

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Shopping Center, 65 West

Kaahumanu Avenue, Unit 29, Kahului, Maui, Hawaii,

commencing at 9:00 a.m. on June 12, 2002.

Reported By: Rachelle Primeaux, CSR #370

IWADO COURT REPORTERS, INC.

APPEARANCES:

Peter Rice, Chair

Clark Hashimoto

Mike Nobriga

Adolph Helm

Ginny Parsons

Kent Hiranaga

Howard Nakamura

Michael Victorino

Staff Present:

David Craddick, Director

Ed Kushi, Corporation Counsel

Jerry Wells, Secretary

Wendy Taomoto, Engineering

Holly Perdido, Finance

Herb Chang, Engineering

Herb Kogasaka, Engineering

George Tengan, Deputy Director

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CHAIR RICE: Good morning, everyone. I will

call to order the Regular Board of Water Supply County

of Maui meeting. It's Wednesday June the 12th. We

are at the Kahului Shopping Center. The agenda has

been posted, circulated. In attendance, Board Members

Clark Hashimoto, Adolph Helm, Mike Nobriga, Howard

Nakamura, Ginny Parsons and myself, Peter Rice;

Director, David Craddick; Ed Kushi, Junior, Deputy

Corporation Counsel, staff, the those members of the

public who are here, who are here to give testimony.

We'll get to that in one second. There are no minutes

to approve.

There has been written testimony submitted. It

was on your desk. Everyone has got copies of that.

At this point, if there is testimony from the public

on any of the issues that are on the agenda, we would be happy to take that testimony at this time. Or if you choose, you can wait until the issue comes up on the agenda, and I will provide for testimony at the beginning of that particular issue. So if I seem to forget, just raise your hand. We'll get moving quickly.

Anybody want to give testimony at this time

before we move into the agenda? Seeing and hearing

none, I'm going to move on to Director's Report

02-19. Mr. Craddick.

MR. CRADDICK: What we're asking for here is either board acceptance of the draft supplemental Environmental Impact Statement or an alternative to allow acceptance of the draft supplemental Environmental Impact Statement by the Department.

Normally the staff does all the work related to the preparation of the projects including the acceptance of the environmental studies. This particular project is unique in that this supplemental environmental study has been required by the court and the

supplemental work is already completed. The Board approved the original study in 1994, and this was under -- with the authorization of the Governor. And currently, it's only State funds that are encumbered in this project. This was done at my request to the Board as I felt the document would be challenged. And I felt it would lend more credence to the document by having the Board approve it. The document was challenged regardless of Board acceptance.

An outline of the environmental review process

is attached. That's a page behind my letter there.

And we're at the point where that large black arrow

is, "Agency accepts draft EIS." Now, should the Board

decide to accept or delegate acceptance of this

document, there is still ample time for community

input. What you're doing here is allowing this to be

published in the OEQC Bulletin, and that starts a

45-day public comment period.

Now I see here corp counsel has reviewed the

legal requirements for acceptance and opine that the

Department can be the accepting authority, especially since this is a draft document and there is still ample time for Board participation and acceptance of the final document should they desire. The preliminary draft that was circulated to the Board in executive session has been supplemented by the comments collected during the comment period and that scoping meeting that we held and answers to all those comments are provided in this document; whereas, the other one you had didn't have those comments.

An appendix has also been added to provide for

further monitoring and observation of the aquifer as

it is built out. And one other item here is after

deciding how to handle the draft supplemental

Environmental Impact Statement, the Board may want to

schedule public meetings to explain the project or

accept further community input to the study or some

other form of participation with those that may be

affected by the project. We would recommend that if

you do it, it be done at this meeting because the

45-day comment period will be up on August 7th if this

is resolved here today.

And the August 7th date would start June 23rd,
which actually is a Sunday, so I think maybe that's
the 24th. And in order to meet that date, it must be
submitted to OEQC sometime today. Anytime after the
June 23rd publication date would be appropriate for a
meeting date keeping in mind we will need to get
minutes of the meeting and address the comments.
That's it.

MS. PARSONS: One question.

CHAIR RICE: Yeah, Ginny.

MS. PARSONS: If it's not accepted today, what would be the results? What would be the prognosis?

MR. CRADDICK: They may I guess delay in getting water into the system, and there could be some financial repercussions on the State funds.

MS. PARSONS: How much?

MR. CRADDICK: On the order of not quite \$4 million.

MR. NOBRIGA: In the absence of the Chairman

because he has something in his eye, monitoring the meeting, is there any other questions from the members? Mr. Helm.

MR. HELM: Yeah, this is in reference to Mr. Hall's letter. He mentioned on his last sentence here, "To accept the draft EIS or SEIS is to violate the procedures set out in our EIS law." And maybe our corp counsel can elaborate a little bit about clarifying what he means.

