

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Shopping Center, Kaahumanu
Avenue, Kahului, Maui, Hawaii, commencing at 9:00 a.m.
on April 25th, 2002.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

ATTENDANCE:

Members Present:

Peter Rice, Chair

Howard Nakamura

Michael Victorino

Clark Hashimoto

Ginny Parsons

Adolph Helm

Jonathan Starr

Kent Hiranaga

Staff Present:

Ed Kushi, Corp Counsel

David Craddick, Director

Fran Nago, Secretary

Herb Kogasaka, Engineering

Mike Quinn, Fiscal

Wendy Taomoto, Engineering

Herb Chang, Engineering

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CHAIR RICE: I'm going to call to order the
Regular meeting of the Board of Water Supply County of
Maui. It is Thursday, not Tuesday, April the 25th.
We're here at the Kahului Shopping Center. It's
9 a.m. Before I go through the Board Members present,
I want to officially welcome Mike Victorino and Ginny

Parsons to the Board. This is not their first meeting. They've already jumped in with both feet at committee meetings attending and getting up to speed as quickly as they can, so welcome. Thank you for your enthusiasm.

Present Mike Victorino, Clark Hashimoto.

Excused, Mike Nobriga. Jonathan Starr, Adolph Helm, Kent Hiranaga, Ginny Parsons, Howard Nakamura, Counsel Ed Kushi and Director David Craddick. Staff and the members of the public present will be represented on the record.

There are no minutes submitted for approval. Do we have testimony from the public at this time?

Tony? Where do we want him to sit? Right next to David.

MR. DURSO: Good morning. Thank you for the opportunity to testify. I apologize for missing the Finance Committee meeting last week, which this topic was gone over before, but I understand there were some questions that the Board had for the ranch in terms of participation on the proposed line that's going in.

And I was just hoping to come down and clarify that for you folks as well as provide the opportunity to answer any questions.

Just very briefly, the ranch has always been willing to participate on the installation of a line. It feels most comfortable doing that on its own property largely because if we start trying to move tractors on and off and we start trying to provide labor off property, that opens up a number of liability issues that we're not very comfortable with. But as always, we would be more than happy to assist in installation on our property. One thing that is important for us, we feel it's important to get out there is that if the issue, and I understand that there's still some size issues being discussed as far as six, eight or twelve. Basically, the ranch really feels that putting in a six-inch line would be pretty much useless and doesn't want to go so far as to say we absolutely will not participate if it's a six-inch line, but feels very strongly that a six-inch line is not worthwhile putting in and you really need to consider an eight or a twelve.

And if you are considering an eight or twelve-inch line, then we would be very enthusiastic participants. Does that delicately state it?

CHAIR RICE: Does that delicately state it? Mr. Starr.

MR. STARR: I know that from some of the comments that came up during the committee discussion, there was a feeling that a line that was six, eight and then a small portion of twelve at the end would probably provide for existing users and, you know, maybe a small amount of buildup. But if we were to go to a larger size than that, then we're talking about providing for some very major development out there in an area where there's really not a community plan that says that that should happen. So I know I for one would feel if we were to go to a larger line, then we should really go out with studies and we should go and talk to the Planning Department and get citizens participation, and that would probably delay the project a couple of years, whereas, if we were to go

with what we feel would be pretty much unassailable, which is six, eight, twelve, which would give adequate fire protection and some amount of service. And that's something that we would feel that we wouldn't have any problem from the community.

And I would certainly be willing to go right ahead with it if you guys would do the site work, dig the ditch and so on. So would you rather see us go ahead expediently with, you know, with that, or would you rather see us go through a process of studies and community involvement and all that for a larger line? It may take several years. It may or may not happen.

MR. DURSO: Certainly avoid the latter. A delay of multiple years is something we would hope to avoid. The ranch, because again, I apologize for missing that meeting in which this sort of variable line was discussed, we haven't really taken a look at the significance of what that would mean. The main thing that we're looking at is that it's our understanding that just to do a six-inch would only raise sort of the current system to adequacy barely

for the current users, so that something larger has to be on the table in which case certainly a twelve-inch line probably would provide greater services that are needed. I'm not so sure about the implication there about massive amounts of development. I don't think that's on the table anywhere, certainly not as far as the ranch is concerned.

And I do understand that putting in a larger line does require some other types of studies, whether that's in the EIS or not. The main thing I just want to stress is that larger than six seems imperative because it wouldn't account for any future use as far as areas that were served that are no longer being served that could be served, and that's really where we're coming from. I don't know if that specifically answers your question.

CHAIR RICE: Clark.

MR. HASHIMOTO: So, Tony, how much of that -- there's five miles of pipeline. How many miles of

that is ranch land?

MR. DURSO: I do not know. I would defer to David on that because I think he would probably be the best one to answer the question.

MR. CRADDICK: Do you know where the property is?

MR. DURSO: Vaguely speaking. Actually, I looked at this before. I've got to orient this correctly first. We would take up from about here, right.

MR. CRADDICK: Right about here. This is Kamole tank. This is Kanaio. These are the three laterals.

MR. DURSO: I'm pretty sure we pick up right to the right of the Paeahu lateral.

MR. CRADDICK: So that is about 5,000 feet that it's not covered, I guess the majority, vast majority, so about 45,000 feet that's not covered.

CHAIR RICE: Mr. Starr.

MR. STARR: Is the other -- the other 5,000 feet, is that one property owner?

MR. CRADDICK: Pretty much. Haleakala Ranch.

CHAIR RICE: Howard.

MR. NAKAMURA: Just to clarify again, so your participation, specifically you're talking about the trenching and backfilling, is that basically it?

MR. DURSO: Correct.

MR. NAKAMURA: Would you also be looking at any financial participation, or are you looking at basically in kind?

MR. DURSO: In kind services pretty much

exclusively. That's really all we can afford.

CHAIR RICE: Mr. Starr.

MR. STARR: Yeah, I believe the spec usually calls -- there's entrenchment excavation. Then usually you have to put in a base of crushed rock, and I don't know what else we're using now. And then the backfill has to be specific material. I would ask David to help me with this, but I'm wondering if you would provide that rock and material or just the actual digging.

MR. DURSO: I need to be careful to not speak out of turn. Certainly my authorization is a bit lower than the Erdman family, but it would be my guess that if we had the materials on the ranch such as various types of cinder, whether small or larger grade, that we could provide it, we would do so. We would, of course, need assistance with the actual excavation of the cinder and the trucking though.

That would be something we couldn't do because we don't have that type of equipment.

CHAIR RICE: I think the bottom line is they're willing to work with us. Any other questions for Tony, Board Members? Thank you, Tony.

MR. DURSO: Thank you, Peter. Thank you, Board.

CHAIR RICE: We will be talking about that I think under the Finance Committee. Is there any other public testimony? Carl?

MR. FRIEDMAN: Hello, my name is Carl Friedman.

I'm one of your consultants. Actually, I'm one of several consultants who is working on the long-range water use development plans for the Department. And I have a couple of comments about the central source availability issues that were brought up several days ago here, and I suppose I could have made the comments then. But I have two comments. One was just to bring

to your attention, if you're not already aware, that the County Council is now considering working on an allocation plan for water for the central Maui area.

And my understanding is that this has to do with ordinance 2.90, which has the title Water Use and Regulation. And the Council has an existing ordinance which allows or requires them to allocate water when resources reach 70 percent of sustainable yield in an area. And I read the ordinance. There's some ambiguities with it, but I guess the news I want to bring, if it's really news to you, is the Council does intend to bring this up after they finish their budget matters, and that I've been told means June.

So I know at the meeting, the committee meeting, the issue was brought up do we want to decide anything about this. I think it was decided to look into it further. And the concern was, well, you know, we're not ready yet to say anything, but I do think it behooves the Department and the Board to be diligent about pursuing this, so when the questions start coming from the Council, you have your act together so

to speak and you can give some clearances about availability.

I think that as the public perception of any water shortage in the central area that might result in limitations on development, you know, just the mere public perception of that is going to focus an awful lot of pressure on you folks. And so I commend you on your efforts there and would encourage you to be diligent about it. I know Kent was saying, you know, it's good to really know a lot and look at this carefully before you say anything, but I think the luxury of that may be short-lived.

The second thing I wanted to say was that I know most of the discussion at the last meeting was about the capacity of the Iao aquifer, and I think in a -- if you're really going to talk about availability, especially if you have a lot of time to talk about availability, and certainly in the context of the water use development plan, that's not the only issue. There are many other alternatives. You need to have good ideas about what the needs are going to be for various consumer/customer classes. There are

other types of alternatives. There are tertiary treatment supplies that could be done with acceleration of the Department of Public Works treatment of nonpotable water. There are conservation options and there's a realm of other options that can be part of a long-term availability discussion, and I don't know if there's time for that.

But you need to be aware that the Department and in the context of the water use development plan are working on that kind of thing, but so far, we've been working in the luxury of doing things carefully and haven't had to come up with any answers before their time. And I certainly am willing to help with any answers like that that might want to be generated before their time to the extent that they can.

So I think a good objective for the Board and the Department would be able to have some clear answers well thought out and easy to understand that don't sound mushy when the Council starts asking questions in a month or two.

CHAIR RICE: Thank you, Carl. Any questions of Carl? Mr. Starr.

MR. STARR: I'm glad to hear those comments, and I haven't really seen the ordinance that the Council is following. I've heard about it, but I haven't really studied it. And I would be curious if you have a little more information on that. And the other comment was we may be at kind of a log jam situation now, but I think one of our -- one of our problems is not ever having, as long as I've been on the Board, a target that we were looking to meet in terms of how much water we were going to need to develop next year and how much we are going to develop in the next five years and ten years and so on out of which may be conservation and treatment to take a part of it, but we've never had that target. And that would be something that I know as a Board Member I would love to have as a tool is a piece of paper that shows us what we're going to need year by year, and then we can try to make our water development plans match our needs rather than just trying to move forward with

water development as fast as we can without spending too much money but not really knowing, you know, when or how much.

So, you know, I'm hoping you can help us with that as part of our water planning to actually set a target to aim for and then we can try to get the sources to meet it.

MR. FRIEDMAN: Well, regarding 290, the ordinance 290, what I understand is that there, first of all, is -- they're considering changing the wording of 290, so there's a draft being put together to amend 290 that would require notification by the Department whenever there's 60 percent or 70 percent thresholds and would also address the issues of the non-Department of Water Supply source pumping, the issue that you brought up several times and authorizing or requiring the County and the Department to go out and find out about those.

So I think first they're talking about amending 290, but I know that the impetus behind this comes

from the fact that the Council now is faced with some issues. They have some large projects before them.

Wailea 670, Makena, Maui Lani, all of these have large water consumptions associated with them, and they're hearing testimony from the public that water is constrained.

And this generates some questions, and I think that the ordinance 290, it's already on the books. I downloaded it from the website, so it's pretty accessible. It exists, but I don't think it's ever been -- there's no attention been paid to it, and so I don't know any more than that really.

MS. PARSONS: I have a question.

CHAIR RICE: Thank you, Carl. Ginny.

MS. PARSONS: Carl, are you saying the Council is trying to control development through the Water Board by using this statute?

MR. FRIEDMAN: Well, not quite so.

MS. PARSONS: Because is that legal?

MR. FRIEDMAN: Not quite in that many words. I think that -- well, we'll see.

MS. PARSONS: Well, I mean that's a possibility?

MR. FRIEDMAN: My understanding is the Council will be taking up 290 and the implementation of 290. What 290 says is that if more than 70 percent of the water capacity of an area. It doesn't say aquifer, but it does use the words sustainable yield. So the wording is a little iffy, but it seems that trigger may open that. Then the Council will allocate water by the land uses identified in the community plans, and it doesn't say too much about how they will do that, but it does say that they will do that.

And the intent seems to be that if there's a constraint on water, the Council will take it into

their hands to decide allocations until the supply of water goes above the trigger. Now, I don't really have any direct line to the Council's intent except to know that these things are under consideration. I do think -- I understand it will be in Mike Molina's committee, so you could inquire with his office.

MS. PARSONS: Mike Molina's committee?

MR. FRIEDMAN: Yeah, the Public Works.

MS. PARSONS: And is it special interest that's pushing this to the Council?

MR. FRIEDMAN: I doubt it, but I don't know. I have no knowledge of that.

MS. PARSONS: Is it legal to control development through the Water Board, Mr. Kushi, the Water Department?

MR. KUSHI: Just a general comment. The Council as well as the Planning Commission do not issue water meters. This Department does. However, this Department and this Board is bound by the general plan and community plans and any ordinance that would cover community.

So in that case, if the other bodies want to control water, they can do it through different manners. But they're not the ones issuing meters. They're not the ones digging the wells. They're not the ones searching for water resources. It's an age-old discussion. I'm not going to get into it with you or anybody else at this time. But that's where the cookie lies right now, and if these Charter provisions go through, it will really hit the fan.

CHAIR RICE: Thank you, Carl. Any other questions from Carl? Okay. Any other public testimony at this time? Okay. Seeing and hearing none, we're going to move on to the agenda.

Director's Report, Director's Report 02-12.

Mr. Craddick.

MR. CRADDICK: The necessity for this I think has been resolved. We're getting a construction right of entry because of the delay in getting the easement, and when the easement documents are prepared, they're willing to get the easement done, so there's no necessity to take action.

CHAIR RICE: So it's basically withdrawn?

MR. CRADDICK: Yes.

CHAIR RICE: Director's Report 02-13, request for authorization for write-off of uncollected accounts. There's a report on Page 11 I believe. Mr. Craddick.

MR. CRADDICK: Okay. This happens yearly. There's some funds that we're not able to collect. This particular request is for \$9,891. It represents .035 percent of the billings of \$27,800,000. And

even though these accounts are written off, we still turn them over to a collection agency that will try and collect.

Out of this amount here, I guess \$1,700 represents people who declared bankruptcy, so we may never be able to collect that. It just goes into some things there that, you know, we're doing it to get the amount down.

