

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Held at the Kahului Shopping Center, Kaahumanu Avenue,
Kahului, Maui, Hawaii, commencing at 9:00 a.m. on
March 28th, 2002.

REPORTED BY: LYNANN NICELY

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

BOARD MEMBERS:

Peter Rice, Chairman

Clark Hashimoto

Kent Hiranaga

Orlando Tagorda

Adolph Helm

Howard Nakamura

Mike Nobriga

Jonathan Starr

STAFF PRESENT:

David Craddick, Director

Ed Kushi, Corporation Counsel

Mike Quinn

Herb Kogasaka

Fran Nago, Board Secretary

IWADO COURT REPORTERS, INC.

CHAIRMAN RICE: Good morning. I'm going to call together the regular meeting of the Board of Water Supply, Thursday, March 28th, 9:00 a.m. We're at Kahului Shopping Center.

In attendance we have the full board and we have on my right Clark Hashimoto, Mike Nobriga, Jonathan Starr, Orlando Tagorda, Adolph Helm, Kent Hiranaga, and Howard Nakamura; Corp Counsel Ed Kushi, Jr.; Director David Craddick, staff, and members of the public.

If you are here to testify, we'll go into that section of the meeting shortly.

A couple of items for the board members from the Chair. We have an issue that was referred to the Committee of the Whole several meetings ago that we haven't taken up and that is the Central Maui Source Availability issue and we need to have a Committee of the Whole meeting, so I want you to be thinking about some date in the near future when we can get together just for that meeting.

Number two on the agenda is the appointment of chair and vice chair for the coming year. Our bylaws require that that be done at the March meeting. It wasn't done last year at the March meeting and I apologize because I didn't know it was in the bylaws.

But in any event, for you to be thinking about during the meeting, we can deal with that at today's meeting, however you want. I can appoint a committee if you want and deal with it at the next meeting. If you think that is in violation of the bylaws, the bylaws provide that a majority of the board can amend them, change that rule, so we can act on it that way. Any way you prefer is okay with me. So those two items for your contemplation while we contemplate all these important issues.

Approval of the minutes of the February 28th meeting. They have been circulated.

MR. NOBRIGA: Mr. Chairman, I move that the minutes of February 28th be received subject to a 30-day review at which time, if there is no corrections, they shall be filed.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: It's been moved and seconded to receive the minutes subject to 30-day review, at

which time they will be filed. Is there any discussion on that motion? All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

Testimony from the public. Members of the public who are here, we will accept testimony at this time if you would come up and sit at this chair next to David. If you want to testify on a specific issue and you want to wait until that issue comes up, that's acceptable also.

Mr. Smith.

MR. SMITH: Chairman Rice, members of the Board of Water Supply, my name is Jim Smith, I'm here to testify on a couple of items and I'll do it

sequentially as it is in your agenda.

My first concern is the joint finance and operations review committee report, Director 02-04.

I've reviewed the minutes of February 28th and in those minutes, it was stated by the Chair that there would be a director's analysis as well as that you would have copies of grants submittals to review.

I saw no attachments to the committee report.

The committee report was very brief, it contained no analysis, it contained nothing that I as a citizen could read to believe that there was decision-making and that approval was justified for the report. So I would ask that you not act on that report until it is amended to include those things.

Some things concern me about this particular request. The rhetoric or at least the testimony on February 28th brought out several references to nonpolitical, references to impartiality which to me presume that the board or the department was somehow not credible and could not get the information itself. And to me that needs to be done away with, quite frankly. I think \$30,000 is an enormous amount

of money for perhaps information that could be gotten by the department and I don't see how it could be justified, especially without reviewing any of the previous submittals that you said you would do before you acted.

So I would ask you not to act until you've reviewed the grant submittals that you said you would, and then act. That ends my testimony on this particular issue. The committee report should in fact show somebody what the reasoning was for a decision, not just simply what the decision is. And to me that might be worth doing. Thank you very much.

Next I would like to share a few comments regarding proposed rules that are on your agenda. Quite frankly, I would like to have Maui Tomorrow preserve its political stance. I find it very helpful. In any event.

So I'll turn first to the fees and just a couple of concerns that seem to me need to be reviewed. The schedule which would adjust the annual basis of the fee and adjust it upwards or whatever.

The Consumer Price Index to me sets a precedent to circumvent our charter which relates to fees being set by approval of the mayor. So I would ask you to delete that. It may not even be significant in amounts, but in terms of a precedent there might be something else that might be more significant. Bond rates, for example, or any other type of thing you might want to insert in the rule that in effect [inaudible].

Page 8-5 of this rule, I really would ask you to remove the word "penalty." To me that just changes the whole nature of this process. And if you're saying it's a penalty if you don't do something within a certain amount of time, I think you've used the wrong kind of terminology. You have a fee, you may lose your fee, but it's certainly not punishing you for not doing something. So I'd ask you to just remove that word "penalty."

There is an attempt I think to change the meaning of a word which I find -- I don't know if it's in this one -- yeah, on page 8-3, there is a reference to corp counsel to provide verbiage of committee

desire on HRS Chapter 46. So I'm not quite sure what that refers to. But I know in the past, corp counsel may include language that affects me and affects my rights and not having an opportunity to review that prior to its adoption would cause me a little bit of concern.

But this rule, it shows that you've spent a lot of time and I applaud that effort to continue. What I see is the proposed fee schedule does not include, from my perspective, some important items. For example, you might want to include agriculture uses and how that might relate to meters and such, whether or not there is a Hawaiian Homes condition regarding the fees. That should be up front. And it might be also possible that you might want to extend the payment schedule for people who are poor, for example. It might be extended for more than three years, it might be however long. But those are just a few concerns on that fee provision.

The final one is your appeals to the board, which to me is necessary, should have some sort of a

procedure. The easy one is at the back on page 2-3, it says that the board adopted this on September 21 and it should -- 26th day of September 2001, it's on the copy I received, and it says it was adopted then. You might want to make sure that the right date is there when you take the rule. It should be blank at this point.

There is an attempt to make this procedure a contested case procedure. Now, this is an appeals procedure. And a contested case procedure is very burdensome. That's where you have substantial rights and that's where you get to bring in your evidence and all that type of thing. And it would seem to me that this appeal should not be a contested case procedure. I think if you'll look at the charter in 1977 when they were dealing with the Boards of Variance and Appeals, they separated variances from appeals and they conditioned the appeal upon any person, any person who felt they should come forward. Because we're talking about conditions that are erroneous, that in effect are arbitrary. In other words, you have to see this on its face as being arbitrary or as

being erroneous and nobody should have to come forward with something that would help everyone and run through a series of loops and expenses. It would be an easy thing for the board to meet one time and determine the question and rights would not I believe be assigned at the point. But once you start using lawyer terminology, you start using standing, you start using things that, for example, Section 16-0276 says any person who has standing to appeal shall petition. Well, in the first one under standing to appeal you say anyone who's aggrieved by the decision. Now you're going to have to spend years, in some cases, deciding whether the person has standing when the real issue is whether there has been error. So you want -- I would ask you to delete that part about any person who has standing and just say that a person shall petition the board within 30 calendar days. So then he doesn't have to prove he has standing because that takes up needless time.

I would ask you to turn to 16-0279 which is under Standings of Appeal. And in this it says the

board shall review the director's decision or order and may reverse or modify if the substantial rights of the petitioner may have been prejudiced. But you still could have the real legal action, not affecting me, brought to your attention. Okay. Which you then would find that I wasn't substantially prejudiced by. So then you would let the illegal action stand. This is a hypothetical circumstance. But because you have this language in standards of appeals, you from my perspective have screwed it up. I mean, you need to be -- it's the board's authority to review the director and may reverse or modify the decision or order if it is. That's all you have to say in that. You've got the authority to review and to change or delete if you find that it's based upon erroneous information or arbitrary or capricious, you can do that. But once you throw in that if the substantial rights of the petitioner, okay, have been prejudiced, well, that sets up a different scheme that you're looking at. You're not looking at the director any longer; you're looking at who the bugger is who is bringing this complaint to you. I would ask you to

remove it.

All of these remarks would probably go right back to what we're looking at, which is my primary concern, and that is: "All appeals shall include a processing fee in the amount of \$300." Now, fees relate to expense. In other words, the law on taxes and the law on fees is different. A fee has to correlate to the expense involved and you cannot include in that expense secretarial work that normally would occur or any of those types of things. So to charge \$300, from my perspective, is draconian. It in fact would discourage someone bringing to the board what they believe to be an illegal activity or an erroneous activity, and you don't want to do that. So if you really are concerned about just paying for additional work, then it would be probably more suitable in the \$25 range because it would seem the normal work of your secretary involves most of this stuff. So I would ask you to, if you wanted to do a fee, make it correlate to the operational expense and that to me \$300 would not be anywhere involved.

Thank you very much.

CHAIRMAN RICE: Any questions of Mr. Smith,
board members? Mr. Starr?

MR. STARR: Yeah, the fee schedule for the
Water System Development fee, the escalation clause
which we had as a Consumer Price Index fraction, do
you feel that there should be no escalation over the
next several years, or do you feel that it's just the
wrong way of pegging it? I know there was some
discussion of this in the Council. We feel it's
fairer to have it slowly rise as the cost of living
rises than to wait and then have to jump up after a
few years, you know. So we're trying to avoid having
another large step in a few years. But I understand
your point is that if we set it on something that no
one in the county has any control over, then it's
subverting the right of the mayor and the Council to
approve and even our own right to set those fees.

Would it make more sense to say peg it at
something -- at a number one percent or percent and a

half, a fixed rate of escalation and then adjust it after a few years? What in your mind would be a fair way of dealing with it? Because I don't think having a flat rate and then having it jump after five years, which is what we're doing now, is really fair.

MR. SMITH: What you're looking at though is me buying a water meter today with a fee of \$6,000 and then my neighbor a year and a half later buying a water meter for a fee of we'll say \$6,500, not paying the same rate that I would be paying.

But the crux of the question is, I believe, you have an amount here, and this is an amount that was arrived at concerning expenses, okay. That includes what you believe will be the expenses. But if you put a separate index involved here, then that changes that. What I'm saying is that there is nothing wrong with the system and if you go forward to the Council, okay, and you give them a clean shot, that's the system. So if in three years you need to get more money and we'll still under a system where

you go there, you go there. And that's the system.

That's the fair way of doing it.

But this sets a practice or a precedent of including other things besides your good judgment in arriving at the fee. In addition to your good judgment in arriving at the fee, you're putting an X factor which is Consumer Price Index and then you may even put it under X factor which might be the bond rates. Or maybe even half of the bond rates, maybe tie it to appreciation of property. Where are you going to stop if you set up this practice? That's just a response.

CHAIRMAN RICE: Any other questions? Thank you, Mr. Smith.
Any other public testimony at this time?

MS. de NAIE: My name is Lucienne de Naie.

I'm on the board of Maui Tomorrow. And greetings to all the board members here.

I came to be available for questions about the same agenda item that Mr. Smith referred to about the report of the joint operations finance committee

regarding the Maui Tomorrow water research project funding. And I appreciate the fact that Mr. Smith reads through the minutes and analyzes things. Thank God someone is there doing that. I certainly don't have the time.

But I'm unaware that there were additional studies asked at the time of the joint meeting on the 28th. And I have to say that if those were called for, it would have been my responsibility to provide them and somehow that slipped through my radar screen as a request. I thought what we were doing is looking at it if there was a possible way to have a contract as part of the grant arrangement that would be -- this is Mr. Nakamura's suggestion -- that would be acceptable to both the water board and Maui Tomorrow. And Mr. Kushi was kind enough to fax over a sample contract that had been used for another nonprofit grant.

Mr. Sturtz, our president of Maui Tomorrow, and I are in the process of reviewing that. We have actually faxed over some comments to Mr. Kushi to ask

if this is standard procedure or if we can offer an amended sort of version. And if there are other documents that this board needs to review as to the amount of research that's already been conducted, what the findings are and so forth, we would be very happy to provide those.

We did meet with Mr. Freedman, who is under contract to the Board of Water Supply, to provide him with updated information recently and he found that very useful and we thought it very useful to see the scope that he was undertaking in developing the support structure for the Water Use & Development Plan that's underway.

So I guess I'm not very familiar with going to the County for this kind of procedure. I have been involved in one County grant with the Haiku School PTA a number of years ago. So if there are additional documents that would be needed, maybe I should sit here and take notes in writing so I could make sure that they're provided.

I feel -- I welcome Mr. Smith's comments that Maui Tomorrow is needed as an independent agency and I

very much agree with this. However, he may be unaware that in the history of Maui Tomorrow, there are several times during grant-funded projects where the organization, under the auspices of a project, not as a whole organization, but a project of the organization, Maui Tomorrow has worked in conjunction with the County and one of these was designing our communities in which County Planning Director David Blair and Jocelyn Carrera from the County-funded Wailuku Main Street Association joined with the Executive Director of Maui Tomorrow [inaudible] at that time, in making presentations about how the planning process worked. And this was like an 8-month, 9-month long project and I felt it did some good.

Certainly Maui Tomorrow wants to be available as a watch dog, but our whole mission in life is not to intervene on county procedures or, you know, sue over infractions of things. Our mission is to try to influence in a positive way the policies that protect our natural resources here and that's our mission to

contribute to sustainable planning. So if we could do this in conjunction with a County agency, it seems like we made a step forward.

If it was going to act as a muzzle for our efforts to receive County funding, I for one would not feel good about receiving that funding. So, you know, just be honest right here.

So if there are any questions from board members or if there are other materials that I should be providing, please let me know.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I know we're not on that agenda item yet, but just to clarify, it was my recollection that in an attempt not to try to burden you with having to create a lot of paperwork that wouldn't really do any good, what we were asking for was I think we called it a sample grant proposal to show how the money would be allocated. And what we were really looking for was a copy perhaps of the -- I think Hawaii Community Foundation or --

MS. de NAIE: I submitted that several weeks ago before your February 28th meeting. Was it not received? I actually submitted the whole grant. I thought that's what Mr. Tagorda was reading from when he said, well, I see here you've received a \$40,000 grant, because part of that grant was listing previous grants we had received.

Yeah, I submitted it about a week before the meeting of the 28th so that members would have a chance to review it. So if that didn't arrive, I can resubmit it.

Well, that was the contract. In other words, the -- the contract just says that if you substantially -- I can submit that page. That was a separate page. It says if you substantially change the scope of your grant, you need to inform us and the amount of the grant, you know, we need to refund the amount of the grant that you're not using and so forth and so on. It's a very simple contract that goes with it. But what I submitted was the proposal so that you

folks could get an idea of the scope that was proposed for the work of the whole project.

MR. STARR: Probably deal with it on the agenda.

MS. de NAIE: Well, if I could just get more specifics, I'd be happy to provide information.

CHAIRMAN RICE: Thank you. Adolph?

MR. HELM: One last question. And I echo Jonathan's concern because I recently applied for a grant through the Maui Community Foundation and what I see here is a summary of basically what your goals and objectives are with the project.

MS. De NAIE: Right.

MR. HELM: But again, what we had to submit was something like this that was that thick and it had everything from budget proposals and how the money was to be spent. And I guess that's kind of what the idea

with trying to have --

MS. de NAIE: Okay. I didn't attach the budget or the budget for our organization. There were like three or four other attachments. It wasn't clear that that was what was wanted. I got the impression that what was asked for was the original grant proposal in terms of what the scope of the project was and then what the working budget as regarded this \$30,000 -- in other words, what your \$30,000 would go to, not the whole budget -- the whole two-year budget of the project.

MR. HELM: Well, specifically you're asking more or less like a matching fund from the county.

MS. De NAIE: I guess so, in a way, yeah.

MR. HELM: So in reality, you have to do a proposal and in it include the budget [inaudible]. So I guess it would help, you know, if we're going to

approve monies, we like to see that.

MS. de NAIE: Sure. I can forward those two pages, the organizational budget in general and then the project budget for this two-year project. Okay. Thank you.

CHAIRMAN RICE: Thank, Lucienne. Any other questions? Is there any other public testimony at this time?

MS. de NAIE: And could I testify later on another matter when it comes up?

CHAIRMAN RICE: Sure.

Okay. We're on Director's Report 02-10, request approval for an appropriation of a lease agreement. Mr. Craddick.

MR. CRADDICK: What I've done is asked for a budget amendment for \$5,000 for rental of space for the Board of Water Supply and staff for the remainder of this year. And in that, it would include this past

month that we paid \$1,000 for and any taxes. I don't expect it's going to be -- we're going to be using the entire \$5,000. That's just a budget amount.

This space here, if this is not dealt with, our agreement to use this space is up on the 30th of this month. And we put an advertisement in the newspaper and the only proposal that came in was from A&B Properties for this same space here. And that offer is good until the 31st of March.

There were some concerns about the ability to have Executive Sessions in here. I went in the room behind us. Apparently they used to have hula classes in here. And because of the noise going into the other office, that vent up there is boarded up. The guy said he can tell people are in here, but short of putting listening devices up against the wall, can't hear what's going on.

And we realize the problem with the air conditioner here, we would expect to fix that if the board were looking at keeping this for longer -- a longer time. And the agreement that we would have

with them would still be month-to-month, basically.

Either party could cancel at any time.

And I believe Mike maybe has something to say about as far as the additional space usage so we're not just using this two days out of the month.

MR. QUINN: Yeah. Mr. Chairman, board members, if the board deems fit to approve this Director's Report today, we would try to utilize this space for the time that the board is not using it. Some of the thoughts we might -- or let me backtrack. In the current proposed organization chart that we presented to the board at the last budget session, workshop, we had a service engineering function in there proposed which the board approved subject to coming back to and basically that would be having a one-stop area for our customers to come in regarding permit issues and meter applications for one lot or small subdivisions. One of the thoughts was that we might use this space for that.

Another option would be perhaps to put a few accounting folks down here, people that can be away

from the 5th floor and operate via a hookup system via computer terminal.

So short story is we would try to fully utilize this space when the board isn't using it. Essentially the board would be using this for the monthly meeting and usually the one day or half a day committee meetings once a month. That's all.

CHAIRMAN RICE: Members of the board, I would like to propose for your consideration that we approve this only for the remainder of this fiscal year subject to a review of the need for additional space or other options for space, recognizing that there are concerns about this space. Also recognizing that the issue of office space was already referred to committee and that the lease should have come up at the time it was -- the ad was run and the response was made, should have gone back to that committee for action and referral.

But given that we also had some pressure for handicap access, I think my recommendation would be to

approve this only for the remainder of the fiscal year subject to review and inclusion in the budget coming forward. And also that we not really spend any money here until we know if we're going to stay here or not.

MR. NOBRIGA: So moved, Mr. Chairman.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Discussion?

MR. STARR: I'm prepared to support that, but I did have a question because I had some concern regarding Executive Session and privacy of the space and it wasn't with that wall there, but rather with this one here which just seems to be a partition wall.

MR. CRADDICK: These are our offices. This is part of our space. And the wall does end back behind there. There is nobody in any of those offices.

MR. STARR: There is not another tenant right over here.

MR. CRADDICK: No.

CHAIRMAN RICE: Kent.

MR. HIRANAGA: So this budgeted amount was for how many months?

MR. CRADDICK: Last month, this month, April, May, June.

MR. HIRANAGA: Beginning February.

MR. CRADDICK: Yes.

MR. HIRANAGA: Is this a gross rent or triple net rent? Are you being charged CAM on this thousand dollars?

MR. CRADDICK: No, this includes all electric, water, whatever.

MR. HIRANAGA: So it's basically \$1,040.

MR. CRADDICK: Plus 4 percent.

MR. HIRANAGA: \$1,041.57.

MR. CRADDICK: That's correct.

MR. HIRANAGA: Thank you.

CHAIRMAN RICE: Any other questions? Mike? Comments?

MR. QUINN: Mr. Chair, along the lines of your proposal, we put an ad in the paper for office space for the entire fifth floor. Those bids are due April 15th, I believe. So at that point we'll be able to have a lot more information in terms of the total office space picture. It may be appropriate at that time, since the board will probably be having a budget session later in April, we'll have that information available to the board.

CHAIRMAN RICE: Okay, I just ask the staff, once we have it in committee, any questions that are

asked by Kent, the reason why we're putting it in committee so we can get those kinds of questions answered. Yeah, Kent.

MR. HIRANAGA: I just wanted to comment that if this -- if this is gross rent which includes the common area charges, that this rate is very attractive for office space.

CHAIRMAN RICE: Well, the group can elect to continue it longer, but I think that just to allay any concerns that there might be about this being the best space, we make a decision with the budget for next year. It's been moved and seconded.

MR. NAKAMURA: Mr. Chairman, I am going to recuse myself in this matter.

MR. TAGORDA: I would like to also recuse myself from both voting [inaudible] since A&B owns this commercial property, just for the record.

CHAIRMAN RICE: Thank you. Let the record show that also.

It's been moved and seconded to approve the lease subject to be a final review for next year. The lease would be good through this fiscal year. And that no substantial improvements be made to this space until we make a long term decision. All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

[No responses.]

CHAIRMAN RICE: Let the record show there were two recused and the vote was unanimous.

Director's Report 02-11, request authorization to reimburse the Department of Finance for the services of Herbert Chock for the Mahinahina arbitration settlement.

MR. CRADDICK: This item here, if the board wants to refer this to committee, that would be all right. But the attorney is here to talk about it if you want to. He's here for another matter also.

CHAIRMAN RICE: Let's make sure we speak into the mikes to help our friends at Akaku.

I have some concerns about the request for the approval of the expert and an amount being set for our approval, and then the actual amount being so high and the contract being signed by Wesley Lo, so I would like to talk about this further in committee if there is no objections from the members of the board. And I'll refer it to finance committee. So ordered.

Okay. Moving on, Communication 02-08, Mr. Craddick. Robin Nonaka, Pacific Century, is Robin here? Anyone here from Pacific Century? Okay.

MR. CRADDICK: Let's see here. That's the trust. Okay. Both the communications could be referred to committee or -- as a matter of fact, we've

told the people they will be referred to committee.

CHAIRMAN RICE: Was this issue not already referred to committee and then there was a recommendation and there was a vote of the board and --

MR. CRADDICK: It was on a different matter.

This Moses Timbal was the one who came to the board and in that decision -- well, I guess the church is trying to get out of the requirements that were put on him to be able to do what he wanted to do. And that basically is it.

CHAIRMAN RICE: Pleasure of this group?

MR. TAGORDA: Mr. Chairman, I believe this item has been on the committee already and I would like to make a suggestion that if the requestor don't want the agreement because of that specific condition, then we should deny his request.

MR. CRADDICK: It's different parties,
Orlando. There is different parties. The person
coming before you now is the Roman Catholic church
trustee, I guess. And the person who was before us
before is this Moses Timbal.

CHAIRMAN RICE: But Moses was representing --

MR. NOBRIGA: Himself.

CHAIRMAN RICE: Himself.

MR. CRADDICK: Yeah.

CHAIRMAN RICE: And the church then either
acquired or somehow --

MR. CRADDICK: No, no, it's always been the church property.

CHAIRMAN RICE: So then he was representing
the church. He was representing the owner of the

property.

MR. CRADDICK: He was trying to do that, I think.

CHAIRMAN RICE: I guess even though he is Moses and this is from the trust and it's regarding a property and the decision was made based on that property, and so the church is now unhappy with the decision that Moses was able to get from the board.

I'm happy to refer it to committee. I have a personal feeling about it. I'll keep my mouth shut at this point. If there are no objections, I'm going to refer it back to Rules. So ordered.

Okay. 02-09, request from Katie Romanchuk.

Katie? No Katie.

MR. CRADDICK: She has been told also that it will be referred to committee.

CHAIRMAN RICE: I will refer it to the Rules Committee if there is no objection. So ordered.
Committee Reports. Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, finance committee met on Tuesday, March 12th, to consider three issues. First issue, Director 02-07 which was to request authorization to increase the capitalization thresholds for capital assets from \$500 to \$5,000. Fiscal officer pointed out that the Government Finance Officers Association recommended that capitalization thresholds should not be less than \$5,000 for any individual item.

The committee felt that the request was reasonable. There would be no negative impact on the budget, although this would be an accounting transaction that would have to be dealt with.

The committee recommends that the board approve the increase of the capitalization threshold from \$500 to \$5,000, which would permit the department to expense a number of small items. And I would move for the approval.

MR. NOBRIGA: Second the motion, Mr. Chairman.

CHAIRMAN RICE: It's been moved and seconded.

Is there any discussion on the motion? All in favor,
say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

MR. NAKAMURA: Next item, Mr. Chairman,
Director's 02-08 to request appropriation of funds for
design of a section of waterline replacement along
Mill Street in Wailuku, 1,100 feet to replace 4-inch
waterline with a new 8-inch waterline.

This is a project which had been planned for a
subsequent fiscal year. However, because of the fact
that the Department of Public Works and Waste
Management is initiating roadway improvements to Mill

Street, it was felt that it would be appropriate to implement the project concurrently. And the request is for design -- design funds in the amount of \$33,000. There are funds available in the pipeline replacement appropriation and the committee recommends approval.

I would move that the board authorize expenditure of \$33,000 for design of the Mill Street waterline replacement project.

MR. NOBRIGA: Second the motion, Mr. Chairman.

CHAIRMAN RICE: It's been moved and seconded to authorize the \$33,000 for the design of the Mill Street pipeline replacement. Any discussion?

Comments?

All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

MR. NAKAMURA: Last item, Mr. Chairman,

Director's 01-53 to request approval of funding for the Haneo Street waterline replacement project in Hana.

The committee had previously recommended that this project not be approved. There were quite a bit of -- there was quite a bit of testimony from the residents in the area regarding this project, a considerable amount of which was in opposition to the project, questioning the need or the priority.

Councilman Carroll asked that the board hold an informational meeting to explain the project to area residents, which was done. There was no additional information presented which the committee felt would justify changing its position.

The Director mentioned that there were

probably other needs in Hana which could be better addressed by the expenditure which was in excess of a million dollars, in particular the need to integrate the Wakio well with the other sources.

And so the committee's recommendation is to disapprove this particular project and I would so move.

MR. NOBRIGA: Second the motion, Mr. Chairman.

CHAIRMAN RICE: It's been moved and seconded to disapprove the appropriation for the Haneoo waterline replacement. Any discussion? Mr. Starr?

MR. STARR: Yeah, I'm in favor of the motion, but I just did want to comment on another thing that had come out in testimony and seems to be a prevalent problem of people in Hana that there is a desire by the community if a major capital improvement project can be funded for Hana in the future, to provide a waterline down to the sole commercial zone portion of

Hana down by Waikalua. That's a project that I believe was funded by the board about a decade or so ago and then didn't go through. And I know the community would like to see that done because that's part of why Hana has not been able to move forward is because there is no commercial zoned property with water and fire flow where service industries can be located.

CHAIRMAN RICE: Thank you, Mr. Starr. So noted. Any other comments? All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: The motion is carried. Thank you, Mr. Nakamura. Mr. Starr?

MR. STARR: This is joint finance and operations review committee. And the joint committee met on March 12th. The committee met and received testimony and a presentation on the Ka Waiola water resource study project. After deliberation, the following motion was made, seconded, and passed by a majority vote of the joint committee: "It is recommended that the Board of Water Supply appropriate funds for the board's participation in this project and that the budget be amended to reflect this appropriation of \$30,000. This appropriation would be subject to the approval of a contract between Maui Board of Water Supply and Ka Waiola." The applicant was requested to provide a sample grant agreement showing how the funds will be used when the matter comes before the full board.

And I recommend that the matter remain the property of the full board because it could be deferred until we can get a little more documentation as has been discussed. So I move for a deferral but keeping it in the board.

CHAIRMAN RICE: Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN RICE: It's been moved and seconded
to defer this issue for the board's consideration at a
later meeting. Any discussion? All in favor, say
aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

MR. STARR: Operations review committee also
met on Tuesday, March 12th, Director's Report 02-09,
and item 02-03. Both of these items had to be
deferred to allow for more information to be gathered

and they will be taken up by the committee at a later date.

CHAIRMAN RICE: Okay. No action is needed there. Thank you, Mr. Starr.

MR. STARR: I do have one other item, just that the operations committee did another site inspection, a very long and very interesting day. We toured all of East Maui and definitely got to see a lot of the different smaller water systems. It was an enlightening experience and I want to thank the staff for setting it up and helping us get around to all the different areas of East Maui.

CHAIRMAN RICE: Thank you, Mr. Starr. Okay.

We're moving on to Other Business. We are going to ask the board for a motion to go into Executive Session to consult with our attorney on the North Waihee land purchase.

MR. STARR: Mr. Chair, before we do that, could I request that at least, you know, some very general basic overview be given while we're in public session, you know, without compromising anything that might need to be kept confidential, perhaps something short could be presented so that we do keep the public in the loop here.

CHAIRMAN RICE: Absolutely. Mr. Tam? Good morning, Mr. Tam.

MR. TAM: Good morning, Mr. Chairman. Maybe I should introduce myself. My name is Bill Tam. I'm an attorney with Alston Hunt Floyd & Ing. I don't know if you know anything about my background. I would leave it to the Chair to brief the board on that. Briefly I've been retained -- I've been retained by the board and the corporation counsel and our firm to look at the acquisition of lands now owned by C. Brewer and Wailuku Ag that is essentially the watershed lands from North Waihee over to Waikapu and to analyze for you and with the Chairman and with the

director which if any of those lands would be useful to the board in protecting the resources both of the ground and surface water and to protect for future resource protection.

One of the issues that's arising all over the Mainland and is going to arise here is the ability of the waterboards to prevent pollution and competition to the water resources which they will need in the future.

New York City, for example, is going through something like this right now where they're finding it is less expensive to go out and buy the lands from which they draw water than to build filtration plants that EPA is going to require them. They are facing a \$5 billion filtration plant cost and a half a billion a year operational cost, or they are going up in the Catskills and they're actually acquiring the lands around where they draw all their water and they are following something called the 60-day rule which says the distance that water would travel underground for

60 days doesn't get rid of everything, but it does a good job of removing a lot of the things that would get into a water source. Their water is not filtrated; it's gravity flow from the north into the city.

So one of the things that all over the country boards of water supply are discovering is it makes sense now to go out and protect your groundwater and your surface water sources without any particular idea of how you may use them in the future, because the capital costs 20 years from now are going to be much, much higher.

So one of the things we're going to try to do with your staff is to analyze which of those lands -- maybe all of them, maybe only a portion of them -- are critical to acquire. We're doing that right now, we're looking at the documentation. As you well know, this board acquired a portion of the Waihee Valley, not all of it and not surface water, previously. So we've got that documentation.

What we're going to be doing is working with Mr. Craddick and your board to come back to you with a

recommendation as to which if any of those lands you might want to acquire.

Now, C. Brewer, as you probably know, has offered to sell all of it. They have also put a very high price on that. It's not clear that you as a board need all of that or all of the infrastructure they would propose to sell you. Maybe you do, maybe you don't. But it may be that it's wise to be more selective for a different price as to what you want. And so we're going to be doing that analysis for you, prepare the maps so you can take a look at it and bring it back to this board for a decision as to what our recommendation would be with your staff as to what lands make sense to get. Some of them may not be worth much in terms of your needs.

So I think the thing I would suggest is the board needs to look at its own long-term strategy of what you need 20, 30 years out, not simply buy whatever somebody happens to be selling. That's not necessarily wise. They may want to get rid of it. They may be happy to get rid of it at their price.

But whether you need it or not is a different question and that's what we're going to come back and analyze for you.

That's a brief summary. We will be glad to prepare a map and make recommendations more specifically. I will say that, just as an example, this is simply -- these are the closing documents for the last acquisition which was a limited area. So the due diligence required in order to analyze the easements, the restrictions, the environmental factors. As you well know, the potential for pollution on a lot of these properties in the past has been ignored, but in the future is going become one of the major concerns you will have to protect your ground and protect what goes into it. So the due diligence required here is going to be an important protection against what may happen in the future. That's a rough summary of what we're trying to do.

CHAIRMAN RICE: Thank you, Mr. Tam. Mr. Starr.

MR. STARR: Just a question. We did a recent

site inspection of the Iao and Waihee areas and our facilities there and I noticed there is a feed lot. There are two wells about, oh, 200 yards apart, I believe that's Kanoa 1 and 2 or -- yeah, I believe it's Kanoa 1 and 2. And right between them about a hundred yards from each well is a feed lot. Is that the type of thing that could be problematical in the future?

MR. TAM: I have not been to that site, so I don't know anything in particular. I will say that EPA has adopted new regulations for what are known as concentrated animal feeding operations. It's become a subject of great concern by the Department of Health. Our firm is actually involved with that issue over on Kauai and the [inaudible] Dairy actually over there faces some real serious problems with the Health Department and the EPA and they actually closed because they were on a slope that went right into a stream and they had no way of really controlling that. So the issues of concentrated feeding

operations and groundwater is something that EPA is very concerned about and there are proposed regulations that are in the making right now aside from the existing ones. But I don't know any particulars on that right now.

CHAIRMAN RICE: Any other questions from the public here? Thank you.

MS. de NAIE: Is it possible to offer brief public comments before you go into Executive Session on this issue?

CHAIRMAN RICE: Sure.

Ms. De NAIE: Thank you. Lucienne de Naie I guess speaking on behalf of Maui Tomorrow once again.

A couple things that I think that the board should be aware of about this project. I think it's a wonderful idea that the Board of Water Supply and the County are thinking about public ownership of what has been a privately controlled region with high

conservation value.

However, having seen that in the past these kinds of larger sort of deals did involve partnerships, I would urge the board to make sure that some of the situations that have arisen in the past about these partnerships are avoided.

One of the situations that has arisen is over-promising a resource. And so I'm sure Mr. Tam will be extremely diligent in researching exactly the amount of water that would be available through the surface system, but just urge all of you to do a good questioning. Do we have accurate information on flows? Is there an independent source monitoring the current flows that are in the ditches, so that you really know the resource that we're talking about? And that really should be done over a period of time because you have rainy times and dry times and get an average.

Also, I feel it's very important that we have I'll call them transparent contractual agreements; in other words, contractual agreements with any potential

partners that are clear, out in the open, and publicly discussed so there is not any surprises afterwards.

And lastly, I would really hope to see that the management plan for these resources, once it is decided what the county would purchase and so forth, would include discussion of stream restoration, especially Iao Stream. I have a personal interest in this area, I've hiked all these streams way, way, way up and there is tremendous plant resources, cultural resources, and stream life even in some of the upper portions of Waihee and Iao Stream, and we would certainly want to make sure that those continue. So thank you for this opportunity to offer some comments.

CHAIRMAN RICE: Thank you, Lucienne. Mr. Smith?

MR. SMITH: Jim Smith. Just a brief comment.

My understanding is that the land involved is owned by C. Brewer and also Wailuku Ag. And Wailuku Ag, from my understanding, is a publicly owned corporation which is a subsidiary within the C. Brewer network, but it might behoove you to look at that relationship

when determining who is selling what. It may in fact be necessary that the stockholders involved with Wailuku Ag should be consulted. That's all.

CHAIRMAN RICE: Thank you, Jim. Okay.

MR. TAGORDA: May I ask in public session, Attorney Tam, because I don't know, I need to ask the corporation counsel for his legal opinion if I can be in the Executive Session since I'm with HC&S and we're drawing water from those areas there. My question to you is is HC&S or A&B would be involved in this land purchasing.

MR. TAM: At this point I don't know yet. I mean, I know there are contractual arrangements which are -- create financial relationships and so I don't know enough yet to judge that.

CHAIRMAN RICE: Wait. I think, to correct that just slightly, there has been representations

that there are contractual arrangements. We haven't seen any of them at this point.

MR. TAM: We don't yet have documentation from the owner. The problem that would arise with your participation I think maybe the board wants to take up when we go into Executive Session.

MR. TAGORDA: And also in your analysis or work with the board, would you be looking at those land titles if they are legit.

MR. TAM: That's a necessary part of the due diligence to analyze whether -- the nature of the title. In other words, what is it the board or the county would be acquiring? That gets somewhat complex because I know the history in this case goes way back. And so --

CHAIRMAN RICE: The answer is yes.

MR. TAM: We would have to do that in order to

fairly appraise what it is you would be buying.

MR. TAGORDA: Thank you. My second concern is for corporation counsel, whether I can go into Executive Session with the board members.

CHAIRMAN RICE: Mr. Starr.

MR. STARR: I believe my question has been partially answered, but I just want to be clear in open session that I assume you're -- the due diligence process will be looking at allocations of water that have been made both in the past -- I know that we've heard that there was some going back to 1924 and also that there may be some that would occur in the future. So I would assume that looking at all of those past and future allocations is part of a -- will be part of the project.

MR. TAM: We will obviously look at what's been done in the past. As far as what may happen in

the future, we will have prepared for you an analysis of what the law is now and therefore what you could reasonably expect to happen. But we're not going to make any representations about what will be the future, other than to advise you what the law is. Unless you make a judgment about the valuation.

MR. STARR: If there are contractual third party agreements to allocate water in the future, I would guess that would be one column and then another column would be whether they would actually fly in light of the laws and water code. I know that complicates things. But to try to simplify that, I would guess that there is -- there would be two columns there.

MR. TAM: We'll certainly have to analyze and represent for you what our legal opinion is about the validity of any outside obligations or any encumbrances on that property.

CHAIRMAN RICE: Okay. Board members, there is

another issue here, C, before we go into Executive Session, the settlement offer regarding Lower Kula Water Treatment System. Is there a need to discuss this or should it be referred to committee because it's not something we've seen yet? What is your pleasure? Committee? Kent?

MR. HIRANAGA: I don't really know anything about it.

MR. MINATOYA: Mr. Chair, Richard Minatoya, Department of Corporation Counsel. We would like to request that this matter be referred to committee so that we can do an explanation for you rather than take your time up here when you have other important matters to discuss.

CHAIRMAN RICE: Mr. Minatoya requested that this be referred to committee so that they can do a presentation for the board. If there is no objection by board members, so ordered.

MR. STARR: Which committee?

CHAIRMAN RICE: Finance.

MR. STARR: Mr. Chair, I know we were looking to go into Executive Session and we have with us board member-elect Ginny Parsons who I wanted to introduce. Since she will be dealing with this with us on a long-term basis, I'm wondering if there is a mechanism where she could join us since she will be a member of the board next week. I guess I'm asking corp counsel.

MR. KUSHI: My response would be no. Once she gets aboard, she's entitled to be a board member. Once she gets aboard, she can also look at the minutes that we're going to be keeping.

CHAIRMAN RICE: Can I get a motion for Executive Session to consult with our attorney on the Waiehu land purchase?

MR. NOBRIGA: Wasn't there a question by Mr. Tagorda --

CHAIRMAN RICE: I'm sorry.

MR. HIRANAGA: I was just going to request a short recess.

CHAIRMAN RICE: Let's have a short recess.

(Brief recess.)

CHAIRMAN RICE: Yes, Mr. Hashimoto.

MR. HASHIMOTO: As you know, I represent a participant in Central Maui Source Joint Venture. But I think this particular issue is a relatively broad and generic issue at this point. And while down the road I may find it necessary on recuse myself, you know, personally I don't see the need to do so at this time unless otherwise advised by either corp counsel or members of the board. So my intent is -- my feeling is I should continue to participate and I

would make a decision on recusing myself at some future date on specific issues.

CHAIRMAN RICE: Well, I believe in the attorney/client arena, that you're barred from making any comment about what's discussed anyway. So I mean understand once we go into Executive Session.

Mr. Starr?

MR. STARR: It's my belief that the two members should be able to hear out our attorney on this because it is a broad issue and however their own corporate entities that they may be involved with may be involved, we don't even know that whether they are or to what extent. We went through that, that we don't even know to what extent they may be involved. So that's not I'm sure going to be part of today's meeting and my feeling is that they should be allowed to join us.

CHAIRMAN RICE: I think corp counsel would agree with that at this point. We're not making a

decision in Executive Session. We're not here to make a decision today. And we will allow it, we'll go forward. Do we have a motion?

MR. KUSHI: Are you asking me a question?

CHAIRMAN RICE: I'm asking you a question. I have no legal training; I want to make that clear for the record.

MR. KUSHI: I need to say this first. If I speak on this, based on what I understand our ethics board has ruled, our office may be disqualified from representing all of you or any of you and I definitely cannot represent the Board of Ethics. This is on the Molina case, as I understand it.

However, just to comment, as far as going into this Executive Session, my understanding is the attorney that we retained, the board retained, is going to give you a briefing. That briefing will be confidential in terms of that's the board's attorney.

If a member feels that he has a conflict of interest, again, that's one thing. But the Executive Session is for informational purposes only. There will be no action. Nobody will vote. So that resolves the conflict of interest in my mind.

Again, the member to my left, Mr. Tagorda, I understand that even if there was a vote at the next meeting, he won't be here. However, anything said in Executive Session, based on what the board's attorney and he is a board member as of this date, shall be confidential, as the Chair says.

Again, that's just for your information. I am not giving you any advice because if any board member wants to, he can take this issue to the Board of Ethics and they will issue you a decision within a couple months.

MR. STARR: Mr. Chair, I move that we go into Executive Session to hear from our attorney pursuant to the applicable statutes.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded. All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

[No response.]

MR. KUSHI: Mr. Chair, can you also in your motion include the item number B, the Craig matter.

CHAIRMAN RICE: Sure. No objection to that?

MR. STARR: No objection.

MR. NOBRIGA: No objection. I just never knew we could do that.

CHAIRMAN RICE: Okay. All in favor?

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Okay. We're in Executive Session. Clear the room, please.

[Executive Session held.]

CHAIRMAN RICE: We're out of Executive Session. We're back on the agenda.

MR. NOBRIGA: Mr. Chairman, I would like to move that we authorize counsel the flexibility to negotiate the settlement of the item we had in Executive Session. Item B. And also to proceed in our indemnification discussion pursuant to the same matter.

CHAIRMAN RICE: Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Okay. Any discussion? All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

C was referred to committee already.

D, Water System Development fee.

MR. CRADDICK: This is the one that previously went to the Mayor and Council and was rejected. So what we're asking here is that if there are any changes to be made, that the board make the changes

and then we put this back out to public hearing.

CHAIRMAN RICE: That's right. The comments that I heard had to do -- and the comments I heard today had to do with the Consumer Price Index issue. Are we willing to drop that in order to send it back up? I did not hear -- personally I did not hear anyone resisting the actual rates. Of course, everyone is going to resist the increase, but the council I don't think was balking at that.

Mr. Craddick?

MR. CRADDICK: For a dollar amount, the average over the last seven years was about 2 percent. Two percent of the fee would amount to I think \$50,000 in the worst case and I believe it was about \$15,000 this last year.

MR. QUINN: Yeah.

MR. CRADDICK: Somewhere in that order of magnitude. So we're not talking about a lot of money.

By the time this goes back to the counsel, we will have lost many times this amount of money just in the delay. So, you know, whatever the reason is they don't want to do it, my recommendation is to drop those two sentences at the bottom of page 36 there where it says this schedule will be adjusted on an annual basis beginning July 1st in accordance with the Consumer Price Index. Now this says Hawaii -- U.S., so this isn't even the right one here. But dropping that sentence basically. It was changed I think to the Hawaii Consumer Price Index.

MR. NOBRIGA: Mr. Chairman, being this point was the grandchild of board member Hiranaga, I would prefer if we get his comments before we take action on this.

CHAIRMAN RICE: Okay. Where is he?

MR. NOBRIGA: As chairman of the Rules Committee, and upon hearing the testimony provided to

date, perhaps it would be more in line for the board to not give away this right to review these increases on a more consistent basis and in that way we provide for the maximum of public input. I say this in light of some proposed charter amendments that if they come into effect would greatly affect the way this rule will be implied -- taken in the future.

CHAIRMAN RICE: Mr. Starr.

MR. STARR: Mr. Chair, I just want to comment that I'm going to refrain from participating in the discussion and also recuse myself from voting on it because a company that I have ownership interest in has a meter reservation and may be affected by it.

CHAIRMAN RICE: I guess that's personal interest. Mr. Craddick?

MR. CRADDICK: What Commissioner Nobriga said, I think maybe makes sense to hear what the community has to say about this provision, whether anybody else in the community agrees with the council to take this

out. So understanding that after it goes out to public hearing, you can remove it then certainly makes sense. But as I said, my point is just it's not -- the amount of money we're losing right now, we've lost many times this amount already and we will continue to lose if we go back and they reject it again because of this.

CHAIRMAN RICE: Kent, we've delayed any action on this Water System Development Fee Rule because you were thought to be the author of the Consumer Price Index clause and we heard that certainly from the Council that it was a sticking point and no one wanted to take action until we got your comment as to whether we should remove it and send it out that way or --

MR. NOBRIGA: Maybe we were mistaken.

MR. HIRANAGA: Are you sure it was me?

MR. CRADDICK: I think this came in as a

result of some previous council members that used to be on the council and granted --

CHAIRMAN RICE: Be that as it may, what's the pleasure of this body in terms of -- we're going to send it back out -- I mean, are we going to send it back out as it is, or are we going to take it out?

MR. HIRANAGA: I guess my thought is any concerns about the council losing control over meter fees because of the CPI index. I think I asked David to do a calculation based upon the current fee and the CPI adjustment since that last fee adjustment, what the rate would be today is -- what was it?

MR. CRADDICK: I think it was about somewhere between 14 and 15 percent increase.

MR. HIRANAGA: So it would be under \$4,000. So, you know, we're talking a 3 percent increase a year, we're talking \$180 a year. Five years, we're talking a thousand dollars. I think the costs of the

meters will be growing much greater at that pace, but if it's going to cause a delay in the approval, I don't believe that the board feels that it would expedite the approval process on that particular clause.

MR. NOBRIGA: I would move that we strike this entire sentence.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: It's been moved and seconded to remove this sentence from the new rules that goes out to public hearing. Any comment? All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

(No response.)

CHAIRMAN RICE: Motion is carried.

Is there anything else we want to change in this?

MR. NOBRIGA: Where is the -- I know we tried to get this rule to take effect when we first passed it, yeah. Try and get retroactive, yeah. Was it this rule or was it another rule?

CHAIRMAN RICE: No, it was this rule. I think it was changed to be effective upon approval by the council, right? Because we thought that was not going to fly. Okay. So that's the change, we're going to send it back out and schedule the public hearing. Do we need to a motion to schedule public hearing or no? We've approved the rule and now we just ask staff to schedule a public hearing. Okay.

MR. NOBRIGA: With the intent that the public hearing be in the Upcountry Kula/Makawao/Pukalani area, perhaps?

CHAIRMAN RICE: I don't have a problem with

that even though I'm driving from Lahaina. I was going to ask that it be held in Lahaina. Just kidding.

MR. NOBRIGA: I don't know. What about -- the last public hearing we had, there was discussion about scheduling -- it wasn't this rule, though.

CHAIRMAN RICE: The upcountry meter rule.

MR. NOBRIGA: Erase, erase, erase.

CHAIRMAN RICE: All right. So we're going to schedule a public hearing.

Let's move on to E, which is confirmation of scheduling of the second public hearing on public practices [inaudible] appeals, amendment to water system development fee, there we go. We want both sections of the rule now to go together.

MR. HASHIMOTO: Yes.

CHAIRMAN RICE: I want to make that clear with the board. We've got this Water System Development Fee broken into two rules. Now that we've remapped this section, we're going to take them out together. Right? And then we're going to submit them that way. The water meter issuance rule, okay, that's all going to be at the next public hearing.

MR. CRADDICK: Along with the one on the development 500,000 gallons?

CHAIRMAN RICE: Yeah, the settlement rule. Let's put them all together. Upcountry is fine with me.

MR. STARR: I don't want to participate.

CHAIRMAN RICE: I'm sorry. So that doesn't need any action. We're going to schedule a second public hearing and put all the rules in there. So guys, bring your pillows. And I think we need to go to Molokai to be sure. Adolph is happy to chair those

meetings. He does a fantastic job. I meant to thank him earlier. Okay. That's so ordered. There is no need to take any action on that. Right? Okay.

Presentation of resolution to outgoing Board of Water Supply member Orlando Tagorda. Orlando, front and center.

The way the staggered terms work, Orlando, if we all aren't here, we can't say that we've been here with you for the whole five years and that -- but our short experience with you has shown us that you're very hard working and caring member of the public and I think that you've shown the highest level of integrity in every issue and we want to thank you for your participation. Five years is a long time and it is appreciated, I can tell you that. Just having been here for a year and so many months and I've already [inaudible] five years. So on behalf of the board and members of the department, I want to present you with this honorary clock.

The resolution that we have is whereas Orlando Tagorda, Kahului, Maui, was appointed to the Board of

Water Supply of the County of Maui April 1, 1997, and his term will expire March 31, 2002. Whereas the said Orlando Tagorda served as vice chairperson of the Board of Water Supply from April 1, 2000 to March 31, 2001. Whereas the said Orlando Tagorda has unselfishly and with dedication devoted without compensation his time and energy into matters dealing with the Board of Water Supply, all in the interests of the people of the County of Maui. Whereas during the time of his service as a board member, he has contributed generously of his knowledge and skills to make business and policy decisions for the board that will influence its direction and operation for years ahead. Whereas his interest in this board and department has been greatly appreciated by his fellow board members. Now therefore be it resolved by the Board of Water Supply of the County of Maui that it does hereby congratulate, commend, and thank the said Orlando Tagorda for the five years of faithful and outstanding service he has rendered as a member of the Board of Water Supply and be it further resolved that the members of this board extend to Orlando Tagorda

our sincere aloha and best wishes for his continued success and much happiness in his future endeavors. And be it further resolved that a copy of this resolution be transmitted to the said Orlando Tagorda and to the Maui County Mayor and Council and to the Maui News. Thank you, Orlando.

MR. TAGORDA: Thank you, Mr. Chair.

MR. NOBRIGA: I move to accept the resolution.

CHAIRMAN RICE: It's been moved and seconded to accept the resolution. Discussion?

MR. STARR: I just want to comment that it's been a special pleasure for me to serve with Mr. Tagorda and he's been a good and strong and honorable voice on this board and we'll miss him and be happy to serve with you any time, any place again in the future because you've been really good. So thank you for your service.

CHAIRMAN RICE: Any other comments? All in favor of the motion, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: All opposed, say nay.

[No response.]

CHAIRMAN RICE: The motion is carried. Thank you, Orlando.

MR. TAGORDA: May I? Thank you, Mr. Chairman and members of the board. I'm honored to receive this resolution and I would like to make a few comments before I end my term.

I have tried to make a difference and tried to speak on behalf of the majority of the community in my years on this board. I have spent many sleepless nights worrying about making the right decision on certain issues. But I have always voted how I feel in

my heart, combined with the information given us. I have always been well aware of the confidence given to me when I was appointed to this board.

There are many good people in this department and I want to thank them. One person I especially want to thank is Fran Nago. She works very hard for this board and goes the extra mile. I'm often aware of your frustration. But even in your frustration, she's always kind to me and members of the public. I appreciate all your efforts and hard work. Thank you, Fran, for all the good deeds that you have done for me.

I had much higher hopes of moving the department forward than I've been able to realize. I had hoped to have given the director an annual evaluation and by doing more evaluations, we would have been able to provide more direction. I am glad to finally see an evaluation on my last meeting agenda.

I encourage all the board members to continue to do annual evaluation, provide direction, and set

clear policies for the director and the department. I hope you will continue to focus on what is best for the community, remembering that you represent the people of Maui.

Finally, I sincerely appreciate the time I've been given to work for one of the most important boards on the County of Maui. Thank you all and God bless.

CHAIRMAN RICE: Thank you, Orlando.

Okay. We're going to move on. Nominations for chairman and vice chairman. What is your pleasure? Do you want a committee? Do you want to act on it? Mr. Starr?

MR. STARR: I would like to ask corp counsel whether we have to act on it -- whether we have to act on it today or whether it's possible, if we were to so desire, to have nominating committee and deal with it at another meeting.

MR. KUSHI: Mr. Chair, just looking at your

rules, it does state that the board shall elect a chairperson and a vice chairman from its members, their term shall be for one year and may continue for such time until their successors are duly elected.

I'm not sure when your current officers' terms began. But even if they expired, they may continue until the new people come.

CHAIRMAN RICE: But isn't that in conflict with the bylaws?

MR. KUSHI: Well, these are your rules. I don't know what bylaws you're talking about.

I apologize, Mr. Chair, I have never seen these bylaws and I feel like a fool right now, but it was apparently adopted June 16, 1998. Did it go out to public hearing?

CHAIRMAN RICE: I don't know.

MR. KUSHI: Well, you weren't here, I wasn't here.

MR. CRADDICK: Peter, I believe it was passed as a resolution of the board's agreement amongst themselves.

MR. KUSHI: If that's the case, then your rules supersede that.

CHAIRMAN RICE: And would it be the pleasure of this body that I appoint a committee?

MR. NOBRIGA: Yes, Mr. Chairman.

CHAIRMAN RICE: Then I would appoint a committee of Kent Hiranaga and Clark Hashimoto and I'll throw in Adolph Helm so there is three. How is that?

MR. HIRANAGA: The purpose of this committee is to?

CHAIRMAN RICE: Is to make a recommendation for the chairman and the vice chairman for the

succeeding year.

MR. CRADDICK: Peter, I don't think we've ever had three board members because I don't know if they intend to notice a meeting, but you've got three -- two or more board members, you've got to notice a meetings and just usually the two of them get together.

CHAIRMAN RICE: Sorry, Adolph, you're on Molokai. You don't mind, do you?

MR. HELM: Don't mind.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: That's fine with me, though I would assume that they will come back with recommendations for people to be on the slate and people could still be nominated from the floor or whatever and then there will be an election. They're

not going to come back and say these are the --

CHAIRMAN RICE: No, no, I think there is always nominations from the floor. Robert's Rules of order provides for that. Everybody happy with that? Mr. Tagorda?

MR. TAGORDA: Mr. Chairman. Yes, it's me again. And since I won't be coming here next month and participating in those nominations, I would like to make a few observations, a statement for the committee members about Jonathan Starr, whether you guys want him to be the chair or the vice chair, that's going to be your call. I think Mr. Starr has been in this board the longest, so with Mr. Adolph Helm. And I think he may have more time to devote, you know, with county, with the department or water issues in the community. And I see him to question and really challenge the department on many occasions and those are the qualities that I want the chairman or the vice chair. And I'm kind of proud of what he's done. It appears to me that he had knowledge of water

issues. He attends all meetings. And that's why -- his dedication and commitment and he does look up to the best interest of the community, Mr. Chair.

So whether the nominating committee wants him to be the vice chair or the chairman, please give a way of my -- that good traits about Jonathan Starr as a member of this board. Thank you.

CHAIRMAN. RICE: Thank you, Mr. Tagorda. I'm sure Mr. Starr thanks you.

Okay. Moving on. Personnel matters, continuing evaluation of the director.

As instructed, I sent the director a letter that I believe you all saw a draft of regarding a performance evaluation. And at this point, David, you have the option of convening this discussion in Executive Session or you can remain in Public Session, I believe. That's correct, Mr. Counsel?

MR. KUSHI: Correct.

MR. CRADDICK: I'll leave it in public session.

MR. HIRANAGA: Mr. Chair, was the letter transmitted to the director?

CHAIRMAN RICE: Yes, it was.

MR. HIRANAGA: Can we be provided a copy of that letter?

CHAIRMAN RICE: Yeah, it was transmitted "personal and confidential" and -- where the heck did it go. I tabulated the average scores by item and I added the written comments as I could read them from the board members.

Mr. Starr?

MR. STARR: I assume that by the fact that this is being held in open session, that this letter becomes a part of the public domain now. Is that correct?

MR. KUSHI: Responding to your question, I was

thinking about that myself and I think you need to ask the employee if he understands his rights to keep it confidential. And if he does, then it will be confidential. But apparently the discussion will be in open session.

MR. CRADDICK: I don't mind.

CHAIRMAN RICE: It appears that Mr. Craddick is acknowledging that the discussion and the correspondence will be made available. So be it.

MR. STARR: Can I read this letter into the record then?

CHAIRMAN RICE: Sure.

MR. STARR: Okay. "To Mr. David Craddick,
Director of Department of Water Supply, County of Maui. Dear David. On January 8, 2002, the Board conducted a performance review based on a job description you received from the Board. As you know,

the board members were asked to evaluate your performance under each of the performance categories on a scale of 1 to 5. "One" represented marginal performance, "two" for adequate, "three" for competent, "four" for commendable, and "five" for distinguished performance. I tallied the evaluation from all eight directors and your overall score was an average of 43 points and if you divide that by 20 questions, your average score per question would be 2.15 or slightly more than adequate.

"Under the explanation of the scoring, this means that you meet the requirements for the position but there is clearly room for improvements.

"A sheet is attached that shows your average score by category. There were eight categories where the average score was between marginal and adequate. There were four categories where the average score was exactly adequate or two. There were five categories where the score was between adequate and competent, two categories where the average score was competent, and one category where the score was between competent and commendable.

"The written notes that accompanied the evaluation sheet clearly expresses concern relative to your leadership and overall management skills. You are considered to be knowledgeable about water resources and the nuts and bolts of water drilling and treatment.

"Communication is another issue for everyone.

Most critical, in my opinion, was your average score of 1.25 on the last question, "Creates a level of confidence and trust with the board," and I plan to raise this issue at the next meeting of the board.

Sincerely, Peter Rice, Chairman, Board of Water Supply."

I certainly have a lot of concerns with the performance over the past three years. This is the first opportunity that I've had in three years as a board member n participating in an evaluation, but I know that some of the same comments that were made when we did our evaluation were also brought up during a previous evaluation by the previous board. And you know, especially when it's creating a level of

confidence and trust with the board and in my own belief with the public, that there is a lot to be lacking. You know, a score of 1.25 is a failing grade and the overall score of 2.15 is certainly less than a 50 percentile grade. That's not -- I think that we strive for excellence, we don't strive for barely adequate.

Among issues that I have is that I feel that over the years a lot of actions have been taken to confuse the board members and providing information that is at best unclear. And I know this is a comment that you've heard before and I for one was hoping that this is something that would change over time and I really haven't seen this.

I would like to pass these around. This is just one example from something that took place at last month's meeting. This is a photocopy of a page from the monthly division reports that you presented us. And this is water pumping for throughout system and water use throughout the system. And I look at this as critical information. I believe this is the same document that's passed on to the State Water

Commission who are currently looking at the possibility of designating Iao and Waihee aquifers as a management area. So this is the one place where not only the board but the commission and also the public can get information about our water use.

And at the last meeting, I was sitting looking at it and I -- there was a conversation going on and I started adding up some of the columns. And after adding up three or four columns, especially regarding the year-to-date and total-last-12-months, I found that the numbers were not adding up, that there are a number of total columns that did not agree with the lines of data. And especially -- well, look at the number for Waihee, 579, where you see year-to-date is 732,639 gallons, total-last-12-months was 245,738 gallons, which of course skews the rolling average that's used as a benchmark. There are some other discrepancies as well.

After the meeting, I brought this to you outside this room. I said I started adding these up, I was wondering if my math was wrong. And you told

me, oh, that, there are quite a few mistakes in that, I'm aware of that.

And I said, well, you know, why do you present it to the board.

And you said, well, I'm going to present a corrected copy. I was waiting for that. That never came.

At today's meeting, I started looking at this month's and I found some discrepancies in the math in this month's pumping reports as well that doesn't seem to add up. And I find this, you know, along with other things over the years to be very, very disturbing.

So with that in mind, I feel that certainly there is confidence lacking and I would like to, in accordance with the board's abilities and duties under the Charter, to make a motion here today. And I would like to move that the current director be removed from his position as Director of the Department of Water Supply. I also, as part of that, would like the Chair to be able to pay proper severance compensation after consultation with the corporation counsel and personnel services.

CHAIRMAN RICE: Is that a motion?

MR. STARR: That is a motion.

MR. TAGORDA: I second.

CHAIRMAN RICE: Okay. It's been moved and seconded to remove the director and to pay appropriate compensation severance, upon consultation with legal counsel.

Mr. Craddick?

MR. CRADDICK: First of all, you haven't allowed for any testimony on this item and there may be people that want to give testimony on this item.

CHAIRMAN RICE: You need to speak up.

MR. CRADDICK: There may be people that want to give testimony on this item and no provision has

been allowed for testimony on this item, at least not by myself anyways. So I would like to be able to say something.

CHAIRMAN RICE: You're speaking.

MR. CRADDICK: Okay. First of all, I would be very interested to know --

MR. HIRANAGA: Mr. Chair, excuse me for interrupting David, but it would seem premature that this motion has been put on the table because an evaluation is a communication tool to describe to the director the feelings of the board. And upon receiving the evaluation, I would think he would have an opportunity to respond to each issue. It would be my hope that if the board was unhappy with the performance, that he would be given notice and another evaluation be done in six months so that he would have an opportunity to correct any deficiencies that have been [inaudible]. That's my understanding of an evaluation. You know, he hasn't been evaluated for

three years. He doesn't know -- in writing officially been given notice of his deficiencies.

CHAIRMAN RICE: Okay. Your point is taken.

There is a motion and a second on the floor.

Mr. Craddick?

MR. CRADDICK: Spoken very well.

CHAIRMAN RICE: Mr. Hashimoto?

MR. HASHIMOTO: I think I agree with Kent because he just got the letter -- when did you get the letter?

MR. CRADDICK: Yesterday.

MR. HASHIMOTO: And I think it would -- for him to respond and maybe in six months to bring up his deficiencies or whatever it is. I don't think it's fair for Craddick or anybody else if anybody else on

staff we did the same thing. So I think I agree with Kent that it's a little premature right now. I would vote against the motion.

MR. NOBRIGA: Mr. Chairman, having to deal with personnel matters on a daily basis outside of this position on the board, dismissing an employee is not the thing you want to do frivolously or at the spur of the moment. It involves countless volumes of documentation that can -- that does point out where an employee is derelict or is nonconforming to the job. I don't believe that Mr. Starr's one instance of pointing out an error is sufficient grounds to even bring up the matter of documentation. If there are other areas where we would like to present such documentation, then it's only fair that we as the governing body and the employee himself have a time period to review such errors and then move forward from there.

So I am not really in favor of the motion.

Although we have expressed some problems with our personal dealings with David, there is other steps

that I really would need to see happen before this type of action would go forward, for me.

MR. HELM: I share this because I also, you know, work as a manager and I deal with personnel all the time. So my concern is when you do give an evaluation, you identify those weak areas and ways of improving those weak areas as part of your expectations or within your performance management plan. So I -- obviously we've identified a couple low scores that addresses some of the communication problems and some of the conflicts we have in Dave. So I think it's also part of our role to also say, okay, what are our expectations for him to improve, what are some of the development objectives for him to improve. Are we offering him opportunities to improve.

And I think we need to also look at that as something critical to anybody. David as a director is not exempt from training. I mean, maybe he needs exposure to public relation methods and how to deal

with the public, how to build confidence in the board.

I think we need to have those kind of expectations in place so that he can take corrective actions in improving himself. That's all I got to say.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, while I believe some of -- or perhaps many of Board Member Starr's concerns are well taken, I also feel that at this point it would be premature to vote in favor of this action.

However, I think that some of these issues have been festering, if you will, for long enough and I believe that now that the director has the evaluation, and some of the -- the nature of some of the areas where the scores were low particularly concern me, the issues of confidence, trust, communication, overall management skills. Those are very troublesome to me and I do feel that the management of the department definitely needs to be upgraded. I believe that the director having been

given the evaluation should now perhaps in working with the chairman come up with a plan, if you will, to improve the areas of deficiencies and that within a relatively short period of time that there would be a reevaluation. And I'm really thinking more a matter of month, not years. But I think the process would really be a more fair process if he were given that kind of an opportunity.

CHAIRMAN RICE: Mr. Tagorda?

MR. TAGORDA: Thank you, Mr. Chairman. I'm glad to finally have a review about director's job performance. It bothers me that the director in charge of water, our most precious resource, could only pull an evaluation that is slightly above adequate. The people on Maui deserve more. Adequacy is not enough for me to retain you as a director.

For five years I have heard that David knows water, but not good with administration or speaking skills. I constantly hear of deals being made, people

being treated unfairly, and major inequities in how people receive bills and other special treatment from the department.

Just last week, if you know, we found a cross connection at a new home in Hana. A cross connection, Mr. Director. We also know that the department person made the cross connection. This is a blatant violation to our rules and regulation. How can this happen? This is what causes the community to distrust the department.

This department cannot continue to use short term fixes for its problems. We need a strong, credible administrator. We need someone who is respected in the community for his ability to get things done, not just because he's a nice guy. It's about time the board members step to the plate and make changes in our [inaudible].

I think David is a very nice man, but his ability to communicate and his literacy is always in question. I don't think he's a good administrator. I believe it takes a good administrator to make a good department and make the community understand why we

need to raise rates to give them the service they want. I believe it will continue to be difficult to get the community and the council to buy into rate increases until we change management.

If the board would like to utilize David's strength, then move him into another area within the department where those strengths will be realized.

Thank you, Mr. Chair.

CHAIRMAN RICE: Thank you, Orlando. Any other comments? Yes, Kent.

MR. HIRANAGA: I believe that the director should at the next general meeting provide, if he wishes, written comments to each of the items because I think there are always two sides to the story. And if there is a staffing situation or whatever, he should bring that to the board's attention. Being given the evaluation, if he only received it yesterday, does not give him time to review and comprehend what is being communicated. There may be

reasons for certain actions. He should be given the opportunity to provide formal comment.

CHAIRMAN RICE: Yes, Mr. Starr.

MR. STARR: Mr. Chair, I feel strongly on this matter and I think that it's an overall problem. My feeling, serving on this board and trying to understand the issues, has often been similar to someone trying to watch a shell game and trying to figure out which shell that the pea is under, they're constantly moving and constantly being changed around to confuse us. So I do feel strongly about this.

But listening to my fellow board members, it seems that perhaps it might make sense to give a little bit of time for the review process that we have done to settle in. I do feel that it should be fair to the director to let him answer to that. And so I would be willing, if we set a fixed date, say the second meeting, you know, say 60 days, that that would be the May meeting, to go through another review process and see if the shortfalls have been corrected

or answered. I feel that I would be amenable to that. I don't want to just let this go and let another three years go by before another board takes the issue at hand. I feel that if we don't deal with it today, we should look at it again after a short, say, 60-day period.

CHAIRMAN RICE: Mr. Hiranaga.

MR. HIRANAGA: I agree with Mr. Starr that we should set a specific date to review the evaluation, but we will be having two new board members coming on board next month. I would be more comfortable with a six-month period beginning April 1, which would make it end of September. End of September. Isn't September a general board meeting we have another evaluation. That would be my suggestion. We give time for the two new board members to evaluate the director's performance. It will also give him time to do whatever reorganization or administrative organization to bring his department to within the

expectations of the board.

CHAIRMAN RICE: Okay. Mr. Nakamura?

MR. NAKAMURA: I think that's a reasonable time period, but I think if we're going to do that, that we should have David submit to us at the next board meeting a response and, where appropriate, some sort of specific plan as to how he is intending to address the identified shortcomings or deficiencies.

CHAIRMAN RICE: Mike?

MR. NOBRIGA: What I found kind of uncomfortable was that Mr. Starr took a little bit different road of approach with his comments on this agenda item. It has been the kind of procedure in the past that discussion is free-flowing prior to a motion being made; not to, you know, say that we condone the meeting not following Robert's Rules of Order, it's just that most of the agenda items that come before us are usually precluded by a lot more discussion.

CHAIRMAN RICE: So now we have a motion and a second on the floor. Mr. Tagorda, did you want to say something?

MR. TAGORDA: Are you willing to withdraw your motion, Mr. Starr? I'm willing to withdraw my second. You going to give him six months?

CHAIRMAN RICE: What I heard --

MR. STARR: Mr. Chair, I would be willing to do it. I feel six months is too long. I feel that that's a long, long time. I would like to request that that period be shortened and then I would be happy to withdraw my motion. Perhaps, you know, if it's not two months or not six months, maybe it's four months, three months or four months.

CHAIRMAN RICE: Yes, Adolph.

MR. HELM: Maybe I can suggest to look at it in an increment basis where at what stage has he shown improvement and is he working on certain areas of improvement that he needs to work on and just reevaluate, but not come up with any consensus until maybe six months. So that we can review in a very short session just to see where is he at and just to be on top of it, and maybe that will address Jonathan's concern and not have this issue slide away. I guess that's maybe Jonathan's concern.

MR. STARR: Well, one other thing I would like to direct to corp counsel and to make clear to my fellow board members as I see it is that we have a charter obligation to hire and fire the director. That's basically the only real direct power that we have. And as I understand it, we don't have to do that for cause, that there is no legal obligation for us to prove or show cause, that that is just something we're empowered to do and we can do it for whatever reasons the board believes in. And I would like to ask corp counsel if this is correct, this view.

MR. KUSHI: Mr. Chair, Member Starr, in essence you've stated what the charter says. The charter says specifically the board hires and fires the director. I've done some preliminary research and I will not discuss this in open session. I would be glad to discuss this in Executive Session in terms of your powers, duties, and liabilities.

However, just to the say that it's my preliminary research that the director as well as the deputy are employees at will. However, there are some exceptions to that legal doctrine which are [inaudible] -- the exceptions to the at-will employment doctrine, which I believe is better discussed in Executive Session. But in essence, you are correct. But how you go about it is a different matter.

CHAIRMAN RICE: What I'm hearing here, gentlemen, is that we want to give Mr. Craddick an opportunity to respond, we want to set another review

date, possibly more than one review date to a final decision in some people's mind in six months, some people it seems to be sooner. Is that correct?

MR. NOBRIGA: Yes, Mr. Chairman.

CHAIRMAN RICE: And given that we have a motion and second on the floor, we either vote on it or they withdraw their motion and second based on more favorable motion for everyone to vote on. What shall it be?

MR. STARR: I'll be willing to withdraw my motion.

MR. TAGORDA: So am I, Mr. Chairman, withdraw my second.

MS. de NAIE: I've probably sat in at Board of Water Supply meetings over the last five years or so and at the other meetings like County Council meetings and Water Commission meetings, maybe a little bit longer than that. And I have a perspective that's from I guess the public viewpoint, and that is as a

person who's had a lot of employees, I think it's wise for a board like this that's charged with an extremely important responsibility to realistically look at a person's strengths and weaknesses because everybody has them. And I know it's the common thing now that you evaluate and then you see if a person can improve and so forth, and that's all really good, but if a person's basic strengths lie in another area, it is hopeless to keep saying well, maybe they will change over here. And you're really shortchanging the public by insisting that that be your procedure.

I think Mr. Craddick is a very intelligent person. I think he knows a lot about water. I think he's a very good-hearted person, a contributing member to the community, and so forth and so on. But as I as a member of the public have a hard time understanding what he tries to explain about what's going on with water. And I'll just offer you one little brief thing. A few years ago I was at a County Council meeting. Mr. Craddick was talking about water availability to council members. I just couldn't

follow him.

I was standing in the back next to a person who was at the time deputy corporation counsel. I turned to this person, I said, "So what was David just saying?" This person turned to me and said, "I have to tell you the truth, I can't follow him most of the time either."

Now, I don't think that this kind of communication is David's long suit. First of all, he's very soft spoken. I really think that you need to find -- Mr. Tagorda is right, you need to find a place in the organization where his skills are going to be of benefit to the water department, and get somebody who can really take the vision of what this board is trying to do, translate it in a dynamic way to the public so that the public feels confident and wants to get behind it, and spare this poor man the torture of having to go out there and do something that may not be his forte and not make him fight for his existence. So that's just my two cents worth.

Thank you.

CHAIRMAN RICE: Thank you. Okay.

MR. GRANTHAM: Can I say something, too,
Mr. Chair? My name is Dan Grantham and I've also been following water board meetings, not only following them but having to watch them on tape afterwards to put them on the air.

And I like David. David's a real easy person to like. However, Clark's point about the time here I think is poorly taken. I've watched Orlando ask for a long time he says "I want to be able to vote on the director before I leave the board." Way more than six months ago. Six months ago the director received, you know, preliminary comments from the board about his communication style. Unfortunately, I don't believe Adolph was at that meeting.

You went into Executive Session afterwards and I actually had a conversation with David outside and said, David, you know, it sounds like they're having a problem with communication. I mean, that was the word that came up more often than not. And I hope I'm not

betraying a confidence, but David said, well, there is people on there that just want to get rid of me.

If that's the case, David has had plenty of warning. You don't needed to give him another six months, another year. I think he should just do it, you know. He's going to wonder do I have the confidence of the board here or not. He's going to be coming here every time, you know, gee, I'm on probation, what do I do? I don't think it's fair to treat somebody like that. Either you trust them or you don't. I don't think it's fair to the public.

David has tremendous skills and I respect them enormously. Communication -- I was going to suggest that one possibility if you do want David on so much that, you know, there is a radio show on Saturdays, a guy does musical history and he has a buzzer that comes on, it's called the irrelevancy alarm. And I was going to suggest maybe there is some software out there that you could plug in, you could get a contradiction alert and you could have a sound on it like a truck backing up or something, beep-beep-beep, you know, or maybe you could have a fog horn for,

"Hey, we're lost in the dark again."

I think that you should reconsider putting things off and just been straight with the man. And I really think Orlando deserves his say. He's been asking for it for years. And I think out of respect to him, I think he should have his say. Thank you.

CHAIRMAN RICE: Mr. Tagorda has had his say all day today. Gentleman, is there a motion?

MR. NOBRIGA: I think the Chairman summed it up in his comments earlier, but I'll move that we receive written comments to the Chairman's letter -- to the director within three weeks so we can all review it before the next meeting; that a preliminary course of action be defined by May's meeting; and that a final decision made no later than September 1, 2002.

CHAIRMAN RICE: Is there a second?

MR. NAKAMURA: I second that motion.

CHAIRMAN RICE: Seconded by Mr. Nakamura. Any discussion? Yes, Mr. Starr.

MR. STARR: I would have liked an earlier date, but I will go along with it.

CHAIRMAN RICE: Okay. Any other discussion? All in favor, say aye.

[Chorus of ayes.]

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Unanimous. Motion is carried. Okay.

It was a long agenda. We have a public meeting update, water issues.

MR. CRADDICK: I think mainly just the charter commission meetings and the water issue, there has

been a number of testimonies and the board chair gave the letter from the board to the charter commission there at last night's meeting and that will be their final meeting, public meeting, and then they have got some decision-making starting next week on that matter.

MR. STARR: Mr. Chair, I have a question about some meetings that I saw the director had advertised in the newspaper but had never come before the board and I have some concern about that. And, you know, it ties in with the previous matter because I don't believe that he always gives the public the straight scoop. I think that he's manipulating, gives several answers to the same question.

I would like to know what these meetings, which are supposed to educate the public about Iao Aquifer, are intended to do. And it seems to me that such meetings should really be authorized by the board and at least the board should know about them officially before they get advertised in the newspaper.

CHAIRMAN RICE: I agree. I don't know anything about the meetings and I think public meetings need to be approved by the board.

MR. STARR: Can I request that these meetings be cancelled unless they be approved by the board?

CHAIRMAN RICE: Mr. Craddick, is there a reason for the meetings? There is four, I believe.

MR. CRADDICK: I would like to know when you decided that department meetings had to be approved by the board. We have many of them.

CHAIRMAN RICE: We have many public meetings?

MR. CRADDICK: Yeah. So this particular one we just took a lot of effort because I knew a lot of people are confused about the Iao issue and I felt that it was important to -- as a matter of fact, somebody from the high tech park actually came to me

and suggested it, that we let the public know what is going on. And I thought that was a good idea.

But I certainly will, if the board feels that that's the correct way to go, get the meetings approved. But if you want the communication to improve with the public, then, you know, you can't say you want it to improve, but you don't want it to improve on the other hand.

CHAIRMAN RICE: No, that's not the case. And I think this is a perfect example of what needs to be taken from this meeting. The Iao Aquifer issue is a particularly sensitive issue. You know that, we all know that. So why would you schedule some information meetings on something that we all know is extremely sensitive without talking to the board? It just doesn't make sense.

So someone calls up a board member and says, oh, you're having informational meetings on Iao. Well, I'm sorry, I apologize to the Maui News, but I don't happen to read the Maui News that often and I'm

shocked. I said I'm not aware of anything. Duh, dummy. You know, that is not the way it should work. And besides that fact, I don't know what other public meetings we hold on a regular basis and if we do and nobody knows about them --

MR. NOBRIGA: Why have them if nobody knows?

CHAIRMAN RICE: Somebody must know about other public meetings we have on issues. If we don't, then I don't know what they are. So I think it is embarrassing and it is exactly the issue. It's a particularly sensitive issue and I would think as the director you would want the board to say heck yeah, we agree with what's going out there. We aren't too -- and here's -- and this does relate to the other issue we just talked about. There are not two entities here. There is not a board and a department. And that is a feeling that I get since I've been on this board.

There is one entity. The Department of Water Supply has a board. It is the Department of Water

Supply. We are the Department of Water Supply.
Period. And the attitude that these guys want this
but it's better for us to have this and we're going to
try and fight our way each way, that doesn't work.
That's creating a conflict. That attitude is creating
a conflict. It causes everybody to have some
disturbing experience somewhere along the line. And
so you have to work with the board. You win some and
you lose some. The board is going to be wrong, yeah,
and you're going to be wrong, yeah. But are you out
by yourself when you're wrong, you're in big trouble.
Yes, Mr. Hiranaga.

MR. HIRANAGA: My suggestion on such an issue
would be to David that if you felt there was a need to
have these meetings, then you would send Peter an
e-mail with copies to all board members, saying I
think it's a good idea if I have these meetings, blah,
blah, this subject, what do you think. And you'll get
a response from Peter: I agree, I don't agree. Cc
other board members. If they have comments, they will

send an e-mail to Peter with their comments so he can send you a direction as to whether this is a good idea or not.

But to go ahead and do something without discussing it and then be chastised about it, you do that too many times, you're going to find yourself way out on a limb. That would be my suggestion.

CHAIRMAN RICE: Yes, Clark.

MR. HASHIMOTO: Also on communication, I think almost all of us have e-mail. Isn't that a more efficient way of communicating?

MR. NOBRIGA: That's what he said.

MR. HASHIMOTO: I know, but we don't get --

MR. HIRANAGA: It's cost efficient.

CHAIRMAN RICE: I think at this point what do we want to do with those meetings?

MR. CRADDICK: Peter, I'll cancel them.

CHAIRMAN RICE: They stand cancelled.

Mr. Starr?

MR. STARR: I don't want to keep beating a dead horse here, but this is something that I've mentioned in at least six of the last 12 meetings is the department having various type of public meetings without the board's being notified. And this is not the first time. But I'll let it go at that.

CHAIRMAN RICE: Yes, Kent.

MR. HIRANAGA: My suggestion to you, Jonathan, is you start keeping a log of all these things so that at the next evaluation you'll have --

MR. STARR: I could give you a very long list, but I try to go to every public meeting that the

department has and it bothers me when someone says, oh, why weren't you at the meeting last night, and I never heard of it.

MR. HIRANAGA: Every deficiency that you identify, so that at the next evaluation you can provide this.

CHAIRMAN RICE: Okay. Anything else? Where is my list of monthly division reports? I would like to ask -- you want to say something?

MR. NOBRIGA: No, no.

CHAIRMAN RICE: On the monthly division reports, we have -- I thought we had a section for subdivision requests and approvals. It's engineering. It's right in the beginning. Where is it? Did I miss it? Right here. Yeah. There is ten -- it's a quick one. It says there is ten building permits approved by the staff and the director. There is one subdivision application approved. That's well and

good, but I guess the question that's been raised is is there a backlog of those, do we know how many have been requested and how many have been approved, and I think we would like to see a little bit more detail on that report. And if -- yeah, we did ten building permit applications and one subdivision ap, is there -- but is there 25 waiting, it indicates a problem and I think that's something that's important. That's my comment on that.

Yes, Mr. Nakamura.

MR. NAKAMURA: And under Reports, I know, David, we had talked a little bit about this -- at least in the evaluation, you know, you had called me about it. But my feeling about those monthly reports is that there needs to be at least some commentary or analysis on some of the numbers. For instance, the figures that Jonathan circulated on, you know, on the pumping, what does this mean? What is the implication at Iao Aquifer or in the case of the plant report, basically what does this tell us in terms of how much

we're pumping, are we -- from one system to another.

I think we need to have some of that just capsulized.

CHAIRMAN RICE: And in the event that we know that any of the reports are inaccurate or mistakes, they need to be corrected and resubmitted, please.

MR. HIRANAGA: I had a question on the easements granted to the board. Is there compensation that's granted to the grantors or background information on those two easements that are accepted for the [inaudible] water system.

MR. CRADDICK: If there is compensation, you'll know about it because it has to come to you. But we don't usually give compensation for fire hydrants.

MR. HIRANAGA: So these are fire hydrants.

MR. CRADDICK: I would expect so, but I'm not positive right off the top of my head.

CHAIRMAN RICE: So let's include that. That's the kind of detailed information I think that -- yes, Mr. Tagorda.

MR. TAGORDA: One thing I want to point out, Mr. Chairman, before we adjourn. Go back on monthly division report. The Department of Water Supply letter on that Lahaina water treatment facility modification, I have a question about the department intention to a water contract portion of it, for \$355,000 and we have only a funding of \$1 million and the low bid came in at \$1.5 million. I think the board should really look into that before you go ahead and give the contract for a portion of that project. Because I don't know if you're going to get available funding to complete the project. And that money will be again encumbered, which has been a practice of the department since I've been here, Mr. Chair.

CHAIRMAN RICE: Thanks, Orlando. Yes.

MR. STARR: My feeling is this should go to redesign and find a way to do it for the money available to us. I'm sure there is maybe some bells and whistles or something that can be taken out, but I was also a little concerned when I saw this letter dated February 28th.

MR. CRADDICK: So what do you want to do on that one? Delay the thing? Because what it is is we have problems with algae in the tank. That's the basic problem. We need to cover the roof. That portion is only \$300,000. What we wanted to do also is build another tank; that's not critical, so we dropped it out. Later on if the board -- if more justification is there to do it and we've got the budget to do it, then I would bring it back to the board. But it is within the budget allowed and I must have thought something about it because otherwise I wouldn't have informed the board there about it, but --

MR. STARR: I agree I want to fix the problem.

If this is a stand-alone roof and if the feeling is that this is the cheapest way to do it, I don't have a problem with that.

MR. NOBRIGA: If the scope of work of the project was initially intended to do what it's doing, I'm in favor of making a motion, if we have to, to let the project go through.

But if the scope of the project as intended included everything, then we should resubmit this to CIP and finances to either expand the budget or change the scope of work.

CHAIRMAN RICE: So the scope of work would have been for the entire project.

MR. CRADDICK: Yeah.

MR. STARR: Mr. Chair, can we do this in committee? I don't think this is really --

CHAIRMAN RICE: Yeah, CIP. Okay.

MR. CRADDICK: It may -- by now it may have already been awarded. I don't know right off the top of my head that portion.

CHAIRMAN RICE: Let's check on it. Okay.

Anything else? Move to adjourn.

MR. STARR: So moved.

CHAIRMAN RICE: So ordered.

(WHEREUPON, the hearing was concluded.)

"By Water All Things Find Life"

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