MR. NOBRIGA: Are you prepared to give a comment at this time, Mr. Kushi?

MR. KUSHI: Yes, Mr. Vice-chair, Board Member

Helm, yeah, I did review Isaac Hall's letter dated June 10th, 2002, and he says basically, if I'm reading correctly, his last sentence says "To accept a draft EIS or SEIS will violate the procedures set out in our EIS law."

I looked at the Chapter 343 Hawai`i Revised Statutes, which is the EIS statute, as well as the EIS rules promulgated by the Department of Health. In terms of accepting a draft or accepting a supplemental

draft, this is just the preliminary stage to get into the final draft, the final statement. I don't see where, you know, what Mr. Hall is saying that we violate the procedures.

You need some mechanism to move forward. If we can't accept it, if the Department or the agency can't accept it, who does? That's the question. By reading these laws, the final accepting authority after a draft is published and public comment is accepted and responded to, final accepting authority is either the

Governor or the Mayor.

In this case, my understanding is the Governor delegated that task to this Board; however, to even to get to that final stage, you need to start the publication process. What Mr. Hall says I don't understand and I don't agree with. And I think if the Board is going to move on with this plan, we should move on accordingly. And there needs to have some sort of approval to get this draft plan to OEQC, QECC, whatever the agency is, to start the publication

process, and the Department has come to you to say let us do it or you do it.

CHAIR RICE: Isn't the question, Mr. Kushi, acceptance -- it's that I don't see acceptance in this draft of the system. It's pointing here, isn't it?

MR. NOBRIGA: Yeah.

CHAIR RICE: Which way is it pointing? The agency accepts draft EIS. The agency is not us.

MR. NOBRIGA: Mr. Chairman, I beg to differ because it was basically under the charge of the Board of Water Supply that these supplemental EIS process

was -- like it was rebegun.

CHAIR RICE: Okay. Except I'm just talking about the words in this document that was circulated to us, because agency in here -- make sure Mr. Kushi has a copy of that. Agency in here, I guess that's my question. Does that mean Board of Water Supply? Because in the very beginning, it says, "Agency determines project is exempt or not applicable." That's not the determination that we make, and I think agency that's being referred to in this document is

not the Board of Water Supply.

And are we accepting -- I don't know that we're saying that we accept the EIS as much as we're saying, okay, it's been done. We've gone through the process. We've got comments. We've incorporated the comments into the document. Move it on to the next step. It's not approved. It's a document that is done to disclose issues, environmental issues that relate to a project. So it's not that it's approved by anyone. I guess this body can say have we

adequately reviewed all the issues that would relate to environmental impacts and are they included in this document if we feel that's the case. Or obviously if we didn't feel that was the case, comments would have reflected that, and it would be included in this second draft. But whether it -- but to say that it's -- I mean I don't know that I could say that it was complete or not complete. You know what I'm saying?

So my question is when they say agency in this

document, who is agency?

MR. KUSHI: Okay. That technical answer to your question I would just cite from the HRS 343. Under definitions, "Agency means any Department, office, board or commission of the State or County government which is a part of the executive branch of the government," so department or commission.

CHAIR RICE: Ginny.

MS. PARSONS: So as the board or the commission, can we appoint the Director to make the determination?

MR. VICTORINO: I think that's what he's asking.

CHAIR RICE: That's what he's asking for us to either accept it or ask the Department. But I don't want to get into that. Remember I made that speech a while back. We're not two groups here.

MS. PARSONS: Right, we're one. So as a group, can we appoint the Director to make the determination?

CHAIR RICE: Mike.

MR. NOBRIGA: Thank you. Because of the nature of the entire project, keeping in mind that historically speaking, the Environmental Impact Statement process was begun and was challenged, and that challenge was heard in a court of law. The court provided -- the court provided a scope of work for the supplemental EIS if I am correct in that assumptions.

Using this -- using this expanded view document that we have in our packets, on the original EIS preparation on the project, at what point was that EIS

project along the line prior to the filing of Mr. Hall
on behalf of his clients? Was it already down on the
bottom, or was it like halfway through?

MR. KUSHI: Understand I wasn't here, but
according to Director Craddick, on your flow sheet, it
was at the very bottom, 60-day legal challenge
period. So it went through the whole 9 yards, and
they went to court.

MR. NOBRIGA: That brings up another question.
Being that that EIS process had come to a natural

conclusion, is our direction of a supplemental EIS a new project in which case Mr. Hall on behalf of his clients, the Coalition to Protect East Maui Resources et al., he -- I feel his comments is directed to the top of the process, which in his view was not followed for whatever reason. And I'm very clear in my mind that that wasn't -- that didn't take place because the court already determined what the scope of work for the top half was going to be.