CHAIR RICE: Mr. Nakamura.

MR. NAKAMURA: I think, Mr. Chairman, this is a fairly standard process that we go through each year and the Department, as the Director has indicated, continues to try to collect whatever is possible, and so I would move for approval of the request.

MR. HASHIMOTO: Second.

CHAIR RICE: It's been moved and seconded to approve the request for the writeoff of uncollected

accounts at \$9,891.14. Is there any discussion?

Mr. Starr.

MR. STARR: I would just like to commend

Mr. Quinn and his staff for the record in keeping those numbers so low as it is.

CHAIR RICE: I would agree with that. As long as I've been on the Board, the numbers seem to get smaller every year. Any other comments? All in favor of the motion, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "no."

(No response).

CHAIR RICE: Motion is carried. Director's Report 02-14.

MR. CRADDICK: This item here, I don't know if

you want to wait until you get the report from the Finance Committee, but basically, we've bid the job out. And the funding for this project was a million dollars of which we have used about I believe \$67,000 for the design of the project. And then the bid came in at \$1.114 million. We have negotiated with the contractor to get the price down to \$1,002,000 -- or no, \$1,016,000 -- okay, actually, it's slightly less than a million dollars, \$966,000.

Anyways, what we're asking for, if the Board could see their way clear to appropriate another \$100,000, which would cover the design work and any additional work that we felt we would have to do on this project to get it finished. So basically that would be a request today as to appropriate another \$100,000 for this job, do a budget amendment to do that.

CHAIR RICE: So you're amending the written request, no?

MR. CRADDICK: Yes.

CHAIR RICE: It says \$181,000.

MR. CRADDICK: The recommendation on Page 16 is
we are requesting approval of \$100,000.

CHAIR RICE: Mr. Starr.

MR. STARR: Under the request it says, "The
Department would like to request additional funding
for construction in the amount \$181,785."

What does that number mean, Page 15 under request?

MR. CRADDICK: Well, that was if we were able to
talk the contractor down, but in light of us being
able to negotiate, we didn't know whether the
contractor would come down.

MR. STARR: So is this an error?

MS. TAOMOTO: Yeah, that's an error.

MR. STARR: That's an error?

MS. TAOMOTO: That's an error.

MR. STARR: Okay, thank you. My second question is why are you adding a contingency of \$50,000 to a construction contract? I thought a contingency is when there's a problem that's unforeseen and the contractor would come to you, but here you're giving him an extra \$50,000. I don't quite understand this process. It's unusual.

MR. CRADDICK: We're not giving them an extra \$50,000. That is something that I believe the last time, as you recall, we were drilling the well down and they had to make the hole deeper. And that's what that type of contingency is for because we cannot come to the Board and run the risk of paying a \$3,000 daily delay of job charges while the Board decides to appropriate a few thousand dollars of money.

MR. STARR: I wouldn't have a problem voting for appropriation, holding it back, but what I do have a problem with is when you say \$50,000, which will be added to the construction project, construction contract. Is that also an error?

MR. CRADDICK: No, that's the way it is, and it's encumbered like that, but it doesn't mean it's necessarily spent at the end of the job. It's just if there's a change order in there, then that's how we cover it.

CHAIR RICE: Maybe we need to clarify this.

You're requesting the appropriation of this amount that includes the \$50,000. The \$50,000 is not part of the construction contract?

MR. CRADDICK: It would be, yes. It would be, but it's not necessarily paid out to the contractor unless they do whatever extra work is necessary to get

it.

CHAIR RICE: I think Mr. Starr is raising a pretty good point. I mean I don't have a problem with the appropriation of the money to provide for a contingency as you explain, but I don't know that the contractor has to necessarily have the money in the contract if we've appropriated it, unless you're --

MR. CRADDICK: Here is what will happen is we'll sign the contract, and then June 30th, all the money will lapse if it's not encumbered under the contract. So, in other words, your action today will mean.

CHAIR RICE: So this has nothing to do with the contractor. It has to do with the money being lapsed on June 30th.

MR. CRADDICK: If it's not encumbered under the contract, it will lapse, that's right.

CHAIR RICE: Could we write the contract in such a way that the money is subject to some different approval? That I think might satisfy the Board. So the contractor doesn't think it's an additional \$50,000 he's got to spend. I think that's the point.

MR. CRADDICK: There's no problem. That's the way the contract will be written.

CHAIR RICE: Mr. Starr.

MR. STARR: Let me make a suggestion. I really don't like to have \$50,000 as a contingency written into the contract. That's like having a ripe fruit hanging out there. And the contractor is going to be wracking his brain on how to find a way to pluck that fruit. So perhaps what we can do is let's take it out. Let's approve a \$50,000 increase and we're going to have a new budget coming in July 1st, and the money contingency is not going to be needed until then.

Let's just put it in next year's, and after July 1st,

it will be available if needed, and then it can be spent. But I don't like to have -- I don't like change orders. I don't like contingencies unless there is a real contingency.

MS. TAOMOTO: The only reason we're requesting the \$50,000 is part of the negotiations was a reduced scope of work, and what we did was we reduced the grouting of the annular space from 1,176 to 500, and that was a reduction of \$31,900 plus another \$6,000 because of the method they're going to use. If you don't approve the \$50,000, then I will revise this recommendation to add that back into his contract.

Because we don't have time during construction to come back to the Board when they're grouting the annular space. If they are at 500 and the hydrogeologist says, "We need to go down to 1,776," we don't have time, like David said, because we're going to be paying the contractor. We're going to be paying the contractor for delay of time, so I would want to add that back in. The only reason the contractor agreed to delete that was to help us bring

the cost down below \$1 million, but that is a very important thing we might need during construction, which we don't have time to wait for, maybe not even a day or two.

CHAIR RICE: Ginny.

MS. PARSONS: I think we need some contingency in there only because when you've got a contractor that you've employed, you're paying for him, if you're not using him, and if they've got to come back to an emergency meeting with the Board to get approval, you're paying that time for him and maybe he's not doing any work because he doesn't have it there, so funds that we weren't expecting additionally. Just I mean do you need \$50,000?

MR. CRADDICK: This is 5 percent of the job. That's very, very minimal.

MS. PARSONS: That's very normal. Usually it's 10.

MR. CRADDICK: This can be used up in a blink of an eye on drilling.

MS. PARSONS: Usually it's 10 in construction.

MR. CRADDICK: That 500 feet of grout, the reason we picked that, that's the minimum the State will allow. If they encounter water as they're drilling down and that has to be sealed off, that depth is going to have to go down.

MS. PARSONS: I agree with Mr. Starr and Chairman Rice that we really need a clause that clarifies exactly. Because, you know, you can run into problems. You know you're going to run into problems. There's going to be something.

MR. CRADDICK: That is the way the contract is written. It's not a gratis thing by any stretch of the imagination.

MR. STARR: Can I suggest we approve it but the contract before it gets awarded, Mr. Rice and Mr. Nakamura examine it and make sure it's written in such a way to their satisfaction?

MR. CRADDICK: That's fine.

CHAIR RICE: Fine. Kent.

MR. HIRANAGA: I guess the Board contingency normally is applied in a budgeting process because you're unsure what the proposals will come in, and I think it's improperly labeled as contingency. It should be, in my opinion, written back into the contract, and if you need to do a time and material type of control over that discretionary expenditure, I think the \$50,000 is mislabeled as a contingency. If you know you might have to do it, it should be written into the contract. It shouldn't be a contingency.

MR. CRADDICK: We don't know at this point whether they have to do it. We're hoping they don't have to do it, but if they do -- the last time, the equipment they had is smaller than the equipment this time. I believe last time they wanted, what was it, \$3,000 a day standby charges while the Board decided whether to approve I think it was a \$35,000 change order last time. That even though the Board approved 35, I think we only ended up spending 20 of that, but, you know, whatever you want to call it there. It's not a gratis giveaway to the contractor.

CHAIR RICE: Mr. Hiranaga.

MR. HIRANAGA: I'm not -- what I'm saying is I believe the money should be put back into the original bid if you feel there is a probability that the money is needed. But it can be classified and controlled differently than being called a contingency because what you're trying to do is saying the proposal is coming in below budget, but it's not -- it could come

in below budget, but currently the proposal as received is above budget. I feel that classifying it as a contingency is not the proper word.

MS. TAOMOTO: So what you're saying is add back in the \$31,900 and the \$6,000 into the construction contract rather than request a contingency?

MR. HIRANAGA: Is this a fixed fee?

MS. TAOMOTO: It's a fixed fee based on linear foot. It's a fixed fee on the proposal that he submitted, but we pay it based on the linear foot of actual installation.

MR. HIRANAGA: So if he doesn't -- so the cost is dependent upon the depth of the drilling?

MR. STARR: I think the labeling as a contingency is a problem. I think it should be labeled as an option, as an optional extra, and then

it would be a lot clearer.

MR. HIRANAGA: If you incorporate it back into the contract, as part of the contract, it will be essentially be based upon the actual depth of the drilling, so rather than call it a contingency, put it back in the contract.

CHAIR RICE: Mr. Victorino.

MR. VICTORINO: I think we're going into semantics right now. Let me ask you two quick questions. Number one, we don't know if we have to do it and it will be determined by whom if we have to do this or not?

MS. TAOMOTO: The hydrogeologist.

MR. VICTORINO: The hydrogeologist. Is the determination based on State statutes or based --

MS. TAOMOTO: His experience.

MR. VICTORINO: His experience. So if that's the case, why don't we just say this is something that will not be determined until he reaches that point, so instead of contingency, why don't we use the word a regulatory or statutory determination as far as the wording is concerned. But to continue going back and forth, it's not only if we need to do it or not. That's the bottom line.

Jonathan, I agree that you don't want to have it there sitting there like a ripe apple. Somebody grabs it and has a meal out of it. On the other side, we don't want to have to wait and have to come back and spend \$3,000 a day. But the bottom line is we change the word and the \$50,000 stays there for the necessitation if we get to that point that he can continue without delaying the job. Is that what we're trying to do right now? So change the word, but the \$50,000 got to stay there someplace.

MR. STARR: I have a motion to make. I would

like to move that the sum of \$99,385 be approved subject to a determination of where the funds should come from and that the \$50,000 be labeled as an optional extra.

MR. NAKAMURA: I second the motion.

CHAIR RICE: Okay. Motion on the table to approve the \$99,385 subject to an appropriate allocation of the funds and the wording of the now called contingency monies.

MS. TAOMOTO: I'm going to send the contract up to corporation counsel, and I'm going to leave it up to them with an explanation of what your intent is for them to write the language. But I know that normally we call it contingency, but I will let them leave it up to --

MR. CRADDICK: No, they've already said how they want it.

MS. TAOMOTO: I don't get the language that you guys want.

MR. CRADDICK: We'll get it straight.

CHAIR RICE: Mr. Nakamura.

MR. NAKAMURA: I think it's a fairly simple and standard procedure what we're -- you know, a true contingency is for unanticipated occurrences, and this is a specific occurrence for dealing with a specific issue. And it's going to be paid for if it's determined, as Mr. Victorino has stated, by the hydrogeologist. There's a maximum on it. The contract can state there's a maximum. You know, that I think would certify the amount of the contract plus the \$50,000, and the contract would say that the \$50,000 is to be expended as called for by the hydrogeologist and the Department on a per square foot or whatever it is basis. You know, I don't think it's that difficult to put into the contract.

MR. CRADDICK: No, it's not.

CHAIR RICE: You agree with that, Mr. Craddick? Kent.

MR. HIRANAGA: I think Mr. Nakamura brought up a very good point. The word contingency gives that a blanket application versus something that is for a specific purpose, and this cannot be used for any other purpose should they determine there is a delay.

CHAIR RICE: I think that's the message. Mr. Starr.

MR. STARR: And I would just like to be clear I know it's the intent, my intent, and I'm sure it's the intent of most of the other Board Members, if not all, is we want to proceed with this as expeditiously as possible, so we don't want to get into any delay caused by -- that gets blamed on the Board here. We want to go as fast as we can, and if there's any snag as it goes along, you know, we'll find a way to appropriate funds if needed for any real

contingencies.

You know, we don't need to wait for the monthly Board cycle. I'm sure the Chair will find a way to deal with it if there is a real contingency, so please get the thing done as fast as possible.

CHAIR RICE: Mike.

MR. QUINN: Mr. Chairman, I need to clarify the source of funding should come from the water system development fund since this is source.

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

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response).

CHAIR RICE: Motion is carried. Director's Report 02-15. Mr. Craddick. Lahaina water treatment facility.

MR. CRADDICK: This item has been bid out. The bid, low bid came in more than a half million dollars over the amount budgeted. And what we did was we talked with the contractor and looked at, you know, what we really needed, and there's two parts of this. A roof to prevent algae growth and in addition to our sludge lagoon. And it's the portion of the sludge lagoons, and it's about 80 percent over the estimate. The building over the sedimentation basin to prevent the algae growth was also over bid, over estimate by about 25 percent, but the bidder is a well-known qualified metal building contractor.

And if that is the price, that is the thing that we need critically right now. We do have a NPDS permit to do what we're doing. It's just that it requires our guys to do something with the drainage line. And if we don't do that, water can get into the

stream and subject us to fairly substantial fines.

But we do have a permit right now, so that portion of the project we can defer until maybe we do other things to the treatment plant. And maybe the problem, the algae growth, we can solve by just negotiating the contract down to 355 is it, Herb?

MR. KOGASAKA: Yeah.

MR. CRADDICK: So the Board said they wanted to be informed a little bit more about what we're doing and basically held up the contract until the Board was informed of this, what we were doing.

CHAIR RICE: Mr. Starr.

MR. STARR: How many square feet is this?

MR. CRADDICK: It covers the three sedimentation basins up above the treatment plant. I don't know the exact square footage.

MR. STARR: Approximately how large is that area?

MR. CRADDICK: I would guess a little over a quarter of an acre.

