear that the present situation is not a desirable situation where we're kind of neither fish nor fowl, if you will. I have -- philosophically, I have some mixed emotions because I do feel that ultimately the elected officials need other people who have the authority to set policy and make final decisions. However, as we've gone about our business the last couple of years, I think that the Board has been very forthright in dealing with some of the issues that have to do with raising funds and increasing the development fees and I think that they are the board's ability to move quickly in that area is important. And so although I do, as I said, have some philosophical reservations, I think I would be prepared to support the more semi-autonomous status.

I do have some concerns about the ex-officio voting members. I think it's important for planning to be involved. I do share Adolph's concern that in that process you're diluting the public membership on the Board and I don't really know if the public works

director is a necessary component. I think as time goes on, perhaps reuse of effluent may be an issue, but other than that, you know, I'm not sure that it's worth giving up a public position if it's going to continue to be nine voting members.

MR. HELM: And I agree with that. But on the basis of establishing a little bit more autonomy with the existing semiautonomy system that we have, I would want to assure ourselves that, first of all, we're not setting precedent here. Apparently the Honolulu Board of Water Supply has to some degree a little bit more latitude.

MR. CRADDICK: All the counties are able to establish their own rules by following the public hearing process that's outlined in HRS.

MR. HELM: Yeah. So, you know, we're not setting precedent here. So I'm looking at it from the perspective that you've got an organization, a board that is totally focused on water as an issue here. I

think when you -- and again, you need check and balance. But again, when you get our elected officials too much involved in our resources, especially water, it can create problems. So I'm more or less in favor of the idea of a little bit more autonomy.

MR. HASHIMOTO: I kind of agree with Adolph.

I think being semi-autonomous or autonomous would be the better way to go and not putting in the hands of the -- totally in the hands of the mayor and the council. And also, I agree with Howard on getting the -- I don't know if the Director of Planning or Waste Management or Public Works and the director should be voting members on the water board. I think representation in the community is important because agriculture -- I represent agriculture from the encouragement of the Maui County Farm Bureau and I think that is important also. I mean, community representation and representing agriculture I think is important. So I would go with the proposal A or autonomous or semi-autonomous.

CHAIRMAN RICE: Well, I would -- actually, the Chair would agree with that position also. I'm not sure that -- what I try and do is look at this in terms of what's in the best interests for Maui and I don't know honestly, and it's not a slight on anybody or anything, but I don't know that having this Board be advisory to the council is what would be best for Maui. I think we have a group of people here who are unbiased and who in every deliberation that I've seen in the short while I've been on this Board, tried to make a decision that's in the best interest of Maui.

Why things have gone on the way they have in the past, I don't know. And I don't know that it's productive for us to try and figure out who did what or said what in the past. I think our goal is to fix the things that we find that are wrong and move forward in that vein. And I feel that this group that we have right now is of that same mind. So while it may -- the end result may be more work, I think the right direction is for more autonomy and I would support that also. And I know that Orlando has

actually spoken on the opposite side, but I would like to see the Board come out for that position. Yes, Orlando.

MR. TAGORDA: My last remark, Mr. Chair, is that you know how I am going to vote when it comes November on this issue. I would strongly vote for that this department should go under the administration with a concept that it becomes a part of the county family, you know. The mayor can hold meetings with all these -- the other departments. The reason why I think we're kind of -- we are out there by ourselves without communication from the other department. That's what's happening to us. So once it goes under the mayor and the council members, then they become just like a family. They will be in touch with the community and the values of the community and their mission will be broader than just provide efficient water.

CHAIRMAN RICE: Okay. Your position is understood.

MR. CRADDICK: Just so there is no misunderstandings, I meet weekly and we also have a monthly meeting with the mayor. George sits on a CIP meeting with the rest of the county. They meet weekly. And so we work very, very closely together with the other departments and I don't expect that is going to change one iota no matter which way the autonomy issue goes. We recognize that we are part of the county and have to work together with the county and I don't believe that's going to change at all.

CHAIRMAN RICE: Okay.

MR. QUINN: Mr. Chair, I might add to Mr. Craddick's comments, we're in constant daily contact with the finance department. We utilize the same systems and we utilize the same consultants and it's a pretty good situation, a pretty good team work.