MR. KUSHI: Well, let me respond this way.

Maybe David can try to make it clear. My

understanding is, like you said, the initial EIS went through the 9 yards and it got challenged. And the plaintiffs were successful in persuading the court to say that the EIS was inadequate. So the court ordered the Department and the Board, both defendants, to do a supplemental EIS. And until you do a supplemental EIS, no funds would be spent, no premise would be issued except funds needed to prepare the supplemental EIS, so we're at that stage.

So it's not like it's a new ball game. It's a

continuation of what they started back in the early '90's. What Mr. Hall and his clients are arguing apparently is we should go back to the top of your flow chart, which I believe the Department and through its consultants have done. They've had meetings with agencies. They've had the scoping meetings. They have published the EIS preparation notice. Mr. Hall has been responding and commenting all throughout up to two days ago. So we're, as Mr. Craddick says, we're at the finger-pointing stage of what -- whether

to go on and start to publish this document.

CHAIR RICE: Okay. And I think that answers the question you had, Mike.

MR. NOBRIGA: Uh-huh.

CHAIR RICE: But my question now, it appears from reading these two letters that Mr. Hall disagrees with you in terms of input he's had along the process. And I'm looking at the longer of the two letters where he's talking about addressing studies and things that he thought should be included in the

EIS that apparently are not. And I'm only bringing this up in terms of expecting a challenge, have we covered our bases adequately enough to -- we're going to be probably required to go back to court to present the EIS in such a way that it's now an adequate EIS.

So the question should be have we done all of our homework and are we comfortable we addressed all the issues. And I think if we answered that question yes, we can make a decision to accept it in its current form and move it on to the rest of the process. Does that make sense to the Board Members?

MR. VICTORINO: Yeah.

MR. NAKAMURA: Can I ask a question? David,

during this process of the preparation notice and the

comments submitted in response to the preparation

notice, were there a large number of comments or just

a comment from Mr. Hall, and were all those comments

responded to on a timely basis or, as Mr. Hall

suggests, he did not receive any response until June

5th?

MR. CRADDICK: Can I just go down and read you

all the people we responded to, or do you want
specific just to Isaac Hall?

MR. NAKAMURA: I want to get a general idea
whether or not there were a number of responses and a
number of comments that whether or not there were
responses made.

MR. CRADDICK: This section in the report here
titled 16.5 Testimony Letter and Responses to Comments
on the Draft Supplemental EIS Notice, it has most
state agencies. And the very last one Isaac Hall's

letter dated June 7th, 2001, is responded to.

MR. NAKAMURA: A year ago?

MR. CRADDICK: Yes.

MR. NAKAMURA: What is the reason for this,

David?

MR. CRADDICK: All of them are responded to

within the span of about a week including the ones

from the scoping meeting that we held.

MR. NAKAMURA: Is that the normal procedure that

the responses are in a significantly later period?

MR. CRADDICK: I don't know if that's normal, but in this particular case, one of the things we had to do is drill that monitor well, so we had to go through the whole bidding process on that and actually drill the well and that was the main I think issue delaying this so that we could actually respond to them, because the issues that they brought up were the same issues brought up in the court case. And we -- the court felt we couldn't respond to them then without doing a monitor well, some sort of observational well, and that's what we did in order to

respond to these.

MR. NAKAMURA: When we started on this supplemental EIS project, we had requested that Mink & Yuen retain the services of a legal consultant to basically assure that the process was clean and that we would minimize the potential for action down the road. Has that been done?

MR. CRADDICK: Yes, it has been done.

MR. NAKAMURA: It has been done?

MR. CRADDICK: Yes.

MR. NAKAMURA: Are you sure?

MR. CRADDICK: Yes. Well, they've been consulting with them over these letters when we held a scoping meeting. I know they talked about -- when I say they, Mink & Yuen talked with him about whether that was okay to have that meeting. And on our side, we talked with corp counsel, and on their side, they also talked to OEQC.

MR. NAKAMURA: Okay. And then one last comment. If the Board, if there's no action taken in

response to Commissioner Parsons, Board Member

Parsons' question, the impact would be basically that

it would be published at the next -- at the next issue

of the OEQC newsletter; isn't that right?

MR. CRADDICK: That's correct. Well, as long as

something happens here today positively and not that

it goes to further study or to try and address these

two letters of Isaac's.

MR. NAKAMURA: And the newsletter is

published --

MR. CRADDICK: Twice a month.

MR. NAKAMURA: Twice a month?

MR. CRADDICK: Yes.

MR. NAKAMURA: So you're not talking about --

I'm not suggesting we defer it, but you're not talking about a disastrous delay?

I think the Director is crying wolf or something. I mean, you know, you raised \$4 million.

I don't think that's a fair statement. Two weeks is going to cost us \$4 million. We've been at this thing for years.