MR. KOGASAKA: The area under the roof?

MR. CRADDICK: Yeah, 8,500.

MR. STARR: So that's about 40 bucks, 45 bucks a square foot. That's reasonable.

CHAIR RICE: Ginny.

MS. PARSONS: What's the warranty on it?

MR. CRADDICK: Larry, the warranty on it?

MR. WINTER: The warranty.

MS. NAGO: Larry, you want to go up there, please.

MR. WINTER: The warranty on the metal building?

MS. PARSONS: Uh-huh.

MR. WINTER: There's a one-year contractor's warranty on the structure. The surface of the aluminum panels has a 20-year warranty.

CHAIR RICE: Product warranty?

MS. PARSONS: Can we get him to up his workmanship to maybe three to five years, at least three years warranty on his workmanship as a negotiation point?

MR. WINTER: I can't answer that.

MS. PARSONS: Anytime you can get that, I mean that's a plus.

MR. CRADDICK: One year is pretty standard for all of our contracts. It's a standard.

MS. PARSONS: Standard, but to get contracts, a lot of times, they'll warranty their labor.

MR. CRADDICK: We can do that. They may charge more for it, but I'm sure they would do that.

CHAIR RICE: Okay. What's your pleasure? Kent.

MR. HIRANAGA: I have a concern about the second to the last paragraph in the Director's letter. It says, "Although the roof structure exceeded the engineers's cost by 25 percent, it was considered acceptable since the price was within the available funding." The available funding was for the sludge lagoons and the roof, right?

CHAIR RICE: What was that?

MR. HIRANAGA: The available funding was for the sludge lagoons and the roof? Their justification is we have the money, we're just doing half of the work.

MR. STARR: I didn't like that either. I do think we should get it done though.

CHAIR RICE: So in terms of, Mr. Craddick, that's a pretty good point actually Kent is raising. There was only one bidder on the roof portion?

MR. CRADDICK: No, there were two bidders.

CHAIR RICE: There were two bidders?

MR. CRADDICK: Yes. The next bidder was about \$100,000 more than Arisumi, but what it was you had no people with experience on structural concrete, which is what the sludge lagoons are, mainly structural concrete, where both of these contractors were going

to sub that out.

That is the major portion of the work, so that means he didn't have the expertise to do it himself. And we believe if we got contractors in there that had that expertise, the price would come way down.

CHAIR RICE: I guess more of our comments, I believe we have to do it, but more of our comments have to do with the actual cost that's coming in through the bids is so much higher than the estimates. Does that mean our estimate was not good? I mean if we hire architects to do the work and provide us with estimates, I know my experience, they usually estimate high because they don't want to get in this position.

But, you know, our estimates were way under and then you use that for your request for funding. Is that -- it's just is that the situation, the estimate was just bogus or what?

MR. CRADDICK: The only thing I can say is for

most of the '90s, the estimates were anywhere from 20 to 30 percent over. I think it's just a reflection of everybody is busy, nothing more.

CHAIR RICE: Larry.

MR. WINTER: I think there's also another factor in there, that the conditions of the work, the roof has to be constructed while the existing reservoir is in service throughout the construction, so the conditions are somewhat more difficult than normal building projects.

MR. CRADDICK: You're not building over a slab, in other words. You're building over a pool of water.

CHAIR RICE: You can't get let a bunch of rubbish fall into it. Mr. Nakamura.

MR. NAKAMURA: I also would -- I feel that this

project should be supported in terms of building the roof, but my concern is that the scope is so different from the original bid. And I'm wondering if you were to put out a request for bids for just a roof to construct the roof whether or not the bidding would be much different, whether you would have other contractors bidding on the project or if it were just the roof.

And, you know, I don't know, you know, because the scope is -- you know, we're awarding for 20 percent of the, you know, the scope, it seems like, you know, roughly the low bid, and again, you know, I'm just not sure whether or not somebody else would bid if it just were the roof.

MR. CRADDICK: Yeah, I don't know either.

CHAIR RICE: Kent.

MR. HIRANAGA: A question on the bids. So the bid broke out the cost of the new roof versus the

sludge lagoons?

MR. CRADDICK: Yes.

MR. HIRANAGA: And there was comment about the overrun being the result of using subcontractors, so Arisumi Brothers --

MR. CRADDICK: That's just an estimate of what it is. We don't really know. We can't really say that's it. That's just our estimate of what it was.

MR. HIRANAGA: So in the Arisumi bid, did they identify the actual if they would be doing the work or if they have a subcontractor?

MR. CRADDICK: No, they do have to list their subs, so that's why we know all that work is subbed out.

MR. HIRANAGA: So is the roofing subbed out also?

MR. CRADDICK: No, that's their business. I would say they're knowledgeable in that business.

MR. HIRANAGA: I guess I just wanted to echo Mr. Nakamura's concern, since the scope has been reduced, could we get more bids?

CHAIR RICE: Ginny.

MS. PARSONS: Yeah, and usually when you have a general and he hires a sub, he usually makes a percentage on a sub.

CHAIR RICE: Jonathan.

MR. STARR: Well, you know, I do second that that's what Arisumi does well is, you know, is metal buildings. And 40 bucks or 42 bucks that it comes out to is not a crazy number. I know that, you know, kind of a low ball number on that sort of thing would be probably 30 bucks. And this is, you know, it's a

project over these lagoons and they have to work in that place and it's big rains and so on and so forth. Maybe if someone is really hungry, we might get a lower price, but I don't really think that's out of line.

CHAIR RICE: I think the other question we have to consider is what risk do we run by delaying the project, and I'm not saying there is or isn't one. I'm just asking the question.

MR. STARR: I know there's possible EPA exposure from the algae.

MR. CRADDICK: What it is it just makes it hard in the treatment process because the algae keeps gumming up the filters. It doesn't go through and, you know, it's something we can deal with, but it makes it difficult to deal with. And if we can prevent it from growing in the first place, then we don't have to deal with it.

CHAIR RICE: What's your pleasure?

MR. STARR: I'm willing to move to proceed with this, you know, if it's the pleasure of the other Board Members.

MR. VICTORINO: Move to approve.

MS. PARSONS: I second that.

CHAIR RICE: Moved to approve by Mr. Victorino, seconded by Ginny. Discussion? All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

MR. HIRANAGA: Nay.

CHAIR RICE: Let the record Mr. Hiranaga voted nay. Motion carries.

Director's Report 02-16, Request for additional

funds and change in scope of work for the Hamoa well project. Mr. Craddick.

MR. CRADDICK: Yeah, this project, the Board back when we wanted to start doing the wells, there was some option of talking with Hana Ranch integrating with two systems. And after the Board brought that up, we started looking a little bit closer about what we could do to integrate our own system. And so what Herb did was renegotiate with the engineer that was doing this and came up with an additional amount that would be necessary to convert the project over to this and doing a pipeline between the two to join the two of them. And that's what we're asking for is to allow us to do that.

CHAIR RICE: But your request is for design funding; is that correct?

MR. CRADDICK: That and combining with what

already hasn't been spent on the original well project to design the pipeline.

CHAIR RICE: Yes, Mr. Starr.

MR. STARR: Yeah, Mr. Chair, the Operations Committee took a site inspection, a rather thorough site inspection out there about a month ago, and I would like to clarify to the fellow Board Members what we're talking about. I know it's confusing.

Excuse me, Terry. We have two wells, and I hope staff will correct me if I'm wrong, but we have one up here above the Hana Airport. There are actually two wells there. One of them is salted up, and the other one has a tank and that feeds this area except for where the ranch has their system, and then we have another well at Hamoa.

MR. CRADDICK: Page 70 is the picture, the drawing.

MR. STARR: Which is over here. That's a little

hard to -- and then this meets the Hamoa area, and there's no connection between the two. And there's only the two wells, but either of those two wells, to my understanding, could actually feed the whole system, and so we don't -- I don't believe we need a new well as much as we need to connect the two, so that if one goes down, then the other one can take up the slack and then maybe eventually add another well at Hamoa, which seems to be a better well site than the one by the airport, Wakiu, where the first well already soaked it up. Is that a pretty good explanation of where we're at?

MR. CRADDICK: Yes. And on Page 70, you can see more detail. In the far left-hand side of the page, you're missing a little portion of that where it connects to the existing line, but basically, that's the line that we would be looking at doing additional wells to back up each one of those sites.

MR. STARR: Just one other comment. I know on

the site inspection, the Hamoa well, when we went up there and looked at how much water was actually pumping per hour, it -- the well had not been -- the pump had not been out of the well for many years. And it looks like that well is not moving all that much water, which means that it, you know, there's a good chance that there may be a failure.

We may be approaching a failure point with that, and if we do that, then half of Hana will be out of water with no real options, so it might be good for us to --

CHAIR RICE: This is a fairly important project for us to undertake. Mr. Nakamura.

MR. NAKAMURA: I just also wanted to mention that on a related matter when the Board considered the request for funding of the Haneo water line improvements, which was nearly a million dollars or in excess of a million dollars, this project was discussed and, you know, the feeling of the Board was this was a priority project especially as compared to

the water line improvement project, so I think that the direction is a desirable direction.

CHAIR RICE: You want to say something, Herb?

MR. KOGASAKA: I just wanted to clarify that we previously have a contract with a consultant to do a second well at Hamoa and a second well at Wakiu.

Under these preliminary studies, we concluded that the Hamoa well, the second Hamoa well would provide backup for both sites if the sites can be connected.

The Wakiu site is not a very good site according to the hydrogeologist study, so they were investigating three or four other areas in the vicinity, made a preliminary estimation for the cost. And it appears that the pipeline connecting this would provide the backup as needed for both sides here integrating the two wells together with an additional well for backup, and that was the intent of the project to provide backup for the Hana system.

CHAIR RICE: Okay. It sounds like we're in favor of this. Do we have a motion? Kent.

MR. HIRANAGA: I just have a question. Where is the contract for Takumi Engineering, that was put out to bid for the consulting?

MR. KOGASAKA: Yeah.

MR. HIRANAGA: Looking at the original fee proposal does not total -- his total fee was about \$100,000, the original work contract?

MR. KOGASAKA: \$169,000.

MR. HIRANAGA: \$169,000?

MR. KOGASAKA: \$169,652.

MR. HIRANAGA: So basically because of the change in scope of work, he's asking for 20 percent,

20 percent increase over the original bid?

MR. KOGASAKA: I'm sorry?

MR. HIRANAGA: Because of the change in scope of work, he's requesting 20 percent increase in his original bid?

MR. CRADDICK: That's correct. But keep in mind this involves a lot of surveying and stuff that wasn't involved in the original doing the wells.

MR. HIRANAGA: No concern specifically to this particular project, but at what point do you consider this to be a major change to go back out to bid? I don't know the answer to that question.

MR. KOGASAKA: I don't have a problem doing it that way if the Board so desires.

MR. HIRANAGA: Just a question that I pose.

CHAIR RICE: Mr. Starr.

MR. STARR: It seems to me the change in scope of work for which we're being charged \$33,000 is the elimination of one well. To my mind that means the fee should go down.

MR. CRADDICK: No, there's a lot of surveying work that you don't have on the well.

MR. STARR: Wouldn't that surveying work have been in the original scope?

MR. CRADDICK: No, because there's no pipeline.

MR. STARR: You mean the original scope didn't have the connection between the two, it just had the two wells and they were kept separate?

MR. CRADDICK: That's correct.

MR. STARR: I can buy that.

CHAIR RICE: If you're not happy with the proposal, we can go out for RFP, or we can accept it. Your choice.

MR. VICTORINO: My question is how long would this all take. With the urgency Jonathan pointed out, possibilities of failure and half of Hana not having water, do we have a lot of time to keep going out?

CHAIR RICE: This is design fees.

MR. STARR: You know at that site inspection, it was mentioned that it might be a good idea to bring in a spare pump for the Hamoa well. Because right now the lease time is I believe several months, whereas, if we had the pump on site, it would take from several months to days and weeks, so that might be something that we could do.

MS. PARSONS: Are you talking about adding it in?

MR. STARR: Yeah, but my question is are we looking at approving a project, or are we looking at approving a plan and should it be in next year's capital improvement or, you know, what would be the right way of -- what are we doing?

CHAIR RICE: I think we've identified a need, as Mr. Nakamura pointed out, in our other meeting about the other pipeline, and I think this is certainly an appropriate response. I guess the option would be to go out to RFP on it separately.

MR. NAKAMURA: Yeah, I think this is a necessary project. I think the approach is a good one, and I think we can deal with the issue of a backup pump and construction funds in the next budget, so I would approve to -- I would move to approve the request for additional design funds.

MR. VICTORINO: Second.

CHAIR RICE: It's been moved and seconded to approve the request. Mr. Hiranaga is absent. Any discussion?

MR. STARR: Let's go ahead.

CHAIR RICE: All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response).

CHAIR RICE: Motion is carried. Note for the record Mr. Hiranaga has walked out, not left the meeting, but excused himself. Okay.

Communication 02-12 Francesco Moretti. You're here. Mr. Moretti has prepared a letter, and I

believe it's in our packet Page 76. Mr. Moretti.

MR. MORETTI: My letter was in regard of this lot A subdivision in Maliko, above Maliko Gulch. And its based on the parcel that was presently divided into two lots from A&B during Haiku Makai subdivision. There was a deferral agreement for the lot that I purchased and is being subdivided now. And the deferral agreement doesn't apply to the situation, and I am going with a private water system to provide water for the lot. And the deferral agreement was considering all the improvement and designs to provide County water to the lots.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: My recommendation would be to refer this to committee because I believe the Board would be interested in knowing what the Health Department has to say about this project.

MR. STARR: Committee.

CHAIR RICE: Committee, okay. That sounds like a rules item to me. So I'm going to refer that to Rules Committee if there's no objection. Mr. Moretti, what we will do is put this on the agenda for the next rules meeting. You will be notified, and you can attend that meeting.

MR. MORETTI: Okay, thank you.