MR. NOBRIGA: Mr. Chairman, recognizing there are so much other aspects that we would like to

explore, like to move that we take a recommendation in favor of the proposed amendments of the county charter that would set the Board in a more autonomous position.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded.

Discussion? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

MR. TAGORDA: Nay.

CHAIRMAN RICE: Let the record show

Mr. Tagorda voted nay.

MR. NOBRIGA: And I'm sure, Mr. Chairman, in his eloquentness and his fabulous writing ability, also address the fact in his letter to the commission

that there is a lot more that we can add to make this Board more productive and also Maui County more productive. Thank you, Mr. Chairman.

CHAIRMAN RICE: Okay. Mr. Nobriga is leaving.

We still have a quorum. We're going on to discussion/possible action regarding Rules for Protection, Development and Conservation of Water.

Mr. Craddick?

MR. CRADDICK: I would just ask that these be referred to the Rules Committee.

CHAIRMAN RICE: So ordered. Okay.

Distributed is Iao Aquifer data for the quarter ending September 30th. Mr. Craddick, do you want to point anything out there?

MR. CRADDICK: I believe the Board is somewhat familiar with this. I don't know if Alan wants to add anything. Do you have anything, Alan? This is just the quarterly report that we get from Iao. We should

get another one here in another month or so.

CHAIRMAN RICE: Okay. Before we adjourn, is there anything else that needs to come before this board?

MR. CRADDICK: Yes. A couple things. One, the Public Works Committee of the council yesterday voted to reject the Water System Development Fee. At the next council meeting, they will need a super majority to defeat that. So if -- I will be meeting with some of the council members again on this matter so it's not quite over with yet. But the consensus was that a couple of them didn't like the CIP thing that was in there, indexing, where it automatically went up and we didn't have to go back to them for review. And quite frankly, that was put in because of the request of one of them, although they're not currently on the council anymore.

The other one was the concern that the upcountry meter rule was not part and parcel of it.

So if the Board wants to get that passed quickly, I think they all expressed sentiment that the Board needed the money, were willing to work on it, and I don't know how strongly the Board feels about having the CIP indexing. It would be about two percent, so we expect that would be about \$50,000 a year or the average from 1993 to now was two percent per year. And two percent of what we would expect to collect would be about \$50,000, so we don't see it as a make or break. It was something there solely for the -- to avoid a rate shock the next time we look at this. So it's not critical. But if the Board wants to do this, I guess they would have to leave it up to Ed Kushi whether we would have to renote it to go to public hearing. I guess if we were going to amend it and drop out the CPI, we probably would have to go to public hearing I guess again. So.

CHAIRMAN RICE: Well, the important thing that you need to follow up on quickly and if you would report back to me as the Chair, we can make some discussions about how to go forward. Okay? Anything

else, Mr. Craddick?

MR. CRADDICK: No.

MR. TAGORDA: Can I ask David?

CHAIRMAN RICE: Orlando.

MR. TAGORDA: What else did they turn down on that Water System Development Fee aside from that CIP price index?

CHAIRMAN RICE: And the fact that the Upcountry wasn't part of --

MR. TAGORDA: Did they mention any other things?

MR. QUINN: The other portion of the Water System Development Fee hasn't gone to public hearing yet.

MR. CRADDICK: Mike, they were confused. They

wanted to see -- they thought that had in it the waiver for the Upcountry meters. I don't think they understand that it's not in there, that it's in the Upcountry rules. And the reason why it's in the Upcountry rules is because it lapses when there is no list and --

MR. QUINN: I believe Councilwoman Tavares brought that issue up.

MR. CRADDICK: Yeah. But it was her impression and maybe, Sherry, do you know whether Charmaine was just talking about the administrative portions of the rule or the portion about the Upcountry meters which isn't in any other part of the water system development fees.

MS. MORRISON: For the record, my name is Sherry Morrison and I'm an executive assistant for Council Member Charmaine Tavares. I missed part of what you were discussing. Most of the council members -- all the council members that were present at the

meeting were all supportive of the fee increase. The concern was that they didn't have anything in front of them that indicated how that fee would be applied.

And in Charmaine's case, I can speak for her

specifically, the other rules that are going out for public hearing in fact and everybody is pleased that you're moving as quickly as you are on those rules.

She would like to see them in place. Whether or not they're specifically attached to the fee was not the

issue; it was a matter of would those rules be in place, the upcountry rule and in her case she had

requested I guess in October in her testimony that the

people on the list, famous list Upcountry would be

allowed to use the lower -- the old fee instead of the

new fee. And there was nothing in writing that the

committee had to assure them that that would be the

case. One other council member had a concern about

that as well. I'm not sure if I answered your

question.

CHAIRMAN RICE: Yeah, you did exactly. So

David, you're going to make sure they get a copy of that proposed rule.

MR. CRADDICK: No. A copy was passed out there at the meeting and they did have all of the rules about the Water System Development Fee in their packet.

CHAIRMAN RICE: Upcountry rule. I'm talking about the Upcountry rule.

MR. CRADDICK: Yeah, that wasn't in their packet, but --

CHAIRMAN RICE: That's what they need to get then.

MR. CRADDICK: No, no, but you have to understand, I think there is some confusion here. This started in 1995. I went to the council and asked for their input on the development fee. So in their packet was the entire Water System Development Fee unchanged as it currently exists.

Now, in addition to that, they had the new fee

schedule proposal. So lacking any other rules, it would be applied according to the way the existing rule is right now today.

CHAIRMAN RICE: But that's not what they're asking for. You're missing the point. What they want to see is the rule that deals with the Upcountry list.

MR. CRADDICK: No, no, that's not what my impression was. But --

CHAIRMAN RICE: That's what she just said.

MR. CRADDICK: No, no, she said --

CHAIRMAN RICE: Didn't you just say that? Yes.

MS. MORRISON: What I said was that the -- in order for the council to -- or the committee to support the fee increase, they wanted to be assured that those other rules were already -- not just proposed, but already either they were before them at

the same time or they could pass them at the same time or subsequently they could know that those rules were in place.

Mr. Craddick assured them that he was convinced that the Board was going to support those rules, but the council actually wanted to --

CHAIRMAN RICE: But we already have and they should have a copy -- what I'm saying is they should have a copy of the rule that's going to public hearing. Past the public hearing, it's in their hands whether it gets passed or not. So it shouldn't be an issue, as long as they have a copy of it and know what's being proposed. That's what I said, Mr. Craddick, was please make sure that they have a copy if they don't already have a copy of the rules that are going to public hearing.

MS. MORRISON: If I can make one other comment. Mr. Craddick did plead your case very aggressively. The concern was that after public hearing, obviously the whole point of public hearing

is to get input on those rules. And certainly not wanting to assume that you would make no changes after those public hearings, that was the other case is that certainly public hearing might impact the proposed rules.

So it wasn't just that they wanted to see what was proposed, but they wanted to have them either before them at the same time or, you know, at almost the same time. But the fee itself was not an issue.

CHAIRMAN RICE: Thank you.

MR. CRADDICK: One other thing. One council member also wanted each change item, item by item, separately noticed for public hearing so they could pick and choose which ones they wanted to approve and not approve.

CHAIRMAN RICE: Referring to what?

MR. CRADDICK: I think it was mainly referring

to the CPI indexing mainly. But --

MR. TAGORDA: I don't know if you remember this, David, I think also one council member asked you something about graduated fee increases.

MR. QUINN: That's correct.

MR. TAGORDA: Councilman Fukama, I believe.

CHAIRMAN RICE: They served the whole thing at once.

MR. CRADDICK: That's correct, too, yeah.

Thank you, Orlando.

CHAIRMAN RICE: Well, you know, that's the crazy thing about the process. We can't go rewrite the whole rule. We've got to go with what the majority thinks. I think the feedback we heard was that the fee wasn't so much the fee but it was the tying in of the Upcountry rule that was important in the CIP. And I think we need to address that. So you

need to talk to them and then you talk to me and work out the strategy. Okay?

MR. CRADDICK: Okay.

CHAIRMAN RICE: Anything else?

MR. CRADDICK: No.

CHAIRMAN RICE: Anything else to be brought before this Board? Meeting is adjourned.

(WHEREUPON, the meeting was adjourned at 11:40 a.m.)

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