MR. CRADDICK: The State has been trying to lapse that money for some number of years. In 1996 the Board Chairman went in and had a meeting with the Governor and the budget person Earl Anzai at that time, and we got it deferred I believe it was until the year 2000. In the year 2000 we wrote a letter asking it to be deferred until December of this year.

And we have always assumed it's early December.

If it's late December, then you might be right. I didn't want to chance it, you know, and having that

being confused. But our letter to them just says

December 2002.

MR. NAKAMURA: Thank you.

CHAIR RICE: Any other comments from the Board?

What's your pleasure?

MR. VICTORINO: Mr. Chair.

CHAIR RICE: Mr. Victorino.

MR. VICTORINO: So if I'm correct in what I

understood what has been said to this point, that if

we accept this report, that's basically what we're

doing so that we can move on in the process? We're not saying that we accept any other further changes that may come about or anything that may come about once this report is published through the -- I'm sorry, I missed that.

MR. CRADDICK: OEQC Bulletin.

MR. VICTORINO: Thank you. So what we're doing, this supplemental report was required by the courts, am I correct? And if we do not get this supplemental report out, we wait another two weeks, a month, we're

getting closer and closer to these deadlines that makes it almost virtually impossible and we may lose the \$4 million along with other things that may occur. By us accepting this supplemental report, it's my understanding we're just moving the process along. We're not saying we accept the project. We're not saying anything more than we want the process to be moved along.

And I think Mr. Hall and those people out there, we're not saying that, hey, we're not listening to you. There may be other things that come up, but we

want the process to continue instead of just being bogged down like it has in the past. Am I correct in saying that?

MR. CRADDICK: I would say yes to that.

MR. VICTORINO: So my feeling is this supplemental report moves the process, then I'm in favor of accepting the report, even though I've spent a number of hours reading it. And I'll be very honest, you've got to have some engineering background to understand a lot of this stuff. But, you know, I'm

in favor of moving it on so we can move the process
because the public needs to be engaged, and this is
another way of the public being engaged.

CHAIR RICE: Mr. Kushi, would you agree with
Mr. Craddick's comment?

MR. KUSHI: Yes.

CHAIR RICE: Thank you. And I guess if Mr. Hall
has legitimate concern, I don't know that we're going
to solve it in two weeks, so if we drop the ball
somewhere, we're going to be back to the drawing board

anyway, right?

MR. CRADDICK: That's correct. Can I -- one

other thing for the record, too.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: There is a court case going on

here right now, and there seems to be some debate

whether that court case is finished. And when he

submits something, it starts a new legal challenge and

it's not part of that other court case. I believe

corp counsel kind of takes the opinion that that court

case is still ongoing, and if he challenges it, he'll be part of that. And if that's true, these letters they keep sending to us I think are of some concern because he should be corresponding with corp counsel, not necessarily us individually because there is a court case going on.

CHAIR RICE: Well, Mr. Craddick, you have -- I'm sure you have a long enough memory to remember that I directed you that all this correspondence should go to corp counsel, so while he may mail it to you, it should be sent directly to them, and the responses

should come from corp counsel.

MS. PARSONS: May I just say this? It's a sanctionable issue in court, so it's a very important issue. It's a sanctionable issue.

CHAIR RICE: I'm not an attorney, and neither is Mr. Craddick. That's why I don't want Mr. Craddick giving legal advice. That's why we have Mr. Kushi sitting next to him over there.

MR. NOBRIGA: The matter before us this morning is to -- for us to either accept the document as the

Board of Water Supply or delegate acceptance authority
to the Department. There's one question that I still
need to be answered in order for me to make that
decision if we want to accept or delegate. That
questioning is, unfortunately might sound weird, but
legally who is easier to defend?

MR. KUSHI: Clarification. Who, the Board or
the Department?

MR. NOBRIGA: Yeah. Because that's what's
before us we. Either got to decide if we're going to

take the rap or let Mr. Craddick take the rap. And I think Mr. Craddick would be more easy to defend in a court of law than we would be because we're all individuals.

MR. KUSHI: Well, defending one is easier than defending nine, put it that way. But in any event, both of you, the Board as well as David in his capacity are defendants in this ongoing case. And I agree and confirm with David that our office's feeling is that this civil case starting back in 1993 is still

pending, that the court made an order saying --

ordered us to do a supplemental EIS. And until we do

it, they still have jurisdiction over it. So in terms

of who is easier to defend, we have an obligation to

defend both anyway.

MR. NOBRIGA: If there is no objections, I would

like to move that we delegate the Department to accept

the draft.

MR. VICTORINO: I second the motion.

CHAIR RICE: Moved and seconded to delegate the

Director.

MR. NOBRIGA: The Director and the Department,

the Director and the Department.

CHