

County of Maui Water  
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Shopping Center, Kaahumanu Avenue,  
Kahului, Maui, Hawaii, commencing at 9:00 a.m. on  
February 28, 2002 pursuant to Notice.

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

A P P E A R A N C E S

BOARD MEMBERS:

Peter Rice, Chair

Clark Hashimoto

Mike Nobriga

Jonathan Starr

Orlando Tagorda

Adolf Helm

Kent Hiranaga

Howard Nakamura

Staff present:

David Craddick, Director

George Tengan, Deputy Director

Herb Chang, Engineering

Herb Kogasaka, Engineering

Mike Quinn, Finance

Fran Nago, Board Secretary

IWADO COURT REPORTERS, INC.

CHAIRMAN RICE: We'll call to order the regular meeting of the Board of Water Supply. It's February 28th. We're at the Kahului Shopping Center.

Present are board members Kent Hiranaga, Clark Hashimoto, Mike Nobriga, Jonathan Starr, Orlando Tagorda, Adolf Helm, Howard Nakamura, and myself, Peter Rice, Director David Craddick, secretary Fran Nago and staff members. Let the

record show all the members of the public that are present.

We have first on the agenda the approval of minutes from January 31st.

MR. STARR: Mr. Chair, I have a little bit of a concern. We're meeting in a new type of location and we had had a ruling from corp counsel a few weeks ago that meeting in a place that was not owned by the county was not legal. And I have heard through the grapevine that they have changed that opinion and I think they made the right choice in doing so.

But before we actually conduct business, I think I would like to hear from corp counsel in their opinion, is it legal for us to meet here. I have no problem with hearing testimony, but I would not want to take a vote or do any real action before we hear that from corp counsel. I know corp counsel has been delayed; we're still waiting for him to arrive.

MR. TAGORDA: Mr. Chair, I do have the same concern with my colleague Jonathan Starr. Because of our corp counsel not here yet, I think we can be enlightened as to the condition of whether or not we're legally holding a meeting here by our

director.

CHAIRMAN RICE: I chastised the director for giving legal advice.

MR. TAGORDA: It's not legal advise; it's just information that we don't have at the present and can share with the public and with us.

MR. CRADDICK: I can share facts with you. Corp counsel signed off on the lease that was specific for the purpose of having board meetings and other water department activities here. Corp counsel signed off on the lease.

CHAIRMAN RICE: What is your pleasure, gentlemen?

MR. STARR: Mr. Chair, may I suggest we take testimony but we not take any action on anything until we clear this up?

CHAIRMAN RICE: Is that okay with everyone? At this

point, then, we'll hear testimony from the public. Jim, you want to say something? I think, yeah, that's the spot now.

JIM SMITH: Chairman Rice, members of the Board of Water Supply, my name is Jim Smith. I am here to speak about -- express my concerns regarding Julie Mattis. First, of course, I didn't expect to but I will. That's the concern regarding the propriety of holding a meeting in this place, regardless of the legality.

My understanding is that this is a public agency, we should know where you are going to hold your meetings. It should be in a public place, and the reason is, is that we don't keep up with everything that's going on, so we can depend upon it and this scatters that. If this is a one-month lease, you could have a one-month lease next month somewhere else, somewhere else, somewhere else, and the public, in effect, will be removed from the opportunities.

I would ask you not to be pushed around. Hold your meeting in front of the county building if you must, but stay in a public place pursuant to the charter. That's my first concern.

The second concern is something that I have been

involved with, with regard to the Sunshine Law for many years. And this concerns what happened at your last meeting which was held in executive session on settlement of a lawsuit.

And at the beginning of that meeting, a party to that lawsuit referenced an item that would be discussed in the executive session, namely, a rule. Which, in fact, transcended from that settlement to me. That made it a public issue and there was no settlement agreement on the agenda for me to review.

In today's agenda, there's a letter from Maui Tomorrow saying that the county has offered to help Maui Tomorrow, and they are proposing \$30,000 as the help. But when you put it in the context of an undisclosed executive session settlement agreement, and ongoing offers by the county to provide grant funding to an organization that's a party to the lawsuit, that brings to my mind fear. That brings to my mind a sense that there's -- if I want a grant, I'll make an application to you and you guys take it up.

But you don't take up a request for \$30,000 or \$10,000 that you guys offer when it may be perceived as connected to a lawsuit. You went into executive session. And

prior to that, a term of your executive session was announced by a party; that makes it public information. We should have the executive session minutes available.

So I would request that before you act on any item in a final way today regarding funding offered by the board to litigate, that you provide at least the minutes to that executive session; so in fact there will not be a perception in the public eye, right or wrong, that you guys have been intimidated by some threat from a lawyer to come up with more money. I may see in a year working eight hours a day.

So if you would please defer the action on any matter in the context of that lawsuit that comes before you. I think, quite frankly, regarding one part, Administrative Procedures Act, provides the citizens a mechanism for bringing to the board a request for a rule change, and it is not as part of the settlement to a lawsuit.

You can petition the board that, as far as I'm concerned, there's been no petition. I would assume there's a new mechanism created in this instance that isn't part of the administrative procedures. That concerns me a little bit, because I know a little bit about that as well. So I would ask you, number one, please value the public place and fight for

it; don't give it up to take a month lease with A&B property.

Secondly, please make the executive session minutes available to the public as well as the settlement agreement identified on the agenda; so at least the perception that there may be some coercion going on that I don't know about, and I trust everybody involved, but I want to see it will not remain in place. Thank you very much.

CHAIRMAN RICE: Thank you, is there any other public testimony at this time?

Mr. Counsel, there's been a question raised by the legality conducting our meeting here and I'll ask you to address that at this time.

MR. KUSHI: Mr. Chair, I'm not prepared to answer that. All I can say is this, an inquiry was made from our office by the director. Not of this attorney but other attorneys. And my understanding was that -- the initial response was that we had to meet -- this morning we had to meet in a county building.

Subsequently, I understand that the response of our

office has changed. According to our office, other attorneys' opinion, it's proper that we meet in this place because we're under a lease of some sort, and that being the case, it is publicly or county control. That's the understanding that I had.

If you want further response, orally or in writing, I would request that the attorneys who made the opinion appear before this board. Aside from that, I have nothing else.

CHAIRMAN RICE: I would not want to have you go through -- the time of conducting a meeting to point out the actions we take are invalid. That's crazy. Mr. Starr?

MR. STARR: First I would like to find out if we really have a lease, and if so, what the terms of it are. Because that has not come before this board, which itself is perhaps a little bit unusual that we sign a lease or don't sign it, you know, for a place for the board to meet without that actually being before the board. I would like to see the lease or to have some --

CHAIRMAN RICE: It's my understanding you have a

30-day lease. The intention of bringing the lease to the board for their review and approval. One of the reasons of trying to obtain the space was comments made by people who can't get up to the space that we're using at the Trask Building, HGEA office space, so the idea was to look at an alternative where handicap people could have easy access to the board and look at it on a trial basis.

MR. STARR: Mr. Chair, I agree with the intent and I was one of the people who had been criticizing the Trask building for some time, and I also approached counsel, when they said we had to meet in the county building, I felt that that was draconian and it was a strict interpretation. I do believe if we have a long-term approved lease on a place, then that does constitute county property and we would be legal.

But I would have to feel that having a one-month lease that hadn't come before the board does not really constitute that. And for that reason, I really feel that any action we took today would be on shaky ground.

I don't know quite how we untangle it, but it doesn't sound like we have something that would really be

considered a lease that wouldn't, in fact, make this be construed as the public property which is where we're empowered to meet. Can we go back to counsel?

MR. KUSHI: Well, Mr. Chair and Mr. Starr, if you are asking me whether to continue this meeting, I'm not prepared to respond. I'm not sure what the exact allegation is or what the previous public testimony is about.

Our understanding is our office approved this meeting, approved this place, the agendas were posted, notice was given and you have a legal meeting. That's my understanding of the situation.

Now, if you do continue with this meeting and there is a challenge and for whatever reason the challenge is upheld, your actions may be void. And you do it again. But that's this board's prerogative to continue with this meeting or not. I'm only here to respond to what my understanding is of the proper setup, notice, and procedures concerning this meeting. In my opinion, at this time, I would say go forward.

MR. STARR: Just to be clear, counsel did approve the setup for this meeting and the basis of the lease; right?

MR. KUSHI: Member Starr, that's my understanding.

You may want to ask the director, the inquiry was not made to myself. It was made to attorneys from our office representing the department. So you may want to ask the director about the response.

MR. STARR: Could I ask you to perhaps call corp counsel and just to ascertain through a direct channel that they approved it?

MR. NOBRIGA: Mr. Chairman?

CHAIRMAN RICE: Yes, Mr. Nobriga.

MR. NOBRIGA: If a member of this body feels that compelled, they should not be at this meeting, then they have the choice to physically leave the meeting. Members do leave and we suffer from a lack of a quorum, that would take care of itself. I made every effort to clear my schedule to be at this meeting to go forward. I don't want to waste my time bickering

about this little --

CHAIRMAN RICE: Mr. Craddick, who at corp counsel's office did you speak with?

MR. CRADDICK: I believe Richard Minatoya was the one who signed off on the lease. We gotten the certificate of insurance from the county listing A&B as additionally insured. Because the county already leases other spaces in this facility here.

The lease is legitimately signed; it is for one month. Simply because of the procurement thing I can't -- the board has not appropriated sums for a year's worth of lease. We have put a procurement notice out to get people to provide prices, to provide a space for a longer term.

But this is not unusual. We did the same thing back in 1994 during the HGEA strike. We leased a place for one month from the Cameron Center to have the meeting. The board had the meeting there. It's not unusual to have a place for 30 days. The board has conducted meetings in other places to get around in the community.

MR. STARR: Mr. Chair, just a comment on something that the director just said. He referenced a meeting in 1994 that was held at the Cameron Center. I recently had the pleasure of reading the minutes from that meeting and that meeting the corp counsel ruled that that was illegal. That it was an illegal meeting and corp counsel did not attend that meeting.

MR. CRADDICK: Which was retracted. Once they found out we leased the place.

MR. STARR: I did not see that in the minutes.

MR. NOBRIGA: The prescribed subject matter has not been noticed on the agenda.

CHAIRMAN RICE: I think I'm satisfied that we have adequate notice of the meeting. We'll go forward unless there's any objection from the other board members. Okay? We're moving along. Minutes.

MR. NOBRIGA: Mr. Chairman, move to accept the minutes of January 31st. If there's no additions or deletions, it shall be filed.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Any discussion? All in favor "say."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Any other testimony from the public before I go

forward with the agenda? Director's Report 02-07.

Mr. Craddick? Request authorization to increase the capitalization thresholds for capital assets from \$500 to \$5,000.

MR. CRADDICK: This item here, if you want to refer

this to the finance committee, that would be fine with us. But

it's something that the county is doing and I believe the auditors recommend. So if you want to further study it, refer it to finance.

CHAIRMAN RICE: Refer to finance. Anybody have any strong feelings about this? Okay, refer to finance committee. Director's Report 02-08. Request for appropriation of funds for Mill Street Waterline replacement.

MR. CRADDICK: What this is, is a request for about \$30,000, I believe, for -- \$33,000 for design of a project where the county is going to pave the street in the not too distant future. We're going to get a design in there so that that pipeline can be put in before the street is paved. And a map is on page 4. It is on our long-term CIP, but we felt that it would be prudent to move it up.

CHAIRMAN RICE: Then I think it's prudent to refer that to the capital improvements committee. Mr. Nakamura?

MR. NAKAMURA: Okay.

CHAIRMAN RICE: Any objection? So ordered.

Director's Report 02-09.

MR. CRADDICK: This item here is one where I was being required to go to Molokai for a meeting with Tri-Isle RC&D. I thought it was going to be about a day and a half and it ended up not really taking any time.

But I just wanted the board to know that the staff does participate in several nonprofit organizations; some during normal work hours; some using materials such as copying, small equipment, and sometimes driving around to and from these meetings that they have.

They are groups like Tri-Isle RC&D, Habitat for Humanity, Aloha United Way, American Cancer Society, Hotel Association Charity Walk, March of Dimes, Alzheimer's Walk, Food Bank collections.

And another thing that has not been done but actually we would like permission to do it, is a number of schools and religious organizations have asked for leak detection assistance from time to time, and if the board sees a way clearly, it would provide those kinds of services to those

people. The rest is somewhat factual.

I believe it's probably a good idea to have the staff participate in these community efforts. It gives some depth to the people, and the county itself does participate in a lot of these efforts. So I would certainly recommend it subject to any releases of liability for use of anything, if non-county employees are driving a vehicle or anything like that, or using anything that somebody might get hurt on.

CHAIRMAN RICE: The request is sufficiently broad and I have some concerns. I mean, our encouragement that employees participate in appropriate charitable fund-raising activities I think is good. But using company -- let's call it company vehicles, and who is going to monitor how much time that they are spending? I mean, that's why this letter is broad.

Your participation with organizations that relate to work is different from making a broad statement for all employees. I would not want someone to get the impression that if they feel that United Way is a great charity they can get a truck and help them haul some stuff. Maybe I'm overreacting,

but you request -- I think we agree with many things, but we don't want to give the wrong message either. Mr. Starr?

MR. STARR: I like it when the director and staff participate in things like the Tri-Isle RC&D -- leak detection programs. That's fine. But I agree with you that giving a blanket approval may not be a wise thing to do. I'm kind of at a loss as to why this matter is coming before us this way.

My biggest concern is that I don't like to see director and staff using work time to go lobby for something that -- before the council or before any other entity or political activity, wave signs, you know, before other government bodies on work time. That sort of thing happened before. I don't want this to be construed as giving blanket permits for any activity that they might want to pursue.

MR. CRADDICK: Peter, I would take great exception to the comment just made because I would challenge board Member Starr to indicate one instance where county employees have taken their work time to come and hold signs or lobby anybody.

When the matter of the charter amendment was before the board, I did tell the staff if they wanted to come and talk

to the board, pro or against, come and do it, because the board needed to know where the staff was on the issue.

But other than that, the only other sign waving time I can think of was back when Kalani English made some proposal to put the water board under the mayor. The staff took their own time; the staff took off work to do that; no staff time was involved. So that is a boldface misinformation to this body unless there's some fact there.

MR. STARR: The January meeting minutes show quite a number of staff coming before the board on their work time and lobbying. That's just one example. I think we should proceed. I don't want to --

CHAIRMAN RICE: Does anyone have comments on this?

MR. TAGORDA: Mr. Chair, I think staff participation on this activity are good. Are noble. I like them to -- I would like to see them continue doing good things to make a difference in the community by contributing a little bit of their time. But like I said, my concern would be to use

company vehicles and all of that, because of liability.

CHAIRMAN RICE: Mr. Craddick, I think the answer is multifaceted. In certain cases I think participation is encouraging. Someone has to -- we don't want to give a blanket approval; someone has to monitor it. I don't know if you are bringing this to the attention of the board just for general knowledge or if there's some specific issue that's going to come up that we need to deal with.

MR. CRADDICK: Nothing specific. All I can say is this has been going on for many, many years. The vehicles mainly involved in the Makawao rodeo, probably the American cancer rodeo, and I know that the American cancer walk, from time to time the people spend overnight and they have to haul tables and stuff down there to it. I mean, it's not anybody other than the county employee using the equipment.

CHAIRMAN RICE: I think you brought up an interesting issue here and we could send it to committee to see if we can come up with a policy that deals with all the different facets. So this sounds to me like operations

committee would be a good one for it.

MR. STARR: Thank you.

CHAIRMAN RICE: Any objections? So ordered.

Old Business. Director's 02-04. Request approval to appropriate funds towards the study of water resource on Maui. Sir?

RON STURTZ: Good morning. Aloha board members, my name is Ron Sturtz and I'm here as president of Maui Tomorrow. What I want to talk to you today about is a project of Maui Tomorrow called Ka Waiola water research project. This is sort of a subset. This is a private commission by Maui Tomorrow to try to create some solutions to some of the issues facing the county in terms of managing its water supply.

I'm sensitive to the comments of public testimony and I would like to clarify the presentation of this and the lawsuit. There's no relationship between this presentation and the lawsuit, other than that Maui Tomorrow is participating in both in certain respects.

The other lawsuit had to do with the Central Maui source joint venture settlement agreement last year. And Maui Tomorrow found itself necessary to intercede in that proceeding because it felt it was not in the public interest to proceed with the joint venture. It had to be filed with the appropriate officials to deal with it.

We see ourselves as an educational organization. Sometimes we need to use litigation as a means of forwarding the litigation process. A settlement was reached and a joint venture was filed. Which means it was killed. In view of the matter having been resolved, a settlement was reached.

The terms of which I don't believe were confidential. There's no terms that called for confidentiality. It was published in the Haleakala Times yesterday, and so there's no effort at all to create secrecies or non-transparency. I'm glad to discuss it; it's an open proceeding.

So having said that, we're here today wearing a different hat. We would like to wear a different hat in that context. I presented to you through the secretary a three or four-page packet, which I believe you all had, which outlines the nature of the project we have here involved.

Basically we have a situation where we're trying to make decisions based upon -- the state has its resources, the county has its resources, private landowners have their resources, the county council has its resources. Everyone is trying to figure out -- the resources, all of which is incomplete and sometimes conflicting.

There are individuals, there are companies that are drawing water who are not reporting it; there are those who are reporting but not getting into the database, and the decisions are trying to be made by developers, by the county, by landowners as to how to go forward in intelligent planning in years to come based upon the information.

Maui Tomorrow likes to be forward thinking where possible. We were looking at the situation last year and we were looking to see if there were resources available at a time when there was no unified resource bank available that could provide impartial, well-researched and well-documented information to all the participants so that everybody is on an even playing field and can make intelligent decisions on how to go.

One of our board members, who has had a lot of

experience in water areas and in research in the past, started exploring grant processes around the country to support a project which is now been called the Ka Waiola project, the waters of life project.

There's two purposes in mind: to provide citizens and decision makers of Maui County with accurate data about freshwater resources and uses on the island of Maui; and two, to insure protection of those resources to affect the partnership, promoting responsible water planning and conservation strategies.

And so these broad charges of the project, she sought funding -- private foundations, private individuals. In thinking about it, since the intention of this project is to provide the information to all parties, we thought we have to share the process. It will be beneficiary, and whether or not you contribute, this information will be available to you.

It was my suggestion to Lucienne De Naie, the solicit board -- there's some concern about having the county involved because she wants to be very certain that public perception is such that this is an impartial fact gathering process and it's not being guided by the county, the water board or private interest or whatever. So it would have to be

a no-strings attached kind of grant.

Because the group that's doing this, and I rely on Terry Reim, who is the technical coordinator of the project, to give me more information about precise ways of gathering that data. And we will be giving a presentation on that.

The goal is to insure the integrity of the data. It's a very political issue. There are lots of people who really want this information. There appear to be some that don't want to come out, and the bottom line -- it's a vital resource and we all need to know what the information is.

So this is a two-year project; it's been operating since November of last year -- and already it's generating data which is being used by you, by the -- I believe the -- on the water tour of Iao aquifer last week. We coordinate with USGS and others in compiling the data. They can look at hard graphic data that's easy to understand. It's already in the process of generating the information provided.

Terry has a long list of credentials in terms of this area of data resource gathering and presentation. He has written books. He is a great resource to us and is working for a mere pittance to what he is used to receiving to help pull

this project together. We tried to provide an outline to give you a budget provided by Lucienne De Naie and the goal of this would be for you to fund -- it's a non-political position.

This information in the years to come will be used on Maui Tomorrow and others to support their positions on what we can do about these things. Terry's position is completely non-political. It's completely scientifically oriented and you'll see -- and in both of those contexts, we want to retain the impartiality of what he's doing, and so we're asking you to fund that portion of this project.

You will see where he is going and you will recognize that as -- for other sources of agenda or -- manage our resources, but to gather the data. So I don't know if this is enough information for you at this moment in time in conjunction with what you already received -- or perhaps you have more questions.

I'd like to ask Terry to provide a little more information about what he is doing. You can get a better feel for your involvement and what the impacts of your involvement may mean.

CHAIRMAN RICE: Terry, you want to say anything?

TERRY REIM: Good Morning, I'm Terry Reim and I live in Paia. I have been involved in this project for about three months now. A month or two ago I think most of the board members were provided with this packet which was an initial attempt to gather public information and collate it so it makes sense and presented in a manner that's understandable.

We have had -- we continue to do this, so there's an update since that time. This is one of the updates which is in the packet and it concerns the public water wells that Mr. Craddick took us on a tour of. Although the information we gathered is not included.

In any case, I do have some biographical information here, which appears on our consulting website that I do when I'm not involved in other projects. My background is primarily publishing, training, education. I started as a newspaper reporter and then magazine editor. I've written a number of books, nonfiction books; generally the attempt to explain technical, complicated, scientific information to a general reading public.

The director of a private boarding school, it's

essentially the same approach, you're trying to teach kids how to think, not what to think. Or give people good information and let them make their own decisions, which is, as far as I know, my role in this project. As a writer, most of it is research; I have a lot of experience doing research.

As soon as personal computers came around 20 years ago or so, I saw that as a real tool for being able to do research and produce materials so that they look nice and people will get information and read them. I'm also a hands-on computer person, where I use a lot of applications and actually do all of the work to produce a product like all the products you've seen here. So I personally created the packet that was handed out earlier.

I'll pass these around which has my bio -- as well as the business card which I also created. I believe there may be one more member that did not receive a packet. If that's the case, I'll pass that to that board member.

Most recently we were involved with trying to track down information about water sources that do not appear in the state database. This is where we started the project, because it was the one place where there did seem to be information about all of the water sources on Maui. But the more that we

investigated the more we realized how incomplete, outdated, and inaccurate it is.

So we have come to the point where we're actually knocking on doors to find out whether the information in the state database is up-to-date. If there's a water withdrawal source in one location, we can get information. If it's in use, what kind of pumpage it might be, what the quality of the water might be.

In the limited time we had so far, we have taken this database and updated the kind of footwork information that we gathered in this kind of form here, mostly for pumping figures, and we submitted this back to the CWRM for their consideration and designation.

But this is an ongoing process with us, because it's time consuming and it takes a lot of legwork and there's no guarantee that we can gather this information. Some of it -- withdrawal -- for the corporations is not revealed publicly, as far as I know. There is other information that the state has provided but does not appear in the state database.

That's another issue. The state database has been withdrawn from the website with concerns of security after the

9/11. Our attempts to gather that information are a little more difficult at this point, although I have talked to staff members at CWRM and they promised to continue to make that information available to myself and members of Maui Tomorrow, there's a staff meeting tomorrow, and to provide us with the update information which may not appear.

Just to give you another idea of kind of what we're involved in. This map was actually taking the withdrawal sources going through -- color coding them by their use, whether they're injection wells, title wells, Department of Water wells, and trying to track every one down; trying to find information about each one of them. This is to help you get a visual idea to the extent of the research we're doing.

Again, as Mr. Sturtz indicates, there seems to be no one place where this information is gathered, which was the inspiration for this project in the first place.

Again, my role as a journalist, primarily, with a lot of scientific background and as an educator, is simply gather the information, put it in a presentable form and make it available to policy makers and the public, so the proper decision makers can accomplish that.

CHAIRMAN RICE: Any questions from the board?

Mr. Craddick?

MR. CRADDICK: We heard Mr. Sturtz say this is not part of the settlement of the court case. In that event, all previous grants that the board has given have been with either the water commission, USGS, University of Hawaii; all government agencies which we can do without following the procurement process.

In this particular case, I believe we would have to follow the procurement process if we're going to do something like this.

CHAIRMAN RICE: Okay. Any other questions of Mr. Sturtz?

MR. HELM: I have one.

CHAIRMAN RICE: Go ahead, Adolf.

MR. HELM: I appreciate the idea that coming up with

a concept of consolidating all these water resources we have.

The other question I have is, you had to propose sort of a guideline by the Hawaii Community Foundation, where you applied for that grant proposal. I'm sure there's a lot more details with respect to what your intent is with that grant proposal.

So I, for one, would be curious if that could be made available, that proposal, because you asked for a \$30,000 grant from Hawaii Community Foundation; you are soliciting another \$30,000 from us, but I would propose to at least be able to see that proposal.

TERRY REIM: I was not involved with the proposal.

Again, my role is a strictly technical role.

RON STURTZ: I see no theoretical reason that's not available. Again, Lucienne De Naie was the coordinator on this project. She was not available. I'm really handicapped in having as much information as possible to share, but I would be glad to --

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I think this is an admirable proposal. I think that we should look at it and in a committee structure. I would like to review something the director said, we're constantly giving grants to different organizations, like we gave \$200,000 to Tri-Isle RC&D. They are the ones he's in connection -- he is involved with.

There are dozens of situations where we give grants to other entities that are not directly government owned, and once again the director has tried to muddle the facts before us.

MR. CRADDICK: Tri-Isle RC&D is part of the federal government Department of Agriculture. So that is a federal agency.

MR. STARR: Nature conservancy.

CHAIRMAN RICE: Okay -- yes, Kent.

MR. HIRANAGA: I would like to request the director prepare a formal recommendation.

CHAIRMAN RICE: Okay. And I think to that end I'll refer it to committee, possibly Joint Committee of Finance and Operations. And we can get the director's analysis; we can get the copy of the grants submittal and clear up some of these other issues. Any objections to that? So ordered.

Thank you, Ron and Terry. Thank you very much.

Next on the agenda is Communication 01-22. Tom Welch is here on behalf of John Elder as a follow-up to a previous action that we had at a board meeting. I believe at a previous meeting we asked Tom to provide us with a document, and it's in your packet, page 12.

MR. WELCH: Tom Welch for John Elder. This is a case we have been kicking around for a while. If you want me to go over the facts to refresh your memory, maybe I should do so very quickly.

This is an application by the owner of a lot in a subdivision, an agricultural subdivision in Haiku, and he has a couple of structures on his property; he's got a residence and he has a gazebo for his pool. He wanted to build a small barn for agricultural purposes. The trouble is, since it's a third

structure, it triggered the fire flow requirements.

This subdivision is an older subdivision and it was not -- the standards were different when the subdivision was developed, or for some reason the fire flow was not adequate for the subdivision. The requirements would be 2600 lineal feet of 6-inch or 8-inch waterline in the public road at a cost of \$450,000.

We presented the case before the oversight committee and before the board several months ago. And since the board was -- perhaps it would be okay, but before you approve it you would need a current letter from the fire department saying that it was okay from the fire protection standpoint.

We submitted that letter a couple of weeks ago.

It's a letter dated January 31st to David Craddick and Captain Neil Bal, saying that it's okay with him based on the \$40,000 on-site storage at the site, plus the system that is going to be built into the building that will trigger the sprinkler, and that system is okay with him.

He said that it's adequate to fight a fire for the present structure on this property and would be adequate for the third structure as well. Thank you.

CHAIRMAN RICE: Any questions of Mr. Welch from the board? Kent?

MR. HIRANAGA: The county requires some kind of indemnification to allow a private system like this. Is there someone from the county to answer that question?

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I believe indemnification is part of our normal requirement for this. I know we spent quite a bit of time on this; this is the one where they are going to use the swimming pool for the holding tank for fire flow. I think if the fire department is happy with that, my feeling is we should proceed with approval based on indemnification and whatever other wording staff and corp counsel feel is needed to protect us in the future.

I'll be happy to make a motion to that effect. I move that we approve this with inclusion of indemnification and other necessary -- any other necessary wording to protect us in the future.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded to approve the request. Mr. Counselor?

MR. KUSHI: Mr. Chairman, may I ask Mr. Welch a question. Mr. Welch, would your client be adverse to entering into an indemnification agreement?

MR. WELCH: No, I think you have a standard hold harmless agreement, and Mr. Elder would be happy to sign that.

MR. KUSHI: Fine.

CHAIRMAN RICE: Any other discussion on the motion?

All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried. Thank you, Mr. Welch.

Communication 02-01. Communication from Fred

Sherman on Molokai. Anyone present? I'm going to refer that to rules.

MR. TAGORDA: Rules or operations?

MR. CRADDICK: I don't know if Mike wants to, but if we got a public hearing over on Molokai it might be a good time to have the meeting over there.

CHAIRMAN RICE: To deal with this one?

MR. CRADDICK: Yes.

MR. NAKAMURA: Mr. Chairman, I would suggest perhaps before the rules committee takes this up, a referral to corp counsel first, to clarify some of the legal issues would be helpful to the committee since there appears to be some

criminal charges pending, potential civil litigation.

CHAIRMAN RICE: Let me say something about all these communications because I think there is issues with many of them. I think once we refer them to a committee, we expect to have a report from staff at the committee meeting on those issues and that would include comments from counsel on the legal aspects of many of them. You are right, some of these issues there's no way we can make a decision.

MR. TAGORDA: Mr. Chairman, if a board member does request an investigation on this subject matter, who will investigate, staff or board members?

CHAIRMAN RICE: What do you mean?

MR. TAGORDA: On this subject matter that we have.

CHAIRMAN RICE: We're going to refer it to committee.

MR. TAGORDA: Could we request independent investigation?

CHAIRMAN RICE: I don't know, we'll have to decide.

Depends on what we decide. I think if we refer to committee, we get a report, the committee can then say we have enough information to make a decision or we need more information or we recommend a certain course of action.

MR. TAGORDA: Okay.

CHAIRMAN RICE: So ordered. Communications 02-02.

Request from David Goode to amend the rules and regulations of architectural structures. David is not here.

MR. CRADDICK: Ralph Nagamine is here representing.

CHAIRMAN RICE: Ralph, you are here to speak on this issue? Do you want to speak on the issue?

RALPH NAGAMINE: Well, I'm here to represent David Goode. Ralph Nagamine for the Department of Public Works and Waste Management. My understanding is that this item would be referred to committee and so we didn't have anything to present

at today's meeting.

CHAIRMAN RICE: It's a rules issue; it has to go to rules, I believe. Thanks, Ralph. If there's no objection, it's referred to rules.

Communication 02-03. Request from the Hanks for a water meter in Hana. No comments? I'm inclined -- go ahead.

MR. STARR: Just that I'm planning to schedule an operations committee site inspection of East Maui in the near future and whatever committee that's referred to I would be happy to take a look at the location.

CHAIRMAN RICE: I think operations would be appropriate.

MR. STARR: Okay, that's fine.

CHAIRMAN RICE: Is that fair?

MR. CRADDICK: This particular person is in a place where the board said do not issue any meters; this is out in

the Hanahuli location. And this is not something that is going to be simply resolved by a site investigation; there's nothing to see except maybe where the house is.

And what's going on is they have been getting water from the neighbor, who has a spring, who is now telling them they can no longer get the water; but in fact, they are continuing to get it. So I kind of get the feeling they just want to sell the property. I know both of them are very old. Nobody will be attending any of the meetings.

I will say that this is a Peter Stolle type of issue. I highly suggest that you list it for executive session when you discuss it. But nobody will ever attend; the people are too old to attend any of the meetings. And it's as a result of the board's own action that we cannot do anything in this particular case.

CHAIRMAN RICE: How is that?

MR. CRADDICK: Because you said do not issue any meters on the Hanahuli area after the Gray decision.

CHAIRMAN RICE: The board made that decision?

MR. CRADDICK: Yeah. If the board allowed staff to take care of this, it probably would have been taken care of.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I don't get it either, Mr. Chair.

CHAIRMAN RICE: We're talking about an old action here.

MR. CRADDICK: These people don't have a meter, as I said, they have been getting their water from a neighbor from a spring. But it's in that Hanahuli area and the board said don't issue any meters in that area after -- because Gray came in. And they have been out there for many, many, many years.

CHAIRMAN RICE: Yes, Howard.

MR. NAKAMURA: Mr. Chairman, I think the facts at issue, whatever they may be, can be determined by the committee. I think that's the appropriate place to resolve it,

in any event.

CHAIRMAN RICE: I see everybody nodding their heads. Mr. Starr?

MR. STARR: I agree. I just want to say that it's not my opinion that it should be handled in executive session. I don't think we need to hide it from the public.

MR. CRADDICK: There will be things that can't be said except in executive session. So if you want all the information, you will want to notice it for executive session. You don't have to go into executive session.

CHAIRMAN RICE: At this time I will refer it to operations. No objections? So order.

Communications 02-04. Request from Maui Youth and Family Services for a two-year extension to facilitate obtaining funding for and completing the installation of a new fire hydrant. Mr. Starr?

MR. STARR: I would like to help them out there. I

know that it's difficult to being a subject to government contracts, and all of that is very difficult for them to move as fast as they would like. I would like to move we approve that unless you prefer to send it to committee.

MR. CRADDICK: Staff has no objection. We recognize the problem. They are not saying they don't want to do it; they are just saying they need more time.

CHAIRMAN RICE: Is that in a form of a motion?

MR. STARR: I move to approve.

CHAIRMAN RICE: Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN RICE: Discussion? Mr. Tagorda?

MR. TAGORDA: Go ahead, Mr. Nakamura.

MR. NAKAMURA: Please.

MR. TAGORDA: My concern, Mr. Chairman, is he is asking outright a two-year extension. In our rules we only give one year, plus two, six months.

MR. CRADDICK: This is not for a meter. This is for a fire hydrant that they need to put in, a line extension. What's happening is, they are currently bringing the line down and going in to serve their houses. The rules say along the road. So we're saying the line has to be extended down to their driveway and the hydrant be put in there.

For whatever reason, basically they have run out of money that they had granted. They're not saying they don't want to do it or anything like that. It is a three-dwelling situation, so it comes under the subdivision rules and you have the ability to modify those subdivision rules. Which they are not actually asking for a waiver of it; they're just asking to defer putting the hydrants in a couple of years.

MR. TAGORDA: Okay. Thank you.

CHAIRMAN RICE: Is that acceptable, Howard?

MR. NAKAMURA: Just a question, Mr. Chairman. So this project is under construction; these residences are under construction and the problem they have is you would not issue a CO because they have not -- it's going to be completed but you would not issue a certificate of occupancy until such time the hydrant was installed. Is that the problem?

MR. CRADDICK: I'm not sure how the -- because these are residences, I'm not certain a CO is even issued.

MR. CHANG: I think a CO --

MR. CRADDICK: Because it's non-family members. I guess you are right, Howard, that would probably be correct.

MR. NAKAMURA: I also have a problem with this. I think it's a worthwhile project; however, I'm assuming that the requirement was initially put in for health and safety reasons; so I believe that perhaps if we're going to approve this, then

we should also ask for an indemnification.

MS. NAGO: Just for the record, they did call yesterday and I did tell them it was going to be referred out to committee. So I just want that out there.

CHAIRMAN RICE: That's okay. I'm sure they would be happy if it gets approved.

MS. NAGO: No, but you are talking about indemnification and other things.

MR. HIRANAGA: Mr. Chair, I don't have sufficient information to make a decision. The questions I have are: Why not a one-year versus a two-year extension? What is their plan to obtain the funding? Will we be in the same position two years from now of them requesting another extension? I would like to see some type of a plan presented as far as how they plan to obtain that.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: You can do that in committee if you want, but I have talked with the CBG coordinator here, and they will be funding it, I guess, this following year. But it is obviously subject to counsel approval. But they will be recommending approval on this next year in the county budget.

CHAIRMAN RICE: We have a motion and a second on the table to approve. Any more discussion? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

MR. TAGORDA: Nay.

MR. NAKAMURA: Nay.

CHAIRMAN RICE: 4 -- 5 to 3. Motion clears. Let's make sure.

MS. NAGO: So the nays were Orlando --

CHAIRMAN RICE: Ayes raise your hands.

Nays raise your hands.

(Mr. Tagorda and Mr. Nakamura voted nay.)

Let's have a short recess real quick.

(A recess was taken.)

CHAIRMAN RICE: I'll call the meeting back to order. We're on -- we're missing Mr. Starr. There he is.

Meeting is back in order.

Communication 02-05. Request from Tom Pierce. Tom is sitting in a back chair so as not to block the movie that's going on.

TOM PIERCE: Good morning, Mr. Chair, members of the board. Tom Pierce, I'm here on behalf of Roger Crouse and Melani Palmer. We have presented our application which is an appeal from the director's decision, as well as a request for temporary water meters.

And I understand that it ordinarily is sent to committee, but I'm asking if you would be willing to consider to assist my clients, two separate families, really. One of the families lives down there, a family of five; they have three kids. They are currently cut off from the water. This is essentially an emergency situation for them.

And what I'm here today to ask is that the board preserve the status quo, and I can explain what that is, Mr. Chair, with permission.

CHAIRMAN RICE: Please, Tom.

TOM PIERCE: What has happened here is that this is a property out in Ulupalakua, it's actually in the Kanaio area. There's a water meter up near a church next to Tedeschi, a concrete cinder block church. The waterline drops down about 5,000 feet.

One of my clients, Roger Crouse's family, paid half of the cost to get the waterline down there. For maybe the last 10, 15 years that waterline has served a property owned by Emil Tedeschi and it has also served Roger Crouse, my client,

Roger Crouse's property. And for the last 5 or 10 years -- excuse me, I would have to check the dates. But for quite some time it has also served Melani Palmer's property as well.

Neither of my clients take much water from this line. Recently, however, what happened is that the Kingdom of Hawaii has been conveyed some portion of an interest purportedly of Emil Tedeschi's property and they are now making a claim to exclusive rights to that water meter.

The director took up this issue and has without -- in our opinion and this is one of the reasons for the appeal -- without really giving us an opportunity to present the facts or to respond to whatever its decisions were, has issued an order to us to what appears to be a final decision, as far as we can tell, to telling my clients to stop using the water for this line.

My clients have agreed to do that under duress; they have stopped using the water, but they would like to continue to do it. I asked the director if you would be willing -- I presented him with a copy of the appeal and request for temporary relief that's now before the board -- and I asked him based upon that, if he would be willing to preserve what's been going on out there for many, many years, until the board had an

opportunity to act on this. And I received a letter back from the director denying me that request.

I'm now here today asking you for an interim release so my clients can continue to basically keep things the way they are while this works through the system. I understand it will take us several months to get through the committee and back to the board again.

I'm asking that the small amount of water that they have been using, and that they were actually using with the Kingdom of Hawaii for over a year, that they be permitted to continue to do that. The Kingdom of Hawaii has represented to us and represented to my clients that they would be willing to continue that sharing arrangement. So the issue is now whether the board will permit us to do that.

I would be happy to answer any other questions.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: Tom is failing to tell you that they also rescinded the easement that they have for the line to feed the meter.

MR. NOBRIGA: Who is this?

MR. CRADDICK: His clients.

TOM PIERCE: Let me explain some additional facts, which is, we were interested in preserving the status quo in trying to settle things with the Kingdom of Hawaii to the extent that we could. The Kingdom of Hawaii has recently, in our opinion, gone back and pressed the director to make a decision on this, and we think it was a premature decision because the facts were not fully before the director.

But at any rate, this is what they pressured for.

We had explained to the Kingdom of Hawaii, with the Kingdom of Hawaii on notice of the fact that they never had any easement across our client's property for the waterline; nor did they have any right to the use of that waterline except with my client's permission, Roger Crouse's permission.

We put them on notice of this fact. It's important, and I explained this to my client, it's important that they preserve their rights to what under the law would be called a revocable license. And you are familiar with this, for

example, DLNR permits, when the DLNR grants or the state, for that matter, grants permission for a waterline to go across their property -- specifically DLNR does this quite often. They will issue a revocable license which means it can be revoked at any point in time.

I explained to my clients that it's important for them to maintain their rights on this issue, and based upon that, they have rescinded the right of the Kingdom of Hawaii to go across that property. What we're willing to do in the interest of maintaining things the way they are, is to continue to permit the Kingdom of Hawaii to maintain access across there, at least until we decide what happens at the end of this case.

But I guess having the director having said this is -- depending on what happens, if my clients are not going to be permitted to have water, they are going to assert their rights -- which they can do for any reason -- they are going to assert their rights to deny the Kingdom access and based upon the department's rules, that would mean that water meter has to be revoked from the Kingdom as well until they find a new way to get water to the property.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The only thing I can say is that no decision has been made at this time, so this is a little bit premature. Yes, we do know that the meters serves the property that is not his clients', and yes, we know that his clients have gotten permits to do their building based on catchment systems, and the water is being used on that property unbeknownst to us.

So saying you are going to preserve the status quo when -- we're not sure what the status quo is ourselves, because we have not gotten all the facts. We're trying to do a title search on the property, Herb, to see who has the authority to sign for meters, but no final decision has been made yet. Except that in the application for the meter it says it serves a certain property and his clients do not have, as far as we can tell, no ownership in that property.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I would like clarification. Has the

director ordered the clients to desist from utilizing water?

MR. CRADDICK: What we have told the people who appeared to be in custody of the land that the meter is serving is that the meter can be removed if the water is being sent outside of the line. That's what we told the people. Those people, I guess, went to them and cut them off.

CHAIRMAN RICE: We did not remove any meter.

MR. CRADDICK: No. No, the meter is still there. I guess their recourse would be if there was some deal between the two parts, they would go to the court and resolve the deal in civil court.

CHAIRMAN RICE: The meter is issued to whom?

MR. CRADDICK: It's issued to -- I don't know what tax map key, but it's not the tax map key that his clients own. That's all I know.

TOM PIERCE: Right now, I'm sorry -- what's the exact word. Mr. Chair, the meter, the water meter number is issued to property parcel 96, which is owned by Emil Tedeschi; but it's in my client's name, Roger Crouse, and has been for some time.

And when that water meter is sitting under Emil Tedeschi's name or Roger Crouse's name since it was first -- when it was first issued and it's our submission based upon -- and we have written facts of this as well, written evidence of this, that the department and at times the Board of Water Supply as well has been on notice of the fact that there has been a sharing arrangement out there.

And I would be willing to point the board today to one submission to the Board of Water Supply where Emil Tedeschi said -- excuse me, Jack Crouse, Roger Crouse's father, who is deceased now, mentioned the fact there's a sharing arrangement in a written letter to the board and making a separate request for a water meter. This has been around for quite some time.

I would also like to just mention the fact that I have a problem with what the director is saying, that there's been no final decision. He signed two letters on January 8th, and these were Exhibits A to our petition.

And it's hard to say there's anything but a final decision, because he specifically says the subject water meter should only service parcel 96. I'm abbreviating what he has to say there. He says he has issued this letter to Melani Palmer and Roger Crouse. We cannot take this as anything else.

And if he wants to tell us today that we can continue to use this water, that would really be -- I would not have taken your time today if I believed that was the director's decision.

MR. CRADDICK: Is that what you are contesting, Tom? Which lot is the meter served? Or are you contesting who has the right to have the meter in their name? I think you are contesting the right of who has the right to have the meter in their name. No final decision has been made on that yet.

As far as the lot itself, which lot the meter serves, if that's what you are contesting, then that's probably right for the board to decide that issue.

TOM PIERCE: This is mental gymnastics, Mr. Chair, because he has denied my clients' use of the water meter and he

is telling you at the same time that he has not reached a final decision. It's either one or the other.

MR. CRADDICK: The only thing I can say is I don't know if there's even any hydrants down there. Are there any hydrants down there? That's the problem why you can't issue any temporary meters.

CHAIRMAN RICE: There's a meter that we issued a long time ago to somebody. And so that was done ages ago, and that was the agreement between Jack Crouse and Emil Tedeschi.

TOM PIERCE: That's correct.

CHAIRMAN RICE: So that meter is in place. That was done by some previous group, rightly or wrongly. Is the question whether that should have been issued in the first place?

MR. CRADDICK: I don't --

CHAIRMAN RICE: No, I don't think so; right?

MR. CRADDICK: Yeah. Yeah. I don't know what --

CHAIRMAN RICE: The question that has been raised here is the use by other parties of the water from that meter; is that correct?

MR. CRADDICK: That's right. I guess, yes.

CHAIRMAN RICE: Is that your --

TOM PIERCE: Mr. Chair, I guess the issue is, in the most fundamental sense, may my clients who are adjacent to the water meter, which we agree runs with parcel 96, but which we also submit that the department has understood for a long time services these other two lots, may it continue to service.

And the issue that's specifically before the board today is, may it continue to service them as it has been for quite some time while you have an opportunity to send this to committee and dig into the facts. Unfortunately, it took me quite a long time to write the facts and figure it out myself,

and it's detailed.

But the thing I can tell you, and this is on page 10 of our petition, is at that point in time it was Chairman Larry Jeffs who Jack Crouse sent a letter to, and he says a few years ago we gave access through our property to two adjoining parcels of property for waterlines. Then he says both have agreed to allow us to tap on their lines to supply our needs. No one has tried to hide the fact that this has been going on.

Mr. Chair, one final thing is, the rules do state and I cite this to the rules, that although there is a denial of sharing water, it's unless the department has approved it. That's specifically what the rule says. So there is an opportunity there for the department to have done it. That's what explicitly has happened in the past.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I think this is the -- complex issue, I think it should be sent to committee. Once again, operations committee will be going toward East Maui and we'd be happy to try to get an understanding of a location for the board at that time.

If it's going to go to committee and we're going to try to understand the issue, I hope that the director will not remove the meter before the board and committee has a chance to get an understanding of the issue.

CHAIRMAN RICE: That's not -- the letter says that they shouldn't be sharing the water.

MR. CRADDICK: That's all. The only way --

CHAIRMAN RICE: What Tom is asking --

MR. CRADDICK: The only way that might get the meter removed is if they enforce their letter saying you no longer have this easement, which we don't believe they can do, because the easement that they have specifically says it's for the property that the meter serves. So we don't believe they can unilaterally cancel the easement. But that's what their letter is --

MR. HELM: Mr. Chair, I think the issue here is the

hardship of those other properties not having the water. And I think what Mr. Pierce is saying here is that either we take it to committee or make a decision whether to allow them to continue to have their water, at least for the interim until a decision is made.

CHAIRMAN RICE: That's what he is asking.

TOM PIERCE: That's correct. If we could just continue to permit both my clients, Melani Palmer and Roger Crouse to get water.

And I would just like to make a correction, there is no easement going across -- there's no written agreement at all. The only agreement that was ever given to Emil Tedeschi or for the Kingdom of Hawaii was just, once again to try to keep the facts straight, is when the -- permission to do this.

MR. STARR: I don't think we can give de facto permission to share a meter, you know, unless there's some kind of extraordinary circumstance or that would make us go outside of our rules.

But I think that the issue is that if the meter not

be removed, then what agreement the two parties have is not really our kuleana. It's not in our purview. I think if they know that until we look into it, that the meter is not going to be removed. It would make sense for them to continue what they have been doing, knowing that they are not -- until we have a better understanding, and be punished for that in any way by having a meter removed, which is our only recourse.

MR. CRADDICK: My understanding is that they got permission to build on the basis that they were doing catchment. We do have a person that has a temporary meter up near Ulupalakua. I don't know how far that is from their house. But I think that is the nearest hydrant and I think I could see my way clear to issue a temporary meter out there somewhere until this issue is resolved.

But it would mean some hauling from there, I guess, to their house. And they do catch -- I know they have got a 50,000 gallon tank or something like that.

TOM PIERCE: It's a large tank. I can't remember exactly what the size is.

MR. CRADDICK: A fairly large tank. So I think one or two hauls of water of them hauling to fill that tank up would -- or even if it was ten hauls of water to fill the tank up would carry them for many months.

TOM PIERCE: Mr. Chair, that would not be acceptable, because what we have been able to do, my clients have been able to turn off the tap for the last ten years under the sharing arrangement. It's only because the Kingdom of Hawaii has recently gotten upset, and actually the reasons for getting upset were rather bizarre, because there was one large water blow out which was caused by a leak in a pipe upstream, which my client fixed because it was his waterline. It was fixed within one month when we found the large water bill, and this is what precipitated all of this.

What we're asking is that the sharing arrangement, our private waterline that our clients installed with Emil Tedeschi, which the Kingdom of Hawaii has absolutely nothing to do with, that we continue to be permitted to use that waterline and use the water meter that -- it's our submission and the director cannot deny it yet -- records from the Department of

Water Supply show that there has been notice to the Board of Water Supply, as well as to the director, that this has been going on.

What I'm asking is, pending your decision on my two requests here, which will take a longer time for you to read, all I'm asking is that you order the director to basically not take any action against us or the Kingdom of Hawaii for our ability to continue to use that waterline, which would mean it would service Melani Palmer, Roger Crouse, and the Kingdom of Hawaii.

CHAIRMAN RICE: Mr. Helm?

MR. HELM: Mr. Chair, I don't want to get into that; I think we can pass it on to the committee. I guess the question I have is, is this a main source of residence for these people? Do they actually live there right through the year? Or is this a vacation home, where they periodically visit their homes?

I, for one, am concerned about the hardship that they might encounter if it is a regular residence. If it's not

a regular residence, then I have a question about that.

TOM PIERCE: This is what I'm asking for -- it's not as for Roger Crouse who uses it as a weekend retreat; but as to Melani Palmer, she and her husband, Jack Hamilton, have three kids and they are down there on the property.

They have been as conscientious as they can about only using the catchment system; but it's good for them to be able to supplement with this potable water which they have grown accustomed to using for the last five or six years. So it has real hardship and it's for that reason that I'm asking for that kind of relief.

In addition to the fact that it's very clear that the director is saying here today he has not completed his fact finding, so it's not fair; nor will it be proper with due process issues to deny something or change or deny water that has been given, where our clients have been paying the bill and have actually been paying under his name to the water department.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I would like to ask the director if he would be kind enough to not remove this meter until the board has been able to look into this.

MR. CRADDICK: We're not removing the meter. I am not suggesting the meter be removed.

TOM PIERCE: The specific request has to be that he continue to permit us to share the water from that water meter. And this is the thing that has been denied.

MR. CRADDICK: And that we have been advised by corp counsel. We cannot --

MR. STARR: I don't think we can do that. I think our only real direct action would be to remove the meter. That's the only direct action that we can take. If we're not going to do that, then I would guess that -- you know, and whether your clients are willing to continue to work together, whether it fits under our rules or not. We're not going to remove the meter right now until we look into it.

Mike, does that make sense?

MR. NOBRIGA: I think so.

TOM PIERCE: Maybe I'm not understanding. But right now it's the director's position that the water meter will continue to serve as parcel 96 and will continue to service the people that live there, which is the Kingdom of Hawaii and possibly Florence Lani, who is another prior owner of record.

He has denied Roger Crouse and Melani Palmer from continuing to also be serviced by that water meter. So I guess what I'm asking is, will the board continue to permit that to happen? The board's rules permit waiver or suspension of the rules. This is Section 02-23 of the department rules. It permits the board to waive for good cause.

If at any time there's good cause, it's a situation like this, where I have presented to the board and a letter documented that was presented at a formal hearing stating that this water sharing arrangement was going on, and that was dated in the -- this is at least a decade ago.

CHAIRMAN RICE: Yes, Howard.

MR. NAKAMURA: Mr. Chairman, I think what Mr. Pierce is requesting; however noteworthy that may be, if he is requesting that this board direct Mr. Craddick to take certain actions in the interim, I don't know that the board can do that at this point because it's not the item that's before us.

However, it seems as though this whole issue was based upon a complaint to the director by the Kingdom of Hawaii that precipitated the notice to your client.

TOM PIERCE: That's correct.

MR. NAKAMURA: Now you are representing that the Kingdom of Hawaii is not taking that same position?

TOM PIERCE: What I'm stating is that the Kingdom of Hawaii has complained to the water department, the water department has started an investigation and the director is telling us today that he has not completed his investigation; but in the meantime, he has ordered my clients to stop using the water. He has denied water service to two people who have

been serviced by this.

Now, what in effect he's doing is he is denying something that they have -- it's our position they have a legal entitlement to. He is denying it without due process of law. It's not that I'm asking you to order the director to take an action; in fact, I'm asking you to order him not to take action. To take no action at this point in time.

To continue the status quo until you have an opportunity to do it. The status quo is that my clients continue to share water as they have been for 5 to 10 years, depending on which client you speak of.

MR. CRADDICK: How do you say they gained a right by telling us they were doing catchment, and then somehow started using the water and did not do catchment anymore? What right is that?

TOM PIERCE: They have been -- since they --

Mr. Chair, since that waterline first went in, it's our submission that the water department was on notice of the fact there was a sharing arrangement. Emil Tedeschi and Jack Crouse went about it, they went to several meetings, they went out and

did it. We can show you records where they shared this money. They sent receipts back and forth to each other.

Jack Crouse comes before the board and he wants his own water meter and he is not able to get it; but in the meantime, he tells the board and he also sees the department, he says, I've continued to share water with my neighbor as I have been for many years and this is what I am doing until I get my own water meter. No one tells him to stop then.

CHAIRMAN RICE: I understand that. We understand that. I think the question in terms of if we were to agree with your request and say that pending the committee report, that use of the water would be allowed as it has been, what would happen to us if -- I believe this is what happened -- because the meter has been given to parcel 96, parcel 96 is owned by the Kingdom of Hawaii --

TOM PIERCE: Excuse me, they purport to that.

CHAIRMAN RICE: They purport to that. But in any event, they are the guys that have the meter; they come here

and say, You don't have any right to give our water to those other people because that meter is given to us. I know there's a conflict about whether they actually own parcel 96 or not, but it would be a position we could be put in.

TOM PIERCE: Here's the other position that you would be put in, which is something that I hope you don't have to go through.

If you have given something as precious and as fundamental as water, and it's been given for quite a long period of time, which in this case is over ten years for Roger Crouse and over five years for Melani Palmer, and you suddenly take it away, and we have here today on the record Mr. Craddick's statement that he has not completed his decision.

If you take it away without his having completed his fact finding, which is why here today, one of the reasons I made an appeal is he has not completed his fact finding, even though he denied us something, then what you have is a procedural due possess of law violation. Which under the United States Constitution you can't do.

This is something that's under the color of law, if

you take an action against my clients and you are denying them something that they have a legal entitlement to until proven otherwise, this is the other predicament you have.

I have represented to you today, and unfortunately there's no Kingdom of Hawaii person here, but they represented that they are amenable to continuing to share water. So they left it to the director. Now, we need to work that out, but assuming that the Kingdom is -- the director of the Kingdom permits the sharing to continue until we work this out, I can't see that there's going to be a problem with the Kingdom.

MR. CRADDICK: I'm still failing to understand even what Tom is talking about here. The only decision that's been made is what lot the meter serves. If he is contesting that decision or not contesting it. I can't tell whether you are contesting that or not contesting that, which lot it serves.

And the other issue of who has the right to have the meter in their name, that's another issue. That's the one that has not been decided yet, who has the right to have the meter in their name. And I can't tell which one it is that he is contesting. Or if he is contesting both of them or just wants

the board to do something that he says that they have had past notice of.

And I don't know whether that's -- I mean, there's been no decision made on that. Certainly not waiving any director -- decision of the director on that. We made no determination on that issue either. Whether the board in fact had notice of this and used it, gave them permission to do this in the past. So I still fail to understand even what the issue is here before the board.

CHAIRMAN RICE: Mr. Starr, and then Mr. Nakamura.

MR. STARR: I will go after him.

CHAIRMAN RICE: Go ahead, Howard.

MR. NAKAMURA: Question to David. Had this issue not come before you as a complaint, I suppose, from the Kingdom of Hawaii, is it your position that the sharing of the meters is improper despite the fact that it's been going on for a number of years, as Mr. Pierce has pointed out?

MR. CRADDICK: Well, the only thing I can say is back in 1993 when we put that notice out for people to get on the list -- actually, I take that back, it was when the water system development fee rule was passed. It says right in that rule, everybody who has these kind of off-the-record agreements to come in, you got 60 days to come in and inform us of it, and the board will allow that to continue on until such time as you can get a meter. These people didn't come in. And that's a rule duly passed by the board.

So when we become aware of these situations, however it came, if there's a leak in the line and two of them are fighting over who will pay the bill, I guess from my understanding, that's what brought this to the surface. We have to take action when we find out something illegal is going on.

This is the same as the one over in Haiku with -- I forget who it was that came in over in Haiku, where the board told us to give the people notice; if these other people don't get off the meter, the meter will be removed.

MR. STARR: Bronson?

MR. CRADDICK: Bronson, right.

CHAIRMAN RICE: We're hearing the whole case here.

TOM PIERCE: This is what I'm trying to avoid. Each one of these things creates a new factual inaccuracy that I don't want to go into with the board right now. All I'm asking is, and I can point to two rules in the department rules that will permit this to continue. There's no issue as to public health and safety as to anyone else because the accuracy of the line can be an issue. This has been going on for ten years.

The only issue is, will there be a violation of my clients' constitutional rights if you revoke their right to share water prematurely. And then the second question is, is there a public health and safety concern? I'm saying there is. One of my clients has a family of three children down there who has come to rely upon this water.

And pending the board's opportunity to dig into these, I'm just simply asking that the director continue to permit this water sharing arrangement, to continue as it has been. If, in fact, the Kingdom of Hawaii creates complaints

after today's hearing, then I would -- we'll come back to the board and we'll work an alternative out. But I think we can work that out in the meantime.

MR. HELM: They have been using the water for five years. We know there's a problem with the rule. But what's wrong in allowing them to -- the investigation is not thorough, it's not complete, there's some cloudy issues that we have to resolve, why can't we come back on the next meeting and make a decision based on the operations committee investigation and allow the individuals to continue to use the water until then? We're making a decision based on something not fully investigated.

CHAIRMAN RICE: I was going to suggest that if we have some reassurance from the Kingdom that they would go along with it, I think we might -- I would suggest that we might authorize them to continue. But I don't want to say authorize to continue, then the Kingdom comes in tomorrow and says that's baloney.

TOM PIERCE: May I offer you make your decision contingent upon me receiving some kind of written letter from them saying that they will continue to agree that --

CHAIRMAN RICE: Pending our final decision.

TOM PIERCE: Right.

MR. STARR: Mr. Chair, I don't feel it would be right at this time to give them any new vested rights, which would be the case if we were to say that these particular people are allowed to break our rules.

However, we have all heard that the meter is not in danger of being pulled, and that is really the one recourse that the department would have that would, from our point of view, change the status quo. That's not going to happen. Then anything between the parties involved is between the parties involved. They can sue each other if one of them says the other one can't have water, or whatever. That's not our kuleana.

We're making a statement that we'll look into it, and I think it should be sent to committee to look into it

properly. In the meantime, we're making statements that while we do that, we're not going to remove the meter and deprive them, from our point, of water, and understood inside this, but not stated is it would probably be wise and kind for them all to continue to share until we're able to deal with it.

I don't think we should empower those rights when they are against our rules and we have not had a chance to look into the legal aspects and the other aspects of the case. My suggestion is we just send it to committee and look into it.

MR. HELM: What Jonathan says is correct. But the issue here is what the director is telling the Kingdom what and what not to do. That's the issue here. I'm sure these parties can resolve the issue amongst themselves, but you do have the director that's sort of saying to the Kingdom, you cannot do this. So that's the problem.

MR. STARR: Perhaps a letter --

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Perhaps a letter could be sent saying the board is looking into it -- pending that is not going to -- the meter is not in danger of being removed. Which would mean that it takes the pressure off of them to have to change the status quo until we look into it.

CHAIRMAN RICE: Yes, Kent.

MR. HIRANAGA: I agree with Jonathan that we should not provide any type of validity to what's occurring to the water once it passes through the meter. We can provide assurance that the meter will not be removed until some type of decision by the board is made as to what is the appropriate use of the water once it passes through that meter.

What happens to that water now is between whatever parties are affected; it's a private matter between those clients. If people are entitled to certain amounts of water coming out of that meter.

TOM PIERCE: I guess, Mr. Chairman, my only response would be that it's less than perfect for me just because it's a little -- it enters an area of -- it makes things very vague

for my clients.

Essentially, on the one hand they are permitted to go and negotiate with the Kingdom, but not under the perfect circumstances since there's been no -- nothing other than already the letters that have been sent by the department to base this upon. Except for perhaps a new letter that the director won't pull the water meter. I guess the director will make the Kingdom feel a little bit more comfortable.

One thing I will state is that my clients at this stage either have rights or they don't, because of what has happened already historically. If the board did continue to permit this to happen, it would not somehow create new rights, because you are going to define today exactly what the extent of those new rights are.

And right now, what I am presenting to the board and what I will be presenting as we go through the committee process, is we have rights and we have them for an indefinite period of time, because we incur those rights through the cost and the reliance we have upon the department's inability to continue to provide water after receiving notice that we were sharing this water.

And that will be the basis of our rights argument and will not have any -- it cannot, and perhaps Mr. Kushi could even make the board feel a little more comfortable with this, you cannot create new rights other than what you create. And today, any right you create would only be an interim right to continue things as they are.

The one thing that I will have to do, I can say this, is if for some reason we do not obtain the Kingdom's consent, I'll have to come back, because my clients, as we see it based upon constitutional issues, as well as just the rules, are permitted to continue to use this water. So with that said, we'll accept what we can get today and hope that it works out until we get this through the committee.

CHAIRMAN RICE: You represented to us a little bit ago that you had favorable conversations with the Kingdom itself. Given that position of the board that no fact finding has been complete so no decision has been rendered, then I think that's probably the best what I hear you are going to get out of this group today.

TOM PIERCE: Would it be possible to ask the

director to just issue a letter to the Kingdom, saying the water meter will not be revoked until there's a final decision from the board on this -- on our petition?

MR. CRADDICK: Peter, we already been instructed by corp counsel, we can't do something like that. If the board wants to give a letter like that, that's up to them. But we have been instructed by corp counsel that we can't give anything like that.

MR. KUSHI: Not by me.

CHAIRMAN RICE: I think it's pretty clear from the discussions today that the director will show that the meter will not be removed. Okay? And I will refer it to operations committee unless there's some objection. Hearing and seeing none, so ordered.

TOM PIERCE: Thank you for your time.

MR. CRADDICK: One other thing is the -- I don't

know when the title search -- I don't know when the fact finding on our end is going to be completed, so it's not something you are going to be able to notice, you know, like in the next meeting. I mean the 203 process for the board is a very formal process. And I believe the fact finding --

CHAIRMAN RICE: We know it's a complicated issue. I think we want to do it right and get it correctly. I don't think anyone objects to that.

MR. CRADDICK: I just wanted you to know that we may not have all the facts, say, by the next time they notice their meeting.

CHAIRMAN RICE: Well, when I made the statement about the finance committee, that's true for every committee. If we refer an issue to a committee, and staff has problems gathering information, we don't want to find out the day of the committee meeting.

We want them to say to the committee chairman or myself in advance that they have got work to do and request it be put on the next committee meeting. Just so we know. We get

to the meetings and we have not had the information prepared and we're there to talk about it and we don't have all the information. It's just communicating.

Communication 02-06. Request from Terry McBarnet to be grandfathered in at the old water use development fee rate. Terry? No Terry. Refer to rules committee. Any objection? No objection, so ordered.

MR. NAKAMURA: One question.

CHAIRMAN RICE: Sorry.

MR. NAKAMURA: I thought I understood most of the things that has to do with the list; but reading this letter, David, is it accurate that not everyone who requests a meter is being put on the list?

MR. CRADDICK: That's correct, because by simply improving the system, he can get a meter. So he is one of these, in quotes, empty lots that could get a meter if he fixed up the line. He doesn't want to fix up the line and -- I don't

know exactly what to do with him because he is not restricted from getting a meter. The list is for people restricted from

MR. NAKAMURA: I'm afraid to ask any more questions.

CHAIRMAN RICE: It's gone to committee.

MR. STARR: Just a comment. I think we have the opportunity under that 30 or 60 days, under the rule; in other words, if he acted during that window he would have that opportunity, and I guess when it goes to committee we'll discuss that.

CHAIRMAN RICE: Communication 02-07. Request from Isaac Hall on behalf of Sherman Dudley and Carol DePonte for fire flow protection. Isaac is not here. I'm going to refer that to committee. Actually, I think there's some legal issues raised here that we're going to ask corp counsel to report on to the committee.

MR. CRADDICK: This is a case where they built with the two-house waiver, and they are trying to subdivide and they

can't subdivide without fixing the system up. And because they built with the two-house waiver, they are trying to get us to fix it up so they can subdivide.

CHAIRMAN RICE: Rules.

MR. NOBRIGA: Sure.

CHAIRMAN RICE: No objection? So ordered.

Finance committee report.

MR. NAKAMURA: Mr. Chairman, the first item is the Director's 02-02. This is a request for the board to enter into a contract with the Tri-Isle Resource Conservation Development Council, Inc., for the Miconia project.

There is an appropriation in the present year's budget. Committee feels that this is a project that is necessary for the protection of the watershed. It recommends approval with the one caveat that there's a concern over the proposed expenditure of approximately \$40,000 for a vehicle, and the committee would like the staff to work with Tri-Isle to

see if there are alternatives to reduce that amount.

With that qualification, the finance committee recommends approval and I would so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded for approval for the reservation of the vehicle. Mr. Starr?

MR. STARR: Mr. Chair, just to go on record one more time. This project is a worthy project but in a perfect world it should be funded out of the lease fees for the East Maui water licenses. Since that's not the case, I'm happy that the board is funding it, but it really should be funded by the lease fees.

CHAIRMAN RICE: Thank you, Mr. Starr. David?

MR. CRADDICK: You made the motion and second. I'll keep quiet.

CHAIRMAN RICE: Any other comments or questions on the motion? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. NAKAMURA: Mr. Chairman, 02-03, this is an approval to enter into agreement with USGS, \$30,000 in matching funds for monitoring of streams in northeast Maui. Again, this is an item that's included in this year's budget. Finance committee feels this is a project which would be valuable in planning the uses of water sources, and we would recommend approval and I would so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Mr. Starr?

MR. STARR: I just want to make the same comment I made on the last item.

CHAIRMAN RICE: Thank you. Any comments? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(No response.)

Motion is carried.

MR. CRADDICK: Peter, for informational purposes, this matching funds is matching with the water commission and then the two of them will match with USGS. Water commission has not yet gotten their portion, so this may or may not go forward depending on whether they get their share.

CHAIRMAN RICE: Okay, so noted. Okay. There's no personal matters under Other Business. Provision reports were

sent. Any other questions or comments to be brought up by any members of the board at this time? Do you have an issue, Mr. Craddick?

MR. CRADDICK: One issue, the water development fee.

CHAIRMAN RICE: Thank you.

MR. CRADDICK: That was rejected by the council. We have since got the report. I'll make that available to you. But all the same information is in the rules that's going out to the public hearing in the next week. Basically I think we should be able to handle those concerns at that time.

CHAIRMAN RICE: Resubmit them all together.

Mr. Starr?

MR. STARR: Mr. Chair, I'm a little bit confused on this. Are we going to be changing the rule wording to comply with the -- what the council wanted to see and sending it to public hearing without it going back before the board purview?

MR. CRADDICK: The whole rule is out to public hearing right now. Whatever the board does after that point, they could do it. If they want to pull it back and make substantial changes, or if someone testifies they want the --

MR. STARR: I don't think that's the case. The part we approved and sent for public hearing, then sent back out to the mayor and the council, and that it had been rejected, that's not out there anymore. It's been -- it's dead, as far as I'm concerned. We need to approve a new rule. It may only have one word change, but we still need to approve a rule before it goes out to public hearing.

What I'm hearing from the director is that that rule that was rejected by the council is going back to public hearing.

MR. CRADDICK: Is noticed in the public hearing.

MR. STARR: I have a problem with that. We have a rule noticed for public hearing that's not been approved by the board.

MR. CRADDICK: It has been approved by the board.

MR. STARR: I'm having a problem with this double talk. The rule that was sent to the council and rejected by the council, is that going to public hearing with the same way it was rejected by the council?

MR. CRADDICK: Yes.

CHAIRMAN RICE: There are two sections I'm getting confused about.

MR. STARR: The second session never went to the council. That will go to public hearing. The first part that was rejected -- that went to public hearing and rejected by the council, that's to come back to the board. It should not go back to public hearing.

MR. CRADDICK: All I can tell you is it's listed in the public hearing notice.

CHAIRMAN RICE: If it's noticed.

MR. CRADDICK: Yeah.

CHAIRMAN RICE: The fee portion. So if we need -- then we should be discussing that right now, if we are going to change it.

MR. CRADDICK: I think you would change it after the public hearing, is the time you would change it.

MR. STARR: I have a real procedural problem with sending something to a public hearing that's not been approved by the board and had been rejected -- and has been rejected. Once it's rejected it's dead. It's nothing. It's not worth the paper it's written on.

MR. CRADDICK: Jonathan, you may not have known what you approved to go to public hearing, because I think Ed's looking at it and it's in the public hearing notice.

MR. STARR: I don't care what's in the public hearing notice. I care about what the board has acted upon. You can sneak out a public hearing notice for anything you want, but if the board has not approved it, it's not legal.

MR. CRADDICK: I cannot sneak out any public hearing without your okay.

MR. STARR: You have to do so in this case. My feeling is, it has to come back to the board and we have to amend it and we approve it and send it to public hearing. That's the legal process. Anything short of that we are really more cutting on corners and that could be very dangerous for us. I want to see this as fast as anyone else but we have to do it right.

MR. TAGORDA: May I make a small statement here. I think either way we can do it. But the thing is, it was rejected by the council, it cannot be sent back to public hearing.

MR. STARR: That's what I'm saying.

MR. TAGORDA: But I think these are new amendments to the water system that we have for public hearing. Isn't it? If you read your --

MR. CRADDICK: You know, you need to ask your legal advisor there. They are all listed in there. Do what you want to do.

MR. STARR: Mr. Chair, could we have a short recess and can we take a look at the public hearing notice so we understand what we're talking about?

CHAIRMAN RICE: Sure.

(A recess was taken.)

CHAIRMAN RICE: Back on the record. We have got the issue clarified. The board has to act on the fee portion. We'll schedule another public hearing. We'll submit both sections to the council and the mayor for approval at the same

time. Agreed?

MR. STARR: Just to clarify. The only thing that we'll be discussing at the public hearing relating to it is the verbiage portion which has not yet gone out to public hearing or through the mayor or council?

CHAIRMAN RICE: Okay. And then that's the way it would go. Everybody clear there? Mr. Craddick?

MR. CRADDICK: Back to the agenda item. Another item discussed at public hearing or public meeting was the Ulumalu issue. We met with all the people out there, gave them the conditions under which the various phases of the project had been bid out.

Basically said if they had any concerns with how it was going to be or the concern over whether the system did meet their needs, they were able to write something into the board or simply not sign the agreement that they wanted to participate in it. I think so far we don't have any people like that, that didn't want to participate.

CHAIRMAN RICE: Ulumalu, is that the Peahi? Which project is that?

MR. CRADDICK: Ulumalu-Peahi. Remember the board said they wanted to hold a hearing with the community and make sure they fully understood the phasing of the project and what had been bid out?

MR. STARR: Mr. Chair, when we asked that a hearing be held, one of the stipulations was that the board members should be informed so they could attend that hearing. Once again the director in his arrogance did not notify the board members of that hearing on that date and time. In the future, I would request once again that we be informed of public hearings and meetings held by the department.

MR. CRADDICK: This meeting was held by Ulumalu community association members and it wasn't our meeting. They asked us to attend; it wasn't our meeting. Perhaps it wasn't even the meeting that the board envisioned, but because they were holding a meeting, I went and they were informed of that.

We can certainly hold another meeting if the board does not feel that met the board's needs.

MR. STARR: I'm asking you to have the courtesy to let us know about the public meetings that relate to water.

MR. CRADDICK: Another one was the wellhead protection meeting. I guess there was another step in that process held yesterday.

MS. NAGO: Ellen, you're going to have to come up here because we can't hear you at all. You have to slow it down a little bit too.

MS. KRAFTSOW: I just don't know if we're supposed to list those two, the Lanai water advisory meeting in February and the source water protection -- wellhead protection meeting was held this month as well.

MR. STARR: Those we were informed of and I would like to thank you for that.

CHAIRMAN RICE: Okay. Anything else? Any other items to be brought up at this time? Adjourned.

(The proceedings were concluded at 11:15 a.m.)

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*"By Water All Things Find Life"*

Department of Water Supply  
County of Maui  
P.O. Box 1109  
Wailuku, HI 96793-6109  
Telephone (808) 270-7816  
Fax (808) 270-7951

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