CHAIR RICE: Communication 02-13. Mr. Beasom, Paul Beasom. This has to do with I think this gentleman or this gentleman's wife was at our public hearing in Haiku. And there was a question about their name continuing on the upcountry meter list because of his request for subdivision lapsing I guess.

While we need to take up this request by Mr. Beasom, it brings up I think an important issue. There are a number of issues that relate to the list

that I think Mr. Craddick wisely should not be making a decision on. The Board should discuss the various situations that are occurring, and we ought to be making some decision about those different situations. I know, for example, having looked at one situation where a person is on the list three times, because they probably jumped on when they heard about it to start with, and then they got a subdivision request in. And then they thought about changing the request for the meter, number of meters or size of meter, so the list of 500 may not be 500 different individuals.

So I think we need to have -- my recommendation would be that we have a workshop or Committee of the Whole meeting where we sit down with just the list and look at the various situations and discuss them and try to come up with some consensus before we go to the public and say you're off the list or you're on the list. Mr. Starr.

MR. STARR: Yeah, I think a workshop is a good

idea, but I would like to suggest perhaps preliminary to that maybe you could appoint either one Board Member or maybe two Board Members could work -- could take -- could look at the list and at least get an understanding so that when we have the workshop we have some Board Members who are more intimately familiar and can make recommendations on it. Perhaps two people would be good. I wouldn't want to be one of them.

CHAIR RICE: What does everyone else think?

MS. PARSONS: I think that's a good idea.

CHAIR RICE: That's a hot potato.

MS. PARSONS: I don't want it either.

CHAIR RICE: Well, we're going to have to touch it because we're going to get through this upcountry meter list sometime. Mr. Craddick.

MR. CRADDICK: It may be -- I don't know where the auditor is in doing the review of the first 50, but I suspect shortly they would have a report on that first 50.

CHAIR RICE: And I suspect that I'm going to invite them to the meeting so they can be party to our discussion. So is that an idea you guys want to pursue, or you want to do it all together? Ginny.

MS. PARSONS: Could we ask the Department to supply us with the information to review ahead of time so we could take a look at it?

MR. CRADDICK: Well, we don't have the auditor's report. We might not be able to supply you with that.

CHAIR RICE: I think we can supply you with the list, but I think someone needs to sit down with you and go over it. I thought the workshop was going to

be a good idea.

MS. PARSONS: I think you're right. Somebody needs to take a look at it.

MR. STARR: Any volunteers?

CHAIR RICE: Kent.

MR. HIRANAGA: Is there enough detail on this list to have discussions, or would you be requesting each individual on the list to appear to present their positions?

CHAIR RICE: I don't want to do that. That could be a multiple day workshop. I think that there needs to be an identification of some issues that we need to decide. Yes, Ms. Parsons.

MS. PARSONS: Am I correct that the County is the one that knows when these applications have

lapsed, it's not necessarily the Department?

MR. CRADDICK: You're talking about like this particular case?

MS. PARSONS: The subdivision issue.

MR. CRADDICK: How do we get notified of those, Herb?

MR. CHANG: The Department of Public Works sends us the letter, sends the Department of Water Supply a letter notifying them the subdivision has been notified prior.

MS. PARSONS: Do they send the letter also to the applicant.

MR. CHANG: Usually the surveyor or engineer.

MS. PARSONS: Assuming that the -- assuming that the applicant gets a letter that the subdivision has lapsed, maybe, and then it's the County's Department

to do this, maybe we should be included in that letter that their application has lapsed. And those are things we need to pursue and maybe you can point people to look into that.

CHAIR RICE: I would like Mr. Victorino and Mr. Hashimoto to kind of head up this for us. Mr. Victorino, welcome.

MR. VICTORINO: I know I don't say much, but that doesn't mean you can call my name anytime now. Let the record show that part, too.

MR. HASHIMOTO: How soon?

MR. VICTORINO: Yeah, that's the question. How soon?

CHAIR RICE: Here is what I think we should do. Believe me, I understand it's complicated, and I think the suggestion is that if you spend some time maybe with David to start with to understand the different

designations of the people on the list because they're like -- they're all over and there are people with multiple names on there. Why are they on for multiple names and what's the different codes mean, so you can help the rest of us when we have that workshop. So you guys work out your time frame with David. Thank you, gentlemen. So appointed. So ordered.

MR. NAKAMURA: That's what happens when you sit together.

MR. VICTORINO: Don't worry, Howard, I'll get even yet, you and Ginny.

CHAIR RICE: Mr. Craddick, could we write a letter to Mr. Beasom and saying we discussed it and we'll be dealing with it as a Committee of the Whole and not to get upset at this point.

Okay, we're moving on to old business. Ron, thank you for patiently waiting. We had discussed this in committee at another meeting, a request to appropriate funds for the study of water resources on

Maui. We asked for additional information. I believe that was distributed to everyone. And at this time, Ron, do you want make a comment or anything? Do you want to field questions after people have reviewed the information?

MR. STURTZ: This is our fourth time before you. Hopefully by now, except for the new members, who may not be aware of the context of this, maybe I can give you a quick overview of the project. Maui Tomorrow recognized last year that getting accurate information to the Board and to the community about our water resources availability and what it was using was of crucial importance. And so we sought funding and put together a project which started November of last year to try and identify -- not to try -- to identify the resources and to make this information available in a clear and simple presentable form.

At one of our earlier meetings, we passed out our efforts -- its efforts, Ka Waiola project's efforts as of January, and I don't believe you received these. The other Board Members have received

this in the past. It's just to show what we had done as of January. And it's an evolving project that continues every few days as information becomes available. And just as an example of that, on Tuesday before the Committee of the Whole, we passed out the Xerox handout to you. I want to pass out an updated version to the entire Board, which has added onto it, in addition to colors, has added on a scale. This is just another example of what this project is doing right now.

This is a two-year project, and we submitted a budget to you. Actually, Lucienne de Naie, who I apologize for not being here, she is on the mainland on a project. After discussions, Mr. Kushi drafted a contract we think would be acceptable to the Board and provides the kind of protection Mr. Craddick was looking for in terms of security and oversight, and so I think this is just probably a culmination -- this meeting is a culmination of the prior meetings and discussions we've had.

And the request is for a grant for \$30,000. And

it's designated specifically in the project where it would go. And it's part of other grants, which have been presented. Other grants have been applied for. And this project is very timely in view of Mr. Friedman's comments in the need for diligence of getting clear answers, so as these things develop, everybody has the same information to them, and so that's the context of the request today.

CHAIR RICE: Any questions, comments from the Board Members?

MS. PARSONS: Are we talking about the USGS study that we want to implement and that's coming up this next month, is that right, Jonathan?

MR. STARR: Yeah, I assume we're going to call --

CHAIR RICE: Yeah, we're going to have a presentation by them of modeling, and then based on what we see, the Board can then make a decision as to how it wants to proceed. I think the timeliness of

that is in the budget, preparing the budget.

MS. PARSONS: Maybe this is something we would like to defer until we have that presentation, and maybe there's some way Maui Tomorrow can work with the USGS over a period of years even to help with that study.

MR. STURTZ: You would be happy to know we have been working with the USGS and they have been providing information to us, and our project has been providing information to them, so all the different players are coming up together. Their mathematical model depends upon accurate information. So the more information we can provide to them to make an accurate mathematical model is provided to them, so it's a constant interchange going on now, which didn't exist before.

Each department had its own resource base and weren't communicating, so we've been bringing them together talking together through us, gathering information from all sources and upscaling the overall bar, so to speak, so I think they're complementary.

MS. PARSONS: I think it could be very complementary. My biggest concern is whatever we're here to present in the public's best interest has to have a decent credibility level, and working together with the USGS I think would have a better appearance than one by itself and another one on top of that.

CHAIR RICE: Mr. Starr.

MR. STARR: I feel that they're generating information which we really need and which USGS will really need, and this is mainly in relation to users beyond the Board of Water Supply. You know, this is actually, you know, our Board usage. But I know that, for example, they've identified almost a million gallons of pumping inside of Iao Aquifer that's not related to the Board, and this is information that was there to -- never coordinated. They've been working with the Water Commission to generate that data, and I think what the work that they would be doing now will

speed up and make what the USGS does a lot easier, plus it will allow us to be able to manage water, you know, on our own in our own purview.

But I know, from what I understand, they're being careful about what information they present. I know they've not presented the other pumping sources in Iao until they can get it in a form that is absolutely, you know, that's proof of every well and pumping and so that it's verifiable. So I think it's a good project. Probably the way that they're doing it is pretty cost efficient I think of the government, and whether it's us or USGS or the Water Commission does it, you take the kind of numbers and multiply them times five and ten.

CHAIR RICE: Mr. Victorino.

MR. VICTORINO: I think I have to echo Mr. Starr's sentiment, that I agree that we need a form or method of obtaining water usage not only from within, but the outside sources. I think for a long

time there have been a lot of speculation, innuendos about how outside sources use their water and how much is being used. And until we get accurate information, we sit here and a lot of times doing the job by speculation more than facts. And I think it's time we get facts on the table so everybody understands what needs to be done. We can continue flip-flopping every year and going this direction or that direction, but like Jonathan said, until we get one clear picture of what we have and what we need and what we want to be, we can continue on. So if you can assist us in that area along with the other entities, I think we all win. It's a win-win. The biggest winner is the public and that's what we're here for. And I think if we continue focusing on the public and leave all the rest of the stuff aside, whether it's Maui Tomorrow or Maui today or Maui yesterday, it don't make a difference to me. Information is important, especially if it's accurate.

MS. PARSONS: Since we're going to have that meeting coming up, let's put this on the table. Let's

see what the USGS has to say, and let's also make sure they're comfortable working with another entity.

Let's get that out, and as long as they are, I have no problem with it. I think if we're going to invest as much money as we're talking about with the USGS and we are going to go in that direction, that we need to have their input as well in this project.

CHAIR RICE: Mr. Starr.

MR. STARR: And we do have a committee recommendation, and, you know, that's what's on the table.

MS. PARSONS: But that was before the USGS issue, too. And I think when you brought that up, that kind of shifted our whole program. I have no problem with them working with the USGS. I just think that before we allot dollars, let's find out how they're going to work with them and how the USGS would like to see them work with them.

And, you know, we're going to have -- we all know we're going to have questions from A&B, for example, on what they're pumping, and I don't know who is going to get those answers. That's one of the things we've got to discuss at the next meeting.

MR. STURTZ: Would Terry Reim perhaps help us in the context of the work we've been doing with the USGS in terms of research back and forth information?

MR. REIM: We have visited USGS offices two or three times in Honolulu and had meetings with them, and some of our information does come from the USGS. I tend to have say weekly e-mail communication with Gordon Tribble at the hydrology office in Honolulu, so we have a good working with relationship with them already.

MS. PARSONS: If they have a good relationship with them, let's just table it for one month and look at it and have USGS talk to us because we're talking

\$600,000, maybe a million dollars with USGS. And this is only 30,000. Let's see what they want to do.

MR. STARR: Mr. Chair, a motion to make, which is I would like to move that we approve this subject to receipt of a letter from USGS stating that this information will be useful and will tie in with what modeling they may be doing for us in the future.

MS. PARSONS: Jonathan, I think that leaves it wide open.

CHAIR RICE: There's a motion on the floor.

MR. VICTORINO: There's no second.

CHAIR RICE: There's no second.

MR. VICTORINO: Mr. Chair, something has been pointed out to me, and we need some clarification I guess maybe from the attorney there. It says here, "Whereas, the County Board of Water Supply,

hereinafter called BWS, has reviewed and approved the grantee's application for a grant of County funds in furtherance of this goal."

First of all, they're not County funds, so that would make this contract null and void in that sense, if I'm correct.

CHAIR RICE: The final review, there are some points Mr. Kushi has on the contract. Any approval would be subject to his final review.

MR. VICTORINO: Yeah, that's what I'm trying to say, if we're going to approve something, make sure whatever.

MR. STARR: It goes to corp counsel.

CHAIR RICE: Kent.

MR. HIRANAGA: I guess my concern is what assurance do we have that this entity will provide

complete and accurate information?

MR. STURTZ: Let me briefly explain the way in which this project is functioning within Maui Tomorrow Board. It's a project of the Maui Tomorrow Board. It's separately budgeted and through one of our Board Members, our treasurer, who served as public accountant is accounting for all the funding and proper allocation.

We have on our board the ex-chair of the Ethics Committee. We have on our board ex-corporation counsel. We have on our board members of Na Kapuna O Maui, developers, conservationists. There's a broad spectrum of quality human beings whose sole unifying influence, if I may say that, is the benefit of the public, the benefit of Maui and the preservation of its resources and appropriation of resources, land use plan and design. So the recognition is that the common good between this process and everyone's intention is to work toward the common good.

MS. PARSONS: Mr. Sturtz, with all due respect, we know you are a special interest group. You've already positioned yourselves as that with our County and on our planning committees and with the Water Board. So you have a skewed view of things and that doesn't mean it's bad or it doesn't mean it's good, but it is skewed.

And my biggest fear in this is the way that this is written and what we've talked about doing with the USGS, I want to -- you're going to give us a report. Now, if the USGS comes up with a different report after we spend \$600,000 and your report is on the table, what's the consequences of that in the future? And we bring a lot of credibility to you. So if we're going to work with you, then I think we work with you in the context of what we've been proposing on a county-wide basis. And I don't have any problem with you working for years with them. I mean if it's \$30,000 that you're looking for, maybe it's \$10,000 a year for the next three years, but and you help to provide them the money.

But if they're going to be the lead in this, I think we have to hear from them first before we put you on a contract basis. We have to see what they want and how they're going to -- and if we're even going to go with them, and if we're not, maybe this is the alternative.

CHAIR RICE: Okay. Board Members, I'm hearing that there seems to be a consensus to defer this until our next meeting.

MR. VICTORINO: So move.

CHAIR RICE: Adolph.

MR. HELM: Just a comment. USGS is a government entity, and I guess we assume that all or most government entities have their facts correct. Not necessarily. My experience in the private sector, sometimes the private sector are the leading people in technology. I for one would like to see two

perspectives, two ways of looking at how our water resources are, you know, in regards to Maui. So I agree that maybe at this point the Board needs to look at what the USGS and how Maui Tomorrow can work together as a team. But I, for one, would like to see someone outside of a government entity to be able to get those kinds of information out to the public. That's just my opinion.

MR. STURTZ: I think we're getting a bit confused between resource information and policy of use of those resources and where there may be differences about policy, which are the political decisions and economic decisions. The raw data is not a political issue. It's raw data that should be used by everyone to interpret the way they wish.

So this project is dedicated toward raw data, not an interpretation of what should be done with it. Maui Tomorrow may take a position, which way or may not be contrary to the Board on what to do with it, but right now we're just trying to get the raw data.

And that's hopefully the objective, basic information that everyone agrees on.

CHAIR RICE: Mr. Starr.

MR. STARR: I'll be moving to defer the issue, but before I do, I just want to make one comment which, you know, the people working on this project have gone repeatedly to the Water Commission and the Water Commission has virtually no data on water pumping outside of the Board.

And they've never requested it, and due to the efforts of the Ka Waiola project people repeatedly going over there and asking for the data for the very first time ever, the Water Commission actually put out a request to all the water users to at least voluntarily submit that data, so that was a first. And that in itself is a major accomplishment to get the Water Commission which has up until now refrained from asking the question to send out letters asking for pumping data, so to me, that's a positive step. But with that -- having said that, I would like to

move to defer to the next meeting.

MS. PARSONS: I'll second.

CHAIR RICE: Moved and seconded. Discussion?

MR. HELM: One more point. The commission on resource management, you know, as far as resource availability, you know, are limited. You know, they, for one, has admitted that part of the problem to them having the data available for the public is because they're limited to resources, and that's just to echo what Jonathan was saying.

CHAIR RICE: All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response).

CHAIR RICE: Motion is carried. Deferred. The chair recognizes Mr. Victorino is excused.

Let's take a quick break.

(Recess taken.)

CHAIR RICE: Mr. Nakamura, Finance Committee.

MR. NAKAMURA: Thank you, Mr. Chairman. The first item is Director's 02-11 requesting authorization to reimburse the Department of Finance for the services of Herbert Chock for the Mahinahina arbitration settlement.

The deputy corporation counsel explained to the members of the Finance Committee that the request is in conjunction with services provided by Mr. Chock. There was an arbitration to resolve a dispute with the contractor on the Mahinahina water treatment project. The arbitration proceedings partially as a result of

Mr. Chock's assistance did result in a favorable outcome to the Board.

However, there was a breakdown in communication and coordination between various departments, and Mr. Chock was originally -- the services of Mr. Chock were originally authorized for \$10,000 I believe. The additional -- the services that Mr. Chock did actually provide required the expenditure of additional funds, which were already paid by the Department of Finance in accordance with procedures that they had previously worked out with corporation counsel.

And so the request is basically for the Board to authorize reimbursement of \$70,171.19 to the Department of Finance for Mr. Chock's services. The director had recommended approval as did the deputy corporation counsel. Funds are available in the Department's professional services account, and although the committee would request that a system be put in place to better communicate between the involved departments to avoid similar situations, nevertheless, the committee does recommend approval of

the request for funding, and I would so move.

MR. HASHIMOTO: Second.

CHAIR RICE: It's been moved and seconded to
approve the request for funding. Any discussion?

MS. PARSONS: Next time we'll get a breakdown.

CHAIR RICE: In advance.

MS. PARSONS: Yes.

CHAIR RICE: All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response.)

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Okay, Mr. Chairman, the next item has to do with a settlement offer on a claim that was filed against the Department in conjunction with the Department's paving of Kahakapao Road, which provides access to the Piiholo Reservoir. So it's a complicated situation in that the Kahakapao Road does not follow the legal right-of-way.

And when the Department paved Kahakapao Road, it paved the roadway in its actual location on the ground, which was again outside of the right-of-way in certain areas and does, in fact, encroach on private property. However, the committee did not feel that the settlement offer was appropriate and requests and recommends that corporation counsel's office continue discussions with appropriate property owners to resolve this particular issue.

And I'm not sure that a motion is necessary, but I guess, for the record, I would move that the Board request that corporation counsel's office continue

discussion with property owners to resolve this particular issue.

MR. HASHIMOTO: Second.

CHAIR RICE: Okay. It's been moved and seconded that corp counsel continue with the negotiations. This issue will though remain in the Finance Committee for future reporting. Any comments? All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response.)

CHAIR RICE: Motion is carried.

MR. NAKAMURA: Next item, Mr. Chairman, is discussion/possible action regarding proposal for

additional office space for the Department. This is again a fairly complex issue. For some reason, we had a number of complex issues at the last Finance Committee meeting.

The Board will recall that there has been discussions in the past about the need to relocate from the existing fifth floor of the County building for a variety of reasons. Number one is -- number one being the lack of space, number two being that the County administration would like to take that space over for their own purposes. A space study was previously done by an architectural consultant to try to establish the long-range needs of the Department for office space.

And based upon that study, a request for proposal was submitted asking for potential landlords, if you will, or I suppose even sale to meet the Department's need for office space. The request for proposal did include a provision that the request would be kept confidential if requested by the proposer. There was one proposal received on a timely basis, and that proposal did, in fact, have a request

that it be kept confidential.

There were a number of questions raised in the committee regarding the procedures that had been followed for soliciting the proposals and the appropriateness of keeping the proposals confidential since ultimately we would be dealing with public funds. So the committee requested that the staff inquire, and let me also say this, that those -- the proposal was not open because the condition was that the proposal could not be open unless the confidentiality agreement was executed.

We -- I personally, as chairman of the committee, had a reluctance to sign a confidentiality agreement on the part of the Board without authorization of the Board to begin with. But, in any event, there were a number of other questions. So the committee requested, first of all, that the staff inquire as to whether the parties submitting the proposal would be willing to waive confidentiality, and my understanding is that the answer to that is in the negative. The committee further asked that

corporation counsel review the request for proposals and offer his thoughts on the whole issue of confidentiality.

And I guess we would have to ask Mr. Kushi to respond. The committee basically feels that the Board needs to make a determination as to whether or not it wishes to proceed to review the one proposal which would require the execution of the confidentiality agreement. And, as I said, I think that's really an issue that needs to be determined by the full Board rather than the committee. So perhaps Mr. Kushi can give his thoughts on it, and then Mr. Chairman can decide whether we want to proceed.

CHAIR RICE: He looks like he's getting prepared to give us a colloquy, renderings.

MR. KUSHI: Mr. Chairman, Members of the Board, if I may respond, I am not totally prepared for this. There was a request from the Department, a formal request to look at their procedures. And unfortunately, I just got a copy of the bid proposal

itself. My concerns and one of my office's concerns are the following: that the request for confidentiality is so broad that you can't -- well, put it this way. The bid procedures and the procurement law, which is a State law according to all agencies, have provisions that bidders can request confidentiality for proprietary information purposes.

However, in this case, my understanding of the procedure is that the Department in its request for proposals made -- in essence, conditioned the proposals saying that all bids would be confidential. And our office's concern is that pursuant to Chapter 92, which is the Information, Freedom of Information Hawai'i State Law, without a case-by-case determination as to what is indeed proprietary, we can't really say yes or no on a blanket cite.

And what had happened in the Finance Committee was that the request was that before you even open the package to see to make a determination, you had to sign off on this proposal. And in that instance, I advised the members not to sign. I'm still not

completely sure as to what policies and procedures the Department on behalf of the Board used, whether that indeed is correct, and it may be determined later on that I will advise you to sign it. At this point in time, I'm not ready to do it. My understanding is that the proposal that was submitted -- David, correct me if I'm wrong -- is that we have a time extension. We have a date certain to respond.

MR. CRADDICK: I believe in the request for proposals, we said that their proposals had to be valid for 150 days from the time of the bid posting, which was a couple of weeks ago now.

MR. KUSHI: So I think we're still within that time frame. I wouldn't want the Board just to disregard the proposal, but at this point in time, I'm not prepared to tell you to sign off on any confidentiality request, because I don't know what it is. To even look at it, I've got to sign off on this confidentiality document.

CHAIR RICE: Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, I guess we're in a catch 22 in that corp counsel has identified, which is that he would like to be able to determine what specifically needs to be, you know, confidential and what perhaps needs to be made public, and he can't do that without looking at the proposal and he can't look at the proposal without signing the confidentiality clause.

I wonder if it would be possible for the chair and corp counsel to be given authorization by the proposer to look at it on a -- I guess on a confidential basis so at least they can get us off square one and move this forward. Would that be an appropriate process?

CHAIR RICE: It would seem to me that in that we're going down to one proposal, and this is a rather important project --

MR. CRADDICK: Two.

CHAIR RICE: We have two?

MR. NAKAMURA: Apparently one was submitted
after the deadline, and again, we would have to --

CHAIR RICE: So you didn't have that for your
committee meeting?

MR. NAKAMURA: No.

MR. CRADDICK: No, we did. We had it there.

MR. NAKAMURA: But it was not presented.

MR. CRADDICK: I gave both of them.

MR. STARR: I believe it was submitted five
minutes after the deadline or something, and we did

have it in front of us.

CHAIR RICE: Kent.

MR. HIRANAGA: I was never given an opportunity to review the second proposal. It may have been at the meeting, but it was never distributed.

MR. CRADDICK: We didn't distribute either one of them.

MR. HIRANAGA: So basically we didn't see them.

MR. CRADDICK: Yeah, you didn't see them, that's correct.

CHAIR RICE: Mr. Starr.

MR. STARR: I think Mr. Nakamura's proposal is good. Perhaps, you know, there's a way that counsel and the Chair or the counsel and someone appointed who could work with a representative to, you know, give their confidentiality and then look at it and try to

see if there's a way to, you know, if it's relevant to the Board to satisfy the proposer so that we could look at it.

What I would want to be real clear about though before the Board as a whole, or at least myself as far as confidentiality, is at what point it becomes open to the public because, you know, we can't -- to a certain extent, we can't exclude the public from the process. You know, that's neither legal nor fair, so it becomes a sticky point of how, you know, at what point it goes public and so the public can comment on it or have some input because I think they have to.

MR. KUSHI: From my understanding of public review is the procurement procedures provide or allow if it's deemed confidential/proprietary, the bid can be considered. And after an award is made, then all these documents become public records subject to deletion or extraction of confidentially determined material. But in this case, the whole bid is -- they want the whole bid to be confidential, so it's such a

blanket request I have hesitations.

CHAIR RICE: Ginny.

MS. PARSONS: Could we ask the agent, the representative waive the confidentiality for counsel only, and is it possible that the representative would recognize -- could he be recognized as an agent indirectly or directly since we have asked for a bid, and that if he waives confidentiality for counsel, he's still -- with a legal confidentiality clause, like client.

CHAIR RICE: Mr. Kushi.

MR. KUSHI: Well, you know, even that, I'm kind of concerned about because let's say you tell me to go and look at something and I agree, and then there's a fight between the -- this business and another business and I get subpoenaed in court. You know, then where is my allegiance.

CHAIR RICE: They were asked to waive confidentiality, and I believe the response was no because the client they represent is requesting it. That's I believe the problem.

MR. STARR: Is the agent representing the client, is there any confidentiality about them? Can they participate in the discussion?

MR. KUSHI: I'm not sure what their authority is.

CHAIR RICE: Yes, Kent.

MR. KUSHI: He's a very honorable man, but I'm not sure how far he can go.

MR. HIRANAGA: A clarification on what Mr. Kushi said. Upon the awarding of the contract, do all the proposals become public, or just the one that's selected?

MR. KUSHI: All.

MR. HIRANAGA: So the public can compare how the decision was made?

MR. KUSHI: Subject to conditions or taken out of proprietary information, and, of course, if the request is the one that would be awarded, it's a public document.

MS. PARSONS: Maybe we should consider building our own facility. I mean seriously, with the money we're allotting for the move, maybe we ought to just take that into consideration and there are properties out there that might even get donated to us.

CHAIR RICE: The list of donors on the front door. Mike.

MR. QUINN: Aside from the legal issue, which is corp counsel's prerogative here, I think one of the

issues is this may or may not be a very good proposal for the Board.

CHAIR RICE: Right, we don't know.

MR. QUINN: If it's legally okay and we accept the confidentiality agreement, somebody ought to be able to look at it in that perspective, too, I think. We don't know, but it may be the greatest thing you've ever seen. I don't know.

CHAIR RICE: Why don't we try -- let me see if at this point I can work with the submitter to find out if we can get at least enough information, and we'll let Mr. Kushi finish his legal research and then I'll bring them back. Kent.

MR. HIRANAGA: Could we also ask corp counsel to make a determination of the other proposal I guess that was submitted a few minutes late to also be considered?

CHAIR RICE: Great.

MR. STARR: I move to defer the issue.

CHAIR RICE: Is there a second?

MR. NAKAMURA: Second.

CHAIR RICE: Moved and seconded to defer the
issue subject to the feeling from counsel and the
Chair's review with the submitter. All in favor, say
"aye."

VOICES: Aye.

CHAIR RICE: Opposed, "nay."

(No response.)

CHAIR RICE: Motion is carried.

MR. NAKAMURA: The last time, Mr. Chairman, we discussed the status of the Ulupalakua water line project. There has been quite a bit of interest and concern over the problems with the system. The Board had in the past appropriated money for the project and had requested that the Department proceed with an engineering study to identify the long-term alternatives for approval by the Board.

Because of the nature of the current situation, the committee did express a desire that the project be expedited. The committee was advised that the process of negotiating the project's scope and the actual implementation would be several months, I believe it was four to six months, and the committee was concerned that, you know, there was a need for a -- for moving ahead a little quicker. And so the staff was asked to look at possible alternatives to present to the Board, which might provide at least interim relief or perhaps an alternative that could be implemented in a shorter period of time. So I guess

we would have to see if the staff is prepared to present any potential alternatives to expediting the project.

CHAIR RICE: Something was handed out today.

MR. CRADDICK: Two things, that and this report.

CHAIR RICE: Okay. So I guess given that we've gotten that, we should -- again, that's information we need to discuss in committee, huh? I think members need to take the time to read this to understand it. There's nothing they can do at this point, is there?

MR. NAKAMURA: We can keep it in committee, Mr. Chairman. I think one issue that needs to be discussed perhaps at the committee is, you know, is this improvement going to serve basically the existing users, is it going to serve existing users plus users on the list, or is it redesigned to serve some reasonable expansion of the system? And that seems to

be where we have perhaps some differences, and that's going to impact what the scope is.

CHAIR RICE: Right, but I think we need to -- that's a very important policy decision we need to make before we begin to decide. Mr. Starr.

MR. STARR: Just to state my own feelings on this, I really believe that we should be looking to provide adequate fire flow for existing users and for people who have been waiting for meters. You know, maybe a little bit of new, you know, new buildout but we should be cautious if we're going to do a program that's going to provide for a massive, a massive buildout because having been, you know, we're kind of exposed and we're not following anything in a community plan. And I know that was what was discussed in committee, and I think we're on the right track.

CHAIR RICE: Okay. Ginny.

MS. PARSONS: I second what Jonathan is saying, and also maybe we need to clarify what our goals are. Are we looking 30 years out, 50 years out, 100 years out, and maybe that's where we make our decision.

CHAIR RICE: So it's in committee, and that's where it will remain. Thank you, Mr. Nakamura.

Mr. Starr.

MR. STARR: Yeah, I just have one other suggestion for the committee meeting is we seem to have a mixed, kind of a mixed read from the Ulupalakua Ranch people earlier today in the meeting. And it might be good to get a comment from them whether they would be willing to proceed on the basis that we've been talking about or whether they -- because they said if it's six-inch, they don't want to -- they don't want to do it.

Well, I think we should get some clarification from them because that seems to be the way we're

heading, you know, 12-8-6 scenario. And if they don't want to do it and would rather go through a process, we should know, and if they would prefer to go with that, we should know.

CHAIR RICE: Yeah, the one thing in their defense, I thought I detected the fact that they hadn't seen the 12-8-6 plan. Didn't Tony say that? That he was reacting to all 6 or all 12 or all 8. I kind of got that feeling, so maybe we need to share this with him.

MR. CRADDICK: He has a copy of it.

CHAIR RICE: He does. I think that's a good point.

MS. PARSONS: Do you have any input on what you think his feelings are?

MR. CRADDICK: I don't believe there would be any problem with going with the flows that are shown

on Page 38 of the handout. Those flows, their maximum flow is 1,000 gallons a minute up to the Ulupalakua lateral, and then going on out to Kanaio, it's 600 gallons a minute and then going down to the church, there's only 55 gallons a minute.

But with the number of services there, that's still more than adequate for the people that we know are there and certainly would take care of any lots that are there. It wouldn't take care of many subdivisions. And those people, if they were doing that, would have to put in the storage requirements that I believe Herb has identified to really make a good system. He's got a number of storage suggestions on Page 33 that probably would also need to be done at some point that aren't part of this proposal right now. This proposal is just the water line.

CHAIR RICE: Okay, still in committee. Moving off Finance Committee CIP.

MR. STARR: Mr. Chair.

CHAIR RICE: Yeah.

MR. STARR: Just in the other projects area,
what's happening with the EIS, the SEIS?

MR. CRADDICK: We've got a draft of it. We're
trying to get the responses to the individual people
that responded to the preparation notice. We're going
to be holding a scoping meeting sometime in the next
30 days, and then once that scoping meeting is
completed, then if there are anymore comments, those
would be addressed and that would be finalized.

MR. STARR: If we have a draft, how come the
Board Members haven't received that? I would like to
receive one right away, and I think the other Board
Members each have the courtesy to distribute that.

CHAIR RICE: Okay. Moving on, Committee of the
Whole. We met this week and on the issue of Central
Maui source availability and the conclusion of the

Committee of the Whole that meeting was to hold another informational meeting, which is to be scheduled along with the consultant Mr. Mink and the USGS people, so no decisions or conclusions have been made subject to another meeting.

MR. CRADDICK: Peter, could I ask a question here of corp counsel? If a draft that is not available to the public is passed out to all the Board Members, does it then make it a public document? Because the draft is not in a form that would be ready to go to the general public, I don't believe so anyways.

MR. KUSHI: Mr. Chair, I'm not too certain what he said. Is the draft part of the litigation?

MR. CRADDICK: We have a draft from the consultant, and draft documents are not considered public documents until they're finalized.

MR. KUSHI: Is it part of the lawsuit, part of the lawsuit?

MR. CRADDICK: Yeah, the whole process we're doing is part of the lawsuit. But we've been submitted a draft supplement EIS by the consultant. If we pass that out to all the Board Members, does that then make it a public document that anybody coming in from the public could ask for, and would Board Members if given this document, would they have to hold it confidential until it's finalized? It would be good. I would like comments from various Board Members, but on the same token, I don't want it to be a public document because we ourself have some concerns over what has been presented to us.

MR. KUSHI: Mr. Chair, anything that's passed out that's not in executive session is a public document.

MR. CRADDICK: So then I think we would have some reservations.

MR. KUSHI: Unless you call for executive session.

CHAIR RICE: Mr. Starr.

MR. STARR: As I understand it, any -- a document of this kind can be obtained under Freedom of Information by the public. I certainly have a problem if, you know, if the Department has received a draft document and is being asked to apply and the Board Members are not allowed to see it, I will definitely raise the roof on this issue where the Department is going to comment, but we're not allowed to see it. I think that is completely against the intent of all of the Charter and everything else.

CHAIR RICE: Mr. Kushi, if the documentation that we're preparing relating to lawsuits these boards review, would it not be incumbent on the Board Members to keep that information confidential?

MR. KUSHI: Mr. Chair, if it's part of the

litigation and if it's part of the ongoing litigation that would eventually end up in court, but it's an attorney/client privileged document, work product.

MR. STARR: It's an EIS.

MR. KUSHI: Is it part of the lawsuit?

MR. STARR: It's an EIS. An EIS is a public document.

MR. KUSHI: If it's ordered by the Circuit Court to do an EIS and that would satisfy the litigation, it's work product. And again, I'm not sure who are the -- who is the client regarding this consultant, is it the Board, or is it the Director? Who is the client?

MS. PARSONS: The Department.

MR. STARR: No, the Board.

MS. PARSONS: That's all the same, isn't it?

MR. CRADDICK: I believe --

MR. KUSHI: We're the defendants in the lawsuit.

MR. CRADDICK: I believe it is signed by me on behalf of the Board.

CHAIR RICE: Well, that's -- let's make something clear. There is no Department separate from the Board. There is only one Board of Water Supply County of Maui. It has a board and a department, that's it. There's no two different entities.

MR. KUSHI: Mr. Chairman, just as a final comment, not to belabor this point. I'm not going to argue with you, but if the Board feels sensitive about information, request an executive session and vote on it. I would then advise you whether it's proper or not. Otherwise, anything produced in a regular board

meeting, committee meeting is public information.

You're right, anybody can request by Freedom of Information Act documents. We can respond and tell them no. They can appeal it to the Office of Information Practices.

CHAIR RICE: But here is what we're trying to do. We want Board Members to comment.

MS. PARSONS: But what he's saying is call an executive session. You can review it in executive session, and it doesn't go public.

MR. KUSHI: If it's within your authority.

MS. PARSONS: Right.

MR. STARR: I have another question. This draft EIS, is this being sent out to those who made comments before for their -- who was getting comments of the draft or copies of the draft for comments?

MR. CRADDICK: The staff, and I gave one copy to Peter, which he looked at, and I don't know if he made any comments on it or not. Jonathan, let's put it this way. I don't feel -- it would be very good to get comments from all the Board Members, but it is a draft document. And under the OIC, draft documents can be refused to be given out. And when we ourselves have concerns over the document, I -- it's just not good to put it out there when that's not going to be the final work product.

MR. STARR: I have a real problem with this, and I'm glad to see the Maui News is here because I hope they're taking note that there's an EIS being prepared by the Board, but the Board Members are not being allowed to see it.

MS. PARSONS: We can see it in executive session, Jonathan.

MR. CRADDICK: That's not the case.

MR. STARR: I'm requesting a copy of it, and I'm being told I can't get it.

MS. PARSONS: No, you're not. Mr. Kushi just said if we call an executive session, you can review it.

MR. STARR: We can't call an executive session.

MS. PARSONS: Not today, but we can put it on the agenda for next time.

MR. STARR: My comments stand. I would like to see it today.

MS. PARSONS: Well, they don't have it today anyway. Would somebody like to make a motion to entertain reviewing it in executive session in the next Committee of the Whole?

MR. KUSHI: It's not on the agenda. Put it on the agenda.

MS. PARSONS: Put it on the agenda. To be put on the agenda.

MR. STARR: I object to this. I think that we're on the wrong track here. We're preparing a public document, and yet it's being done in a such a way to keep not only the public but the Board Members in the dark. We're off on the wrong foot again on this East Maui proposal, which is the most important place for us to try to work together and to get the community behind us. But yet we're operating in the old back room in-the-dark fashion about it, and it's going to put us way behind the eightball when we try to get public support.

CHAIR RICE: Ginny.

MS. PARSONS: When you're in the middle of a lawsuit though, Jonathan, that does change things around, so you have to take that into consideration, and it's not like it's just a regular issue. This is

an issue, which, one, it has to protect not only the Board, the Department, the employees and everyone with it, so it's not just an issue.

And it's -- there's nothing wrong with going into executive session on the next agenda and discussing it.

MR. STARR: Yes, there is.

MS. PARSONS: Why?

MR. STARR: And that's not the thing. We're not trying to protect our asses. We're not trying to protect the Board and protect the Department. We're trying to get a consensus in the community to this EIS so we can develop east Maui water, and you don't get a consensus in an executive session.

CHAIR RICE: Hold on here. Let's break this down. Number one, we want -- let's figure out what we want to do. We want to get Board Members' input on

the draft. It's not an EIS here.

MR. CRADDICK: That's correct.

CHAIR RICE: That's number one. I'm not sure, and I wouldn't speak to whether this EIS is a function or required by the lawsuit, because I don't know that for a fact at this point.

MR. CRADDICK: It is. It is.

MR. STARR: It's required by the basic law.

CHAIR RICE: Yeah, I know that, but the supplemental EIS was driven by the lawsuit.

MR. STARR: No, it was driven by the fact that the EIS was terrible and failed.

CHAIR RICE: In a normal situation when we're preparing an EIS for the public, what would we do? We

would distribute the EIS to the Board Members for comments?

MR. CRADDICK: No.

CHAIR RICE: We wouldn't?

MR. CRADDICK: No.

MR. NAKAMURA: I think perhaps we're getting caught up in semantics and creating an impression that's not there. If you look at the EIS process, at a certain point, the draft, and somebody can correct me if I'm wrong, but the draft EIS is submitted to the public for comments. Comments are received. It goes back to the originator, and they take those comments into consideration, and, you know, produce a final EIS, if you will.

What we're talking about now is the product prior to the preparation of the draft EIS, which under the law is submitted to the public and agencies for

comments. And I don't think it's unusual for a consultant to submit their first or their preliminary draft, if you will, to whoever is commissioning that product for their comments to look for obvious errors or what have you, and that's the stage that I think we're in now. I agree with, you know, with Jonathan that it may be helpful for the Board Members to look at this work product or whatever you want to call it to, you know, provide some input if they see things that are obviously incorrect or obviously seem not to be appropriate, and I think that's -- we just need to figure a mechanism to, you know, to do that.

CHAIR RICE: Thank you, Howard. So in that this document is public, but I guess I don't understand the problem. If it ultimately is designed to be a public document, I don't see why we shouldn't distribute it to the Board Members, get their comments and send it back.

MR. CRADDICK: Peter, what Ed is saying is just

the act of passing it out to the Board Members makes it a public document. It's not in a form where we even agree with what the consultant is saying yet, so it's not a final work product.

CHAIR RICE: So then it's not a final work product.

MR. CRADDICK: And I would like -- you know, the process from here, once we can address, once they can address even the staff's comments, actually, we're going to have a scoping meeting, which they have to give a presentation to the community on their findings and what have you. After that scoping meeting, if there are any additional comments on what they are doing, what their findings are, those get incorporated into a final document. That final document is posted, and at that point, everybody in the public sees it. They have their chance to make their comments on it.

CHAIR RICE: Well, if I understand what you just said, if the process is you gather the staff comments

and give it back to them, and now you're going to schedule a public meeting, then give it to the Board Members. If someone wants to come and get an incomplete that makes no sense, knowing that the process is scoping is coming up and that's not even a final document -- if you have a scoping meeting, someone is going to hand out a document at that meeting, are they not?

MR. CRADDICK: No, no, they're not. It wouldn't be passed out.

CHAIR RICE: I guess I'm not seeing what the -- this whole thing is geared toward a public meeting as Howard pointed out. And even before it's done, you're going to have a public meeting. Why not get the Board Members' input before we get to that? And if somebody from the public want an incomplete document, so what. It's not the final document. It makes no sense.

I mean I don't know what we're -- I guess now that I'm hearing all the facts, I don't know what we're protecting here.

MR. CRADDICK: You know, Peter, you've read it.

CHAIR RICE: Let anybody read it. There's nothing in there. There's geological this and that.

MR. CRADDICK: It's your choice I would say.

CHAIR RICE: I guess if there was -- you want the Board Members' input, then give it to the Board Members. It's going to go in the short period to public forum and then it's going to be finalized whatever changes are made, and then it's going to be public again, so I don't see any harm. I fail to see any harm.

MR. CRADDICK: Okay.

CHAIR RICE: And if somebody comes in and says, "I want a copy of an incomplete document" and they know it's incomplete, so what.

MS. PARSONS: One comment.

CHAIR RICE: Ginny.

MS. PARSONS: I would like to defer to counsel
and take counsel's advice.

CHAIR RICE: Mr. Kushi.

MR. KUSHI: Can I just discuss this with David
later and see what's, how this involves the litigation
and what is final work product, and at the next
meeting, maybe put it on the calendar and we'll decide
at that point?

CHAIR RICE: When is the scoping meeting?

MR. CRADDICK: We would like to do it sometime
within the next 30 days.

MR. KUSHI: Scoping with the Department staff?

CHAIR RICE: No, it's public he said.

MR. CRADDICK: With the general public, but the document itself at that point is not passed out to anybody. It's just an overview of what -- see, what maybe 90 percent of the document has already been given out when we did the draft EIS, supplemental EIS preparation notice, so the public has got most of the document already.

The findings from the pump test are in there, and whatever comments we have made to the comments that we got after the prep notice, we -- actually, they're not in the report yet. We're working on those.

MR. KUSHI: So Mr. Chair, David, is this meeting being held and called by the consultants?

MR. CRADDICK: It's required as part of the contract that we have with them.

MR. KUSHI: Is the Department -- is the Board or the Department calling this public meeting?

MR. CRADDICK: It's required under the contract, so if you want to say the Board is calling for it, yes, I believe the Board is calling for it.

MR. KUSHI: That presents another problem. I would like to get back to you.

CHAIR RICE: Mr. Starr.

MR. STARR: I'm being told this meeting is going to be held within the next 30 days. Is this meeting, once again, the Department is going to be calling a public meeting without informing the Board about it? That's what I seem to be hearing. And I just have a really big problem with the fact that the Board won't

see the thing until the general public.

This seems to be another attempt by the Director to take the Board Members and the public out of the loop, and this seems to be contrary to the way the Board wants to perceive the way we do business, which is for the Board Members to have the ability to have input and understanding and to bring the public and the community that would oppose us as much as possible into the process so that we can create a consensus in the community and move forward together rather than keep everything public until the last minute -- private until the last minute and then have all different community organizations and individuals screaming bloody murder because something is being passed over as a fait accompli without their ability to see it or have input.

This is the most important thing that we've done as a board or will do in the next 20 or 30 years, and yet, we haven't learned the lessons of the past in that only through consensus are we going to be able to develop these water sources. I would like a way for the Board Members to see this before it goes out, and

I think the public should be in the loop, too.

CHAIR RICE: Well, I absolutely think the Board Members should get a copy to review. I think that's part of the process, and the process also calls for a scoping meeting for the public and for it to be public access, and so I think that that process, which is already defined, is not in any way preventing the public from reviewing it. But I do think the Board Members should have a chance to have -- to look at it and give their comments, and I don't know that there's any harm in that, in that the goal of the document is for it to be a public document.

MS. PARSONS: I can't understand why counsel can't give us what the harm might be. I want to know. That's what you're here for. What is the harm then, Mr. Kushi? What is the possible harm potentially?

MR. KUSHI: Mr. Chair, Member Parsons, I don't

know. I don't even know what the status of this lawsuit is. Obviously, I'm not involved in the lawsuit. I have somebody else from my office is handling it. I'm just concerned about releasing documents intending to be confidential intending to be part of the litigation and if you do release it prematurely, it's going to come back and bite you if you don't do it in executive session, and I'm assuming all of you are defendants in this lawsuit, so I can scope it out. I'm not going to say yes or no.

MS. PARSONS: Could we recess? Let him call his office.

MR. KUSHI: I'm not going to go look at the file now.

MS. PARSONS: Call your office and talk to the corp counsel.

MR. KUSHI: Mr. Chair, I request you put it on the next agenda. I'm not prepared to give a response at this time.

MR. CRADDICK: We don't have the scoping meeting. We can delay the scoping meeting.

MR. STARR: I don't want it to delay. I want to get through it. The way we're heading, we're just going to create another year or two years. It's been ten years. It's been ten years before the -- through the EIS process, and we still don't have one. It's just making it worse.

MS. PARSONS: I move that we put it on the next agenda with an executive session.

CHAIR RICE: Kent.

MR. HIRANAGA: Is my understanding that the issues where corporation counsel recommends a certain action and Board Members decide not to follow that recommendation, that they expose themselves personally and lose the County indemnification; is that correct?

MR. KUSHI: I don't even want to even touch that one. It may come down to a fact where if you are sued because you don't follow our advice, we would have to go to Council to get you indemnified. You are entitled to a defense based on your position. Whether the Council would then based on your actions indemnify you and hire an attorney, that's up to them.

CHAIR RICE: Just a second here. Mr. Starr, the purpose of this discussion is for the Board Members to review the EIS. This is not to distribute it to the public in its form. It's simply to distribute a piece of work that the Board has commissioned to the Board Members for their comments, period, that's it, okay. It's not to go to public.

It is a public document, and following the correct process in very short order, there will be a public meeting. The document will then be completed, and it will be distributed to the public because its intention is to be a public document. But there's nothing wrong with Board Members giving their

comment. It's not for Board Members to go publish.

And if someone says, oh, because you distributed it to the Board, it's public information, that goes in there. It's not a completed document. Why would you want it? There may be a glaring error in it, so I don't see why this shouldn't be given to the Board Members.

It can be marked confidential, ask for their comments, given back. If we're going to have it at a public meeting in 30 days, fine. That's the procedure. Whether you do it in this case or another case, that's still the procedure for the EIS I believe.

MR. HASHIMOTO: So the next meeting, can't we call a special meeting?

CHAIR RICE: We can do whatever we want.

MR. HASHIMOTO: And go into executive session instead of waiting until the next meeting.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: I think it's a good idea. What we can do, if the copy already has been given to corp counsel, we'll give it to corp counsel. They say attorney/client work product until they're done reviewing it, and they'll pass it out with that attorney/client work. You don't have to have a meeting to see it. And then you'll get it and get the comments back into corp counsel. I mean what each individual does with it I mean at that point is up to that individual.

CHAIR RICE: Mr. Nakamura.

MR. NAKAMURA: I agree with you, Mr. Chairman, that, you know, to me, I'm looking at this in a really simple-minded way, which is that, you know, ultimately this process is going to be public. It's intended to be public. You know, there's a procedure that has to

be followed, and that procedure is going to be followed. And I don't want to give the impression that anybody is talking about ways to circumvent that process, because that process is clear.

But we have here a preliminary submittal that, you know, the preparer wants comments from, and he would like to get comments from staff. The Board would like to make comments I think appropriately, and, you know, I don't know -- I don't know what the legalities are, but my simple-minded brain says what you said. You pass it out to the Board Members. This is confidential because it's not ready to be released yet. We're all providing input. We give input, and that's it. And then it goes back to the preparer and they finalize their draft and that draft then goes to the public in accordance with the appropriate statute.

I just -- you know, you can argue at that point is it public or not, but, you know, hey, you know, if somebody wants to do what they want with it, but if you're asked to make comments as a Board Member.

CHAIR RICE: My feeling.

MS. PARSONS: I make my motion that we have a special meeting and pass out the -- it in executive session as Clark suggested.

MR. HASHIMOTO: Second.

CHAIR RICE: Discussion?

MR. STARR: Mr. Chair.

CHAIR RICE: Yes, Mr. Starr.

MR. STARR: I think the main issue here is that this should be and it should also be perceived as this EIS is coming from the Board, and in its function as representing the water users and the public. And if the Board, you know, is kept out of the loop and if the public is kept out of the loop, then we're definitely proceeding against, you know, against the

grain, and I'll be voting against because I don't think it should be happening in executive session. I think that we're trying to serve the public and we're not -- we shouldn't be trying to hide from them.

MS. PARSONS: And I would agree with you if we weren't in a lawsuit.

CHAIR RICE: Any other comments? All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

MR. STARR: Nay.

CHAIR RICE: I understand the motion was for a special meeting. Okay. The special meeting to be six days' notice. What's tomorrow?

MR. CRADDICK: The first would be next week Wednesday.

MS. PARSONS: Good, it's my birthday. We can bring cake.

CHAIR RICE: We want to have it as quickly as possible, Fran.

MS. NAGO: Six days.

CHAIR RICE: Okay, we're moving on. Nominating committee. Mr. Hiranaga, Mr. Hashimoto.

MR. HIRANAGA: Just a verbal report. Clark Hashimoto and myself after conference would like to submit to the Board a recommendation that the Chairman Peter Rice continue for the next term and we also nominate Mike Nobriga as the Vice Chair.

CHAIR RICE: Okay. Is there a discussion? Is there action?

MR. HASHIMOTO: Is that a motion?

CHAIR RICE: That was a report. I don't know why we would wait. You want to wait until the end? Okay.

MR. STARR: Mr. Chair, I move that the honorable Peter Rice be elected as Chair. You've been doing a great job, and that Mike Nobriga would be the Vice Chair for the next one-year period.

MR. NAKAMURA: Second.

CHAIR RICE: Moved and seconded. Any discussion?

(No response).

CHAIR RICE: All in favor?

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response).

CHAIR RICE: Thank you. Thank you very much for your support. I plan to work even harder next year. We've got actually personnel matters, Mr. Craddick's response to our evaluation of the last meeting. Mr. Craddick, it is your option to have our discussion in executive session.

MR. CRADDICK: I think I would like to do that.

MR. KUSHI: What?

CHAIR RICE: He said I would like to do that.

MR. STARR: Mr. Chair.

CHAIR RICE: Yes.

MR. STARR: Would it, just for punctuality, can we move that to the end of the agenda?

CHAIR RICE: Fine, if no one else has an objection to that. Information regarding contested case with EMI. Whose item is that? Mr. Kushi.

MR. KUSHI: Mr. Chair, Board Members, just for your information, you don't need an executive session for this. This is a case out of the licenses for water from the State DLNR properties, the east Maui area.

As you know, the Board has entered into agreements with the EMI, East Maui Irrigation as well as A&B and HC&S for long-term agreements to take out water from what they receive from the State. Back in I believe last summer, sometime before -- last summer sometime when the long-term disposition of the Board of Licenses and Permits were being solicited, there was some opposition to intervene and to hold a contested case hearing on the issuance of licenses filed by various parties. And at that time, the Board of Land and Natural Resources appointed ex-Judge

McConnell to be hearings officer.

About a couple of weeks ago, April 15th, I believe Judge McConnell held a hearing on just the issue of who should be allowed in this contested case hearing. He has requested that parties file findings and proposed findings and decisions as to who is to be allowed. There is approximately seven parties to be admitted, HC&S, A&B and East Maui as the potential licensees, Maui Tomorrow as an intervenor, A&B -- I mean Warren Watanabe and the Maui Farm Bureau is requesting to be intervenors. On behalf of this Board, Howard Fukushima did write a letter to -- and the County Board of Water Supply to the intervenor.

Maui Land & Pine has already requested to be an intervenor. Various Native Hawaiians represented by the Native Hawaiian Legal Corp have requested to be intervenors. Judge McConnell is requesting proposed findings, and he will just deliberate and issue his decision hopefully sometime in the middle of May.

At that point in time, they will proceed on with the formal contested case hearings. For us to be -- for the Board to be a party, I believe it's important

in that we have some say in what the State would be doing with these licenses. In any event, if our heretofore parties to the various agreements that remain do not get their renewed licenses, that leaves the status of our draw from the system up in the air.

Several issues -- several issues to be decided, whether it should be annual versus long-term.

Historically, it has been long-term. The other issues are diversion of waters to the various streams out in the East Maui area. And the more overall issue, it may get into a Waiahole type situation, what right does the State have or any private party to divert water in the first place, so this case is just beginning. In any event, we are trying to be a party to the contested case hearings.

CHAIR RICE: Mr. Starr.

MR. STARR: Yeah, I would like to correct what I believe are a couple of inaccuracies. One is that historically it's been short-term. Since the Water

Code has been implemented, the licenses have been one-year duration alternating between A&B and EMI, so the long-term licenses ceased when the Water Code went into force 20 years ago.

MR. KUSHI: I stand corrected.

MR. STARR: The second item is unless something was agreed to by the Board that I never saw, we -- our agreement with A&B does not necessarily call for us to get an allocation of water from the State lands. It calls for us to get an allocation of water from A&B. Now, only a part -- a portion of the watershed lands that the ditch system draws upon are State lands. There's quite a bit of watershed that's owned by A&B and EMI from which water flows into the ditch, so our contract is with A&B for a certain amount of water.

It never specified in the memorandum of understanding, which I believe is what you're referring to, that these come from State land. So in the event that the State licenses lapse completely, we would still get our water from A&B and EMI land, so I

think we should be clear on that. I do feel we should be a party to that. I have no problem with that. But I want to be very sure and very clear that what are filings and that our position is driven by the Board and not driven by either the Director and staff or by corp counsel. I would like to see some mechanism for our filings to come to the Board, and I feel that Board Members should also be notified when future hearings are going to be, or any other activity in the case, if they want to participate, they'll have that ability and that is our duty.

CHAIR RICE: Thank you. Okay. Mr. Craddick.

MR. CRADDICK: I'm going to guess the seventh party was DLNR. You only listed six parties. You said there was seven. DLNR, did they consider them as a party?

MR. KUSHI: Well, DLNR is the -- represents the State, who is conducting these licenses. As a matter

of course, they are a party.

MR. CRADDICK: So that's the seventh then including them, okay.

MR. KUSHI: Whatever, David.

CHAIR RICE: Okay. Moving on, that leaves us with, okay, the Director evaluation. There's reporting. Let me -- I don't know if everyone got a chance to look their through reporting in March. The legislative update was included, and just for future reference next year, I think we want to take a little bit of time in advance, not at the time we contract, but in advance of that to talk about this.

Because I don't -- my perception of reporting is not a couple of pages stuck in the back of the reporting. I think there ought to be a little bit more to it than this. You didn't see it. It was in the March -- it was attached to the March monthly division report. I missed it and found it there.

There's nothing wrong with the information that's on here. It's just I think there should have been a little bit more discussion with regard to the different issues and what might affect us and if there's a position we want to take. It's a little late for this year.

MR. HIRANAGA: Well, Mr. Chair, I don't believe my packet included that.

CHAIR RICE: This was a prior month. This wasn't in this month's.

MR. HASHIMOTO: March.

CHAIR RICE: Yeah, it was March's stuff. We got that last meeting. I'm just saying if you didn't know it was there, it was there. And I think it's something we need to talk about before we contract with next year. Mr. Nakamura.

MR. NAKAMURA: Just one quick comment on the monthly reports. I noted that there has been, you know, some improvements in the report and that they've tried to analyze the data and try to summarize some of the more pertinent information, and I think that's noteworthy. We appreciate your forward progress in that regard.

MR. CRADDICK: Thank you.

CHAIR RICE: And I think there was some information handed out by Mr. Craddick at the meeting for your review. Budget workshop. You should have received from Mike both the CIP and the operating budget and Mike is going to hand out an analysis now. We will be scheduling a budget workshop. We've done that in the past, and that will be an opportunity for the Finance Department to present the line by line budget to the members to get comments before we move onto the next stage. So I'll be contacting everyone through Fran as to the date that we will reserve for

the budget workshop, and the other date that we're going to need to reserve is our next meeting on the Committee of the Whole for Central Maui source availability. And that will be subject to attendance by USGS and Mr. Mink. So those meetings will be coming in the next month in addition to our regular meetings. Mike.

MR. QUINN: Just one quick comment, Mr. Chairman and Board Members. What was just handed out are four pages and what we've done is we've tried to present the variances in a percentage fashion. You see the columns on that summary sheet, and the purpose is to highlight those variances to the major categories, and we've also provided on the second and third pages a narrative to explain those variances.

And finally, since I know this is of particular interest to the Board and particular interest to the chairman, vacancies. We've supplied a schedule that tries to highlight the vacancies by division. The reason that's been in issue in the past with Board Members is very often we have trouble filling those,

so we budget for them. And many times, we don't fill them, so we have a big variance in what we budgeted versus what we actually have spent.

So at the workshop, whatever that date is decided, each division manager will be able to explain in detail the reasons for the vacancies and the kinds of problems they have with filling those vacancies. In my particular case, we have a lot of -- we have some entry level positions, and in those kind of positions, there's a lot of turnover. People get into the system, and they immediately after six months start looking for higher level positions elsewhere in the County.

So we tend to have a high level of turnover for positions, but at any rate, hopefully these four pieces of paper will facilitate the review process and make your job easier. That's the intent.

CHAIR RICE: Mr. Starr.

MR. STARR: Yeah, just glancing at this, I can

see that I'm going to have a problem here because we discussed last year and the year before the fact that we're not adequately funding the capital replacement fund. We put 4 million in there last year even though we didn't -- and we know that we needed to be in the seven to \$8 million range. Otherwise, there's going to come a time when our entire system is just going to deteriorate and turn to dust. And I see our projection is to put a million dollars in, and so I think when the time comes to have our meeting on this, I know I will be pushing for a realistic number in that, whatever we have to do. And even if we can't fund it, because last year we just put a note in our financials. This year we have to fund it.

CHAIR RICE: You've got to have that model ready for our workshop.

MR. QUINN: Yeah, one of the problems we're facing in the narrative is we're at the end of the rate schedule, so we don't have the ability to -- in the past, over the past five years, our rates have

increased at an average rate of 5 percent. We no longer have that luxury for the upcoming fiscal year, so things are getting tighter. And that's one of the reasons why we tried to tighten up on the expense side.

CHAIR RICE: Well, we'll discuss that in the shop.

MR. QUINN: And Mr. Starr is right, we did have an asterisk on the front page last year, we may want to do it again, stating that even the \$4 million at the time was not sufficient to cover the depreciation levels of the replacement needs of the system.

CHAIR RICE: I think it's important that you have the model with you and set it up for us that day so we'll get to it at some point. Mr. Starr.

MR. STARR: Regarding meeting scheduling, I had, you know, I've been having my Operations Committee visit different parts of our system, and it's been a very interesting process. And my hope was that in the

next month we could visit West Maui. It's been quite a while since we've done that. We know how important that West Maui system is, so I would like to request the possibility that at our next monthly meeting we all get up real early and go out and visit the West Maui system and then have a meeting in West Maui.

There are people out there who may want to come to a meeting and find it hard to come over to this side and find this place impossible. Mr. Chair, could we do that?

CHAIR RICE: Absolutely. The Chair would love to have a meeting in West Maui. I'll keep that in mind.

MR. NAKAMURA: The Chair is buying lunch I assume.

CHAIR RICE: Absolutely, if you guys come to West Maui, I'll buy lunch. We will start to use some kind of Pavlovian system. Okay. As it relates to meetings, that reminds me, and I want the Board Members to think about this, because I've got some feedback from other Board Members about the committee

system which we were using last year under the prior Chair.

And while I like the idea of having committees, I want you to think about having us establish two meeting days a month, that everyone attends both meetings. While we may have a committee agenda early in the month, the Chair will rotate based on who is the Chair of that committee, but we all will attend. That way everybody gets a chance to look at all the information together and speak about it.

And then you know, if we could still produce reports and we still can deal with those at our regular meeting then later in the month. That way one thing that happens is we all get input into all the issues; number two, we have a definite date for that first meeting. People like Adolph can plan better to be in attendance on those. It helps him a little bit, and it will help the staff because they'll know it's that day all the time. So I guess I'm saying that as a result of the feedback you've given me, I like the idea, and think about it, maybe implementing it and

going forward. Mr. Starr.

MR. STARR: I just want to comment I think that's a good idea. I think that it will make for two long hard-working meetings, but what it will do will be to prevent having to go to a lot of one-hour meetings on different days, which really can screw up a schedule worse than scheduling off two good blocks of time.

CHAIR RICE: Yeah, and I think if we organize it right, possibly we can have a segment of the meeting that deals with all the capital stuff, so the staff can prepare maps on capital information, and we can focus on capital information and then maybe we do rules things and lump everything similar.

Mr. Hiranaga.

MR. HIRANAGA: Question. On this proposed new format on the meeting when committee meetings are scheduled, would the Board still be able to take

action at those meetings, or is action going to be --

CHAIR RICE: And that's why I've been thinking about that. My idea was they would be committee meetings and we would take action at the next meeting, but I'm flexible.

MR. HIRANAGA: Personally I feel if the Board prepares to take action, if it expedites a certain need or request, why make that issue wait two more weeks before the action is taken?

MR. STARR: Perhaps they could both be regular Board meetings, but we just have kind of a committee segment, you know, where a kind of segment of those meetings where we take up this kind of issue or that kind of issue and we can act right there.

CHAIR RICE: I don't have a problem with that.

I like the idea of having committee heads where people take ownership of things and they've had some history

in it. Let me work on how that can be structured.

Anything else before we go to executive session on the Director evaluation? Yes, Kent.

MR. HIRANAGA: I have some questions regarding the division reports. On the first page, which is the engineering program manager, in the chart, Requirements Pending Applicants Completion, you have "2 (549 from previously pending projects.)" I wanted a clarification of that comment, please.

MR. CRADDICK: That's what?

MR. HIRANAGA: What does 549 from previously pending projects, what is that?

MR. CRADDICK: Well, I can tell you most of those are the people on the upcountry waiting list on the subdivisions there. So we've responded back to them we're taking the applications, but we're not processing it until your name comes up on the list.

If they then come back to us and say, "We want to proceed at our own risk," we will typically let them and they may submit a structural drawing at that point. But the other ones are things where we've made comments on the plans, submitted them back to them, and maybe they have submitted them back to us.

MR. HIRANAGA: So what you're saying is two subdivision applications were returned with comments to the applicants? There are 549 --

MR. CRADDICK: No, I believe two were completed. Two were completed.

MR. HIRANAGA: By the Department or by the applicants?

MR. CRADDICK: By the Department.

MR. HIRANAGA: Right, and returned to the applicants for action.

MR. CRADDICK: No, returned to them completed.

They submitted with the -- we addressed all of our comments and finished off and signed off on the subdivision.

MR. HIRANAGA: So you signed off on your Department's review for subdivision application?

MR. CRADDICK: Yes.

MR. HIRANAGA: So, there's 549 open applications?

MR. CRADDICK: Right.

MR. HIRANAGA: And Issued Without Approval, what does that mean?

MR. CRADDICK: Where are you reading that?

MR. HIRANAGA: Right below.

MR. CRADDICK: Well, there may have been some

subdivisions not connecting to our water system.

Let's say there was a subdivision over on Lanai or Kaanapali, Kapalua or Molokai Ranch or something like that. We wouldn't review those.

MR. HIRANAGA: No comments, no comments provided by the Department?

MR. CRADDICK: No.

CHAIR RICE: Can we separate out the people on the previously pending projects who are upcountry meters from others so we can get a true look at the public that's waiting?

MS. PARSONS: What type of subdivision? What type of subdivision?

MR. HIRANAGA: On the third page, subdivisions approved between March and the end of March. What is final approval and Department of Water Supply

approval, what does that signify?

On this chart labeled Subdivisions Approved

Between March 1 and March 31st, you have a column

Final Approval and a column DWS Approval. Can you

explain what those two columns represent?

MR. KOGASAKA: The Department approval date is

on that column, and that goes to the Land and -- Land

Use, and I think that's the date of that --

MR. CRADDICK: Is that final approval or preliminary approval?

MR. KOGASAKA: Something is wrong with that. I

have to check into that.

CHAIR RICE: Ginny.

MS. PARSONS: When you were talking about

breaking out the subdivision review, can we find out

whether they're residential or ag or what categories

they're into when you're breaking them out? There's

different types of subdivisions. I'm interested to see how many are ag.

CHAIR RICE: Ag subdivisions?

MS. PARSONS: Uh-huh.

CHAIR RICE: Do we have that?

MR. HASHIMOTO: Gentlemen estates.

CHAIR RICE: I see.

MR. CRADDICK: So just ag you want broken out?

MS. PARSONS: Ag and res, which ones are which.

MR. CRADDICK: There may be other subdivisions other than ag.

MS. PARSONS: Let's categorize how many are in each category because they're different water uses, right, David, ground surface water and et cetera?

CHAIR RICE: Kent.

MR. HIRANAGA: Finally -- well, not finally -- another question on this Water Resources and Planning Division completed reviews.

MS. NAGO: Kent, can you say the page number, please?

MR. HIRANAGA: Twenty-four. Just give us a brief explanation of this report.

MR. CRADDICK: These are mainly comments to the Planning Commission for various discretionary permits, SMA, things like that.

MR. HIRANAGA: So EA is environmental assessment? I'm not sure what those acronyms are.

MR. CRADDICK: Yes.

MR. HIRANAGA: CP is conditional permit?

MR. CRADDICK: Try that again.

MR. HIRANAGA: CP.

MR. CRADDICK: Conditional permit or something.

I don't know what the condition was.

MR. HIRANAGA: What's a CIZ.

MR. CRADDICK: I'm not positive if I know what that is.

MS. PARSONS: Something in zoning probably.

CHAIR RICE: Change in zoning.

MR. HIRANAGA: And my last question is on Page

27, Item Number 4, Palauea Investors. Why were there 20 three-quarters reserved versus five-eighths inch meters?

MR. CRADDICK: Why were there 20 three-quarter inch meters versus what?

MR. HIRANAGA: Why would they issue 20 three-quarter inch meters versus five-eighths inch meters?

MR. CRADDICK: They wanted to change it.

MR. STARR: Unless they're going to do ag over there.

MR. CRADDICK: What's that?

MR. HIRANAGA: It says the discretion of the applicant.

MR. CRADDICK: Yeah.

CHAIR RICE: They paid a higher meter fee.

MR. STARR: Maybe rice farming.

CHAIR RICE: Papaya.

MR. HIRANAGA: Thank you. Those are my questions.

CHAIR RICE: Thank you, Kent, for your diligent review.

MR. STARR: Mr. Chair, before the motion for executive session, I think that's the next thing.

CHAIR RICE: Yes, unless there's any other recording issues.

MR. STARR: I would like to ask a question to corporation counsel, and this is regarding the Director's right to hold this in executive session. Has he waived that right by the last two times it has come up saying that he wants to hold it in public session? Can he at this point switch it after waiving

his rights? You know, the process is mostly done.

MR. KUSHI: Mr. Chair, Board Member Starr, I'm going to respond accordingly and say, yes, he can. It's a different agenda item. It's the same subject matter, but it's a different agenda item. I believe his feeling, being an employee matter, he can, if he's waived his rights for executive session in the past, I don't think it precludes him from waiving executive session now. It's a different agenda.

CHAIR RICE: Okay. Motion for executive session?

MS. PARSONS: Second.

CHAIR RICE: Let's take a quick break before we start. All right. Let the record reflect Mr. Hashimoto is excused.

(Recess taken.)

CHAIR RICE: Call the meeting back to order. I want a motion, please, to go into executive session to discuss the Director's response to our evaluation.

MR. STARR: I move to go into executive session subject to the standard paragraph.

MR. NAKAMURA: Second.

CHAIR RICE: Moved and seconded. All in favor?

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response.)

CHAIR RICE: Motion is carried.

(Whereupon, the Board went into Executive Session.)

CHAIR RICE: That ends the meeting.

MR. STARR: Move to adjourn.

MR. NAKAMURA: Second.

CHAIR RICE: All in favor, say "aye."

VOICES: Aye.

CHAIR RICE: Opposed, say "nay."

(No response.)

CHAIR RICE: Meeting adjourned.

(The meeting concluded at 12:45 p.m.)

"By Water All Things Find Life"

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