

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

OPERATIONS REVIEW COMMITTEE MEETING

Taken at the Kahului Shopping Center Conference Room,
Kaahumanu Avenue, Kahului, Maui, Hawaii, commencing at
10:30 a.m. on March 12th, 2002.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

ATTENDANCE:

Members Present:

Jonathan Starr, Chair

Orlando Tagorda

Mike Nobriga

Kent Hiranaga

Staff Present:

Herb Kogasaka, Engineering

David Craddick, Director

Ed Kushi, Corporation Counsel

Fran Nago, Secretary

Wendy Taomoto, Engineering

Myles Fujinaka, Engineering

Mike Quinn, Fiscal

George Tengan, Deputy Director

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CHAIR STARR: I would like to call to order
the Operations Committee meeting of the Maui Board of
Water Supply. It's now 10:30. And I would like to
recess that meeting and I would like to call the Joint

Finance Committee/Operations Review Committee back to order.

(Recess taken.)

CHAIR STARR: I would like to call the Operations Committee Meeting of the Maui Board of Water Supply back to order. We have with us Committee Members Hiranaga, Mr. Tagorda, Mr. Nobriga and Starr, Counsel Ed Kushi and Director and staff and we do not have any minutes I believe.

And I would like to call for testimony from the public. If it's okay though, I would like to call testimony in order because I think we may be able to dispense with the first item really quickly. So is there any testimony regarding Director's Report 02-09, Request for concurrence to allow participation in, and minor assistance for, various non-profits by the staff and Director? None.

I've been advised by counsel to defer this item because it's going to require some research to see how this fits in with our employee manual and other County

literature. So if it's okay with other members, we should probably defer this. Do we have a consensus on it?

MR. NOBRIGA: I have no objection.

CHAIR STARR: I don't see anyone objecting. So we're going to defer 02-09, and now we come to the one we're all waiting for 02-03, request from Mr. and Mrs. Marion D. Hanks for a water meter in Hana, and we're looking for public testimony. And who wants to go first here?

MR. CLIFFORD: I would be happy to.

CHAIR STARR: Please sit down and I'll ask you to speak loudly and state your name.

MR. CLIFFORD: My name is Chris Clifford. I'm the son-and-law to Marion and Maxine Hanks. By chance, we had planned a trip from the mainland here,

and it was fortuitous that our timing of that trip now presents itself this morning. I've had fairly extensive discussions with Marion and Maxine on the subject of the meter having been a member of the family for 25 years, and we're aware of the property here in Maui.

The property, as you have probably been informed by previous correspondence, has been in the family since the early 1940's. As part of the larger holding, that was -- that had a house on it. The lot was a property held by the family and then was subsequently sold. It was a matter of restructuring the estate of Mr. Christianson who passed away. And Maxine arranged to purchase the property from her brothers and sisters and then built this home on the property back in 1992-'93, completed in '93, and at that time requested the meter to be installed as part of the permanent supply of water.

Previously the water supply had been part of the arrangement with the larger property known as Hanahuli, and Hanahuli Ranch through that arrangement

supplied a necessary medium amount of water to the property, but it sometimes has been inconsistent and not, if you will, a guarantee of water. Particularly in the circumstances of a later transfer of that larger property, the Hanahuli Ranch, to a private individual getting assurance that the water could be supplied to the property is in jeopardy.

The Hanks are not newcomers to the islands.

Mrs. Hanks was born in Honolulu in 1925. Her middle name he is Lehua. She has been a part of Hawai`i for many years since her marriage to Marion Hanks. We have been a part of the islands. We feel like Hawai`i is our home, in effect, and they do, too. And now they're in retirement years and spend a considerable amount of time here and in Utah, and they're approaching their 80's. And under the circumstances of given their age, dealing with water is a very tenuous situation for them and upsetting to them, and so we come before you in a third attempt, if you will, to make this formal request and hopefully convince the Board to allow a water meter, and, therefore, secure their water entitlement.

Just as a matter of history, the past request, the previous formal request was made in '93. It was reviewed in '94. It was rejected, and then another request was made in '97. That was also rejected. We now come before you with a third consideration -- requesting your serious consideration. And we understand that since those requests, that two additional meters have been granted on properties nearby. The Meyers and the Klibans put in their second meter. The Meyers first and primary meter for the property were granted. We are aware of current requests and previous requests that, in fact, have not been given serious consideration, and we're aware of Mr. Dana and Mr. Blumberbuell's situation, and, in fact, we hardly endorse their claims to water meters as well.

We are in understanding of the current capacity, so-called capacity of the water system, and we understand, of course, the limitations that the Board has in granting water meters in the case of that capacity. What we're suggesting perhaps is not

something new. In fact, I was just meeting with Mr. Craddick outside of here just a second ago, and I suggested that perhaps there would be an arrangement where some kind of a bonding fee could be paid to, in effect, guarantee against future liabilities in the event of incapacity or lack of capacity or a shortage of capacity in that area.

And then I also visited with Mr. Blumberbuell briefly before the meeting. I think that today if we were all to sit down and visit on the subject of the mechanics of delivering water to this area, there is a reasonable solution that could be worked out that would satisfy all of the parties. My only suggestion to you is to do what you've done in the past, and that is to be fair. All we seek is fairness. All we seek is equity. All we seek is a sense of serious consideration given this request, and we, of course, appreciate the fact that the Board will act in that same fashion.

CHAIR STARR: Again, any questions? Okay.

Thank you.

MR. CLIFFORD: Thank you.

CHAIR STARR: Mr. Blumberbuell, could you come and give us your name and try to speak loudly and clearly.

MR. BLUMERBUELL: Aloha, Water Board Members and staff, Corp Counsel, my name is John Blumberbuell. I'm testifying on my own behalf, and I'm testifying regarding Communication 02-03. And I would first like to say there's been some really unfortunate conflict created around this issue because of the Water Department, and that's the most unfortunate part of this situation.

Mr. and Mrs. Hanks and Mr. and Mrs. Dana are both people to be held in the highest esteem. They are -- I don't want to say that there aren't many people, but they're people of impeccable records and public service and they're all great people in their own way. And I have to say that, you know, that this

situation when Mr. and Mrs. Hanks are being told basically by the Water Department that if the Blumberbuelles and Danas will agree to it, then there won't be any problem, when for many years we've been trying to get the Water Department to act fairly in all this, and our trying to get an equitable situation and solution for everybody has been confused with the idea that somehow the Blumberbuelles and the Danas are running the Water Department.

I mean it's really -- it's that ridiculous that it's really -- I read a letter that Mr. Isaac Hall wrote regarding that very subject a while back. It's somewhere in your records, so I'm here today to set some of the history straight. And I also have suggestions for a solution. First of all, I have a letter from the Director to the Board of Water Supply dated May 20th, 1997. And under justification for request, this is talking about Mr. Blumberbuell, and it says, "He has made written requests for water service on February 19th, 1988, March 26, 1992, and April 20th, 1992." And just prior to that, it says, "He has

talked to Kent Simon in 1976 about obtaining a water meter for his property."

Well, the record, and this is in the records, the accurate record is that we requested two water meters back then. And we did so not out of being greedy or anything else. We have two kids. We were thinking down the line 25, 30 years when all the water was Wailua stream catchment. Everybody in Hana was on surface at that time, and we thought it was responsible to make that request to put the County on notice that here is somebody that 10, 20 years, they want some water.

That is, for your information, it's rural designated property with rural bills coming through in Hana. Again, I seriously doubt we will subdivide to the extent allowed under that bill. Because of the Leeman situation, where apparently she was required to have a meter just to build an additional structure, we still think we made a good request.

Now, again, to correct the historical record, since we made our request for two meters and we were the very first people to make any requests for water

out there during that time, the County has granted 8 meters to people, some of who made the request 10 to 15 years after we did. That is a matter of record.

And that is also well documented in an August 7th, 1997, letter to the Board of Water Supply from the Director. He identifies a meter to the Blumberbuelles, to Cleve Acarius. And when Mr. Acarius, who is my next-door neighbor, comes this year, I plan to get a sworn statement from him about our meetings with Kent Simon, our discussion on those issues, a second meter to Judith Kliban. I think I read Mr. Hall's letters. He's appropriately pointed out the Water Board could have taken that meter back.

And then the total is about 8 different meters. It's just astounding to me that, you know, the people that came in and requested water meters some 15 years after we were given first shot, and it wasn't clear. We were very up front. It's in writing that it was two, and, as the Water Board knows, you're allowed to request more than one meter. And it doesn't -- you don't get one at the top, one at the bottom. It was a

fair request. There's never been any pressure from us.

And, you know, after reading Mr. Hall's letter yesterday, which I got a fax of that from him as the -- as the Danas' attorney yesterday, he's flat out saying that he believes that there's grounds to constitute a denial of Constitutional Rights of the Danas and Blumerbuells. Well, he, Mr. Hall is incorrect in what I agree with that statement.

He's -- I would like to correct one thing if you have Mr. Hall's letter, which apparently was delivered to you yesterday. Third paragraph of the first page, it says, "Thereafter," and this is referring to January 29th, 1996, when Mrs. Kliban was given a meter.

"John Blumerbuell and Dana requesting that the Department grant a second meter." That would be -- the correction would be that we actually requested our second meter in writing in 1988, so that's a mistake that Mr. Hall made. And I have called him up and told him that, and he said just please correct it at the meeting, so I'm doing so.

Another thing I just want to hit, and this is

very briefly, besides this, when the County made their improvement of the water line out in that area, you know, we were expecting to get two meters and so were the Hanks. A lot of people were expecting to get meters, and the Hanks had requested one at that point. And they were actually stubbed out. I mean there is a water line going from the main line to their property. The County installed a meter for the Hanks. Mr. Hanks gave the County a check, which apparently they never cashed, the County never cashed, but, you know, and that issue got raised of them getting a meter. And then it was taken away from them.

So this, I mean this just seems like almost cruel and unusual punishment for the Hanks. They wait. They expect a meter. They had one. The County took it away, and then everybody is going, well, why haven't they -- why aren't they taking the water meter away from Kliban when in writing they've admitted that that was a mistake?

So again, there's been an attempt to establish

some equity in the situation. And so there's a couple of other situations I want to make you aware of because you're going to be maybe going into executive session. The first is that the Hanahuli Association still has, as far as I know, an unmet water bond obligation for that whole area from 1958.

Now, you have somebody that knows about that.

Myles looked into that situation when Chet Gray, who is the neighbor, asked for approval of the waiver of the water requirements for the subdivision. I objected to that. The Water Board approved that even though the staff recommended denial. And one of the reasons I wanted the Board to deny it was because the Grays are one of the primary people in the Hanahuli. They still have an unmet water obligation from 1958, and again, we were asking the Board to take a comprehensive look at this and make it equitable for everyone.

And so at this point, I'm going to make a proposal for a possible solution. And I am suggesting to bring the -- to make the situation more equitable to diffuse the situation of Kliban getting an illegal

meter, which she did request at some point in time and she should have been on the list for that request. I think what in my mind is fair at this point is to allow the Hanks, Danas and Blumberbuells to buy meters and to put severe limitations on water usage. I would suggest -- a lot of people know that 1,000 gallons is a standard use.

I would suggest selling meters to those three parties and limiting the water usage to 500 to 1,000 gallons a day, no more for domestic and household use only. And I believe that there is -- I believe that there is that 1,500 gallons available in the system right now. I don't want to embarrass the County water supply right now, but if you want to go out to Hana with me this afternoon and have me show you where there's hookups and where people are pulling a lot more than 1,500 gallons out of that system as we speak, I'll be happy to do so.

I took a good inspection the other day, and I don't want to get into names or places. There's more than 1,500 gallons being pulled off that system every

day and some of it by people that probably aren't paying for it. And so everybody out there knows that there's been plenty of water that's been used. People are neighbors, so they'll let somebody that doesn't have a meter, they'll give them water for their house. My point is not to make anybody a criminal.

My point is that I believe there's adequate water to give 500 gallons for 3 people each, and that would be an equitable solution at this point. I'll go even further. When I said that I was looking long-term for our kids, I'll agree not to use any water on that meter for a year. Okay. You can, you know, kick me in a year from now. So I just, I'm willing to do what it takes to make this situation right.

You know, I feel like something has got to be done to make it equitable with people. And I've thought about anything else. I think the idea of having a contested case hearing, which Isaac Hall has already requested on behalf of the Danas, I mean we've been -- I think the fact that 15 or 20 years later I'm sitting here having not run out of patience and still

trying to find an equitable solution should speak for itself. But when I look at the evidence at the point where we want to do some of these things, we're being required to have another meter, we're going to be damaged. We're going to be able to prove it. There's a clear record we've made these requests for more than 20 years, and there's witnesses to these things, too.

So, you know, in conjunction with that solution of, you know, 500 gallons per meter, I would suggest the County water, in any case, think about putting, you know, maybe require that the Hanks and/or Danas put in maybe a few days' supply of water. Let's say the 5,000 gallon tank or some sort of small tank where they have to have a pump system on there where they can pull the water out where the Water Board determines it's a low rate of usage.

In other words, if the Water Board determines with the graphs there's no water being used or very little between 2 in the morning or 4 in the morning, the Blumberbuelles, Danas and Hanks can pull their water out of the system at that point, and then the water

they use would come from a storage tank with a pump on it so they would have their water pressure.

And I think that's an additional step to be sure that it's not going to hurt anybody else. Now, I am concerned, the final thing, I think that's the solution. There may be -- I don't know if there's other people that have -- I don't think there's any people in Muolea that have requested any meters.

MR. CRADDICK: You know, Eddie Puu?

MR. BLUMERBUELL: Eddie Puu, he's in Koali.

He's Kipahulu side of Muolea. This is what I propose dealing with what I know about, and, you know, perhaps as part of the overall solution that an additional storage tank in Koali would help to solve it. The other thing that we don't have in Muolea, and it's a little perplexing to me, is when they did the new pipe, and I believe it's 4-inch, David, or 6-inch?

MR. CRADDICK: 4-inch.

MR. BLUMERBUELL: When they did the new 4-inch pipe, they put fire outlets everywhere along the road except in Muolea. There's no -- there's no fire protection in Muolea. As part of this, I would be happy to pay for a fire outlet in Muolea that the trucks can come and tie onto. I believe that a storage tank we have up on the hill, 15 or 20,000. If we had a couple of fire outlets in Muolea, people would actually have some protection. And anyway, that's all I have to say.

CHAIR STARR: Members, any questions of Mr. Blumberbuell?

MR. TAGORDA: Just a comment, Mr. Chairman, thank you very much. Mr. John Blumberbuell, thank you very much. I believe I thought you were coming here to bid me farewell. I heard your request since I came to be a Board Member in '97, and I too have sympathized with you and I've supported you all up to

this time; however, my criticism again is to the Department. In the past five years of being on the Board, the recommendation was with the same reason that they didn't do anything to solve the problem there at your area.

MR. BLUMERBUELL: Right.

MR. TAGORDA: I don't know what the plan is, to tell you honestly.

MR. BLUMERBUELL: I appreciate what you're saying, and that's that the Water Department considers the point of adequacy Kapia stream, which is almost near Hamoa, and, you know, it's theoretically a moratorium. And this is one of the reasons why the unequitable treatment of everybody doesn't make sense. I think that, you know, what maybe is logical is for the County right now is doing looks like a major repair from the pump station at the bottom of Drummond hill going up towards Koali that, you know,

maybe there could be a reassessment of the situation and see if 1,500 gallons a day would really bust the system open. And the other thing I would suggest is to make a list. Eddie Puu has made a request, and let's get the -- let's get an accurate list and keep it on file. So in ten years or 20 years, Eddie is not up here doing what happened to us.

So, you know, that may be a way. I mean I respected when the Board said there was a moratorium. I mean I respected that judgment, although we should have had our second meter before they issued another eight, but and that could still be a point of discussion with the corporation counsel. But again, I think that the -- I don't know if the Hanks or the Danas have agreed to it. I did talk briefly with Mr. Clifford, and I think they would be -- I think that 500 gallons a day would serve them. I've been one of the people primarily responsible for making sure they've had water for the last 28 years, and I think 500 gallons is adequate for them. And anyway, that's my proposed solution.

There may be some -- you know, there could be --

Jonathan's next with this, and you have a staff.

There may be some engineering solution how do we free up 1,500 gallons if that's what creates an equitable situation. Would a 5,000 gallon tank next to the one in Koali, would that solve the problem? I would contribute to that if that helps everybody. If Eddie Puu has made a request, let's look at him, too. What can we do right now to make it equitable before we improve the whole system? What can we do right now to make it work for everybody?

I think there's an engineering solution. My feeling is the water is there. We know the water is at the Hamoa well. We know the water is in the Hamoa water tank. The question is it flows gravity at the pump house at the bottom of Drummond hill, perhaps a booster pump somewhere along the line, whatever, or other storage in that area would be an engineering solution to make the water available.

I'm sure the Hanks and the Danas and the Blumberbuelles and I'm sure the Puus, too, would be happy to participate in any engineering solution to

the situation. Again, I think it's important to keep in mind, the Hanahuli situation, which is in the process of liquidating all of its assets, has an obligation to your Water Board right now from 1958. And I contend that at least they had an -- I mean that at that point, I contended that you should hold them responsible for what they agreed to in 1958 in 2000-dollar terms. So I think the Hanahuli should be held to their water bond obligation, and that's potentially part of the solution.

So I'm happy to -- I'm happy to do anything I can to help out, and I know that the -- again, to repeat it, the Danas, Hanks are very reasonable and they want to work this out without conflict.

CHAIR STARR: I would like to thank you for your spirit of cooperation, and I do want to comment that we did receive written testimony from attorney Isaac Hall. Anyway, if there's any other questions, I would like to ask the Director to try to explain what he can about this situation. We will be making a site inspection out there next week. And I don't know how

that should tie in with this, and I also believe that counsel may have some words for us as well.

Mr. Director, any comments on this whole thing?

MR. CRADDICK: The only thing I can say is the Board has declared the system inadequate, and beyond that, we don't have any other recommendations.

CHAIR STARR: Okay. Welcome, Attorney Minatoya. Thank you. Corp Counsel, do you have some comments here?

MR. MINATOYA: I think at that point, I don't see -- if I could just have a few words with the Director.

CHAIR STARR: A short recess while we do this.

(Recess taken.)

CHAIR STARR: We're back in order. I know it's

been suggested that we go into executive session because there's some information that may -- could theoretically be involved in litigation later. What's the opinion of the members right now? Do you have any other questions? Do you want to defer until after the site inspection? What's your pleasure?

MR. TAGORDA: If there's really important information that we have to go to executive session, Mr. Chairman, we'll do it. But if that information is just it can be open to the public, well, there's no point.

CHAIR STARR: I'm told that -- go ahead, Counsel.

MR. MINATOYA: Thank you, Mr. Chair. For the record, Richard Minatoya, Deputy Corporation Counsel. I'm the attorney for the Department. Basically, I guess the problem at this point, I don't know the nature of that information, and I want to be clear on the fact that there is I guess the potential for

litigation in this matter that that issue has been raised. And because we're not entirely clear about the nature of that investigation, it does relate to the Board's duties, responsibilities and liabilities, especially the liabilities portion.

At this point, I would like to request that it be done in executive session so that, you know, we can get to the root of all of this and the Board can get that information and make its determination.

CHAIR STARR: Okay. Do I have a motion, if that's the pleasure of the members?

MR. TAGORDA: Mr. Chairman, I would like to move that the Board may convene in executive session pursuant to HRS 92-5 (a)4 in order to consult with the Board's attorney on the questions pertaining to the Board's powers, duties, privileges, immunities and liabilities.

CHAIR STARR: Do we have a second?

MR. NOBRIGA: Second.

CHAIR STARR: I would like to be clear this is not for us to take any action or discuss anything, just to receive some information. Anyway, all in favor, say "aye."

VOICES: Aye.

CHAIR STARR: Okay. The Board will convene in executive session. The regular meeting is recessed.

(Whereupon, the Board went into Executive Session.)

MEETING RESUMES

CHAIR STARR: Back to order. The meeting is back in order. Members, what's your --

MR. NOBRIGA: Mr. Chairman, in light of the discussions with Mr. Blumberbuell and Mr. Hanks, there appears to me that there is a lot more information that we need to obtain before we can adequately make a good decision on this matter. If there is no objection from the members, I would like to recommend we defer action until we can get all that information.

MR. TAGORDA: Second.

CHAIR STARR: Okay. We're going to defer this item. We also will be making a site inspection out there, which will help as well. So, Ed, were you going to say something?

MR. KUSHI: No.

CHAIR STARR: Okay. So that being the case --

MR. KUSHI: Mr. Chair, whatever information that

you want, maybe it should be relayed to the secretary,
so the record has a request as to what you exactly
want. You can do it later, but --

CHAIR STARR: Yeah, okay. We can do that, and I
know we certainly want to have real clarification of
what meters were issued, whether there was a meter
issued or withdrawn and what people have applied and
so on. Anyway, the matter will be deferred, and that
being the last business, the meeting is adjourned.

(The meeting adjourned at 11:55 a.m.)

IWADO COURT REPORTERS, INC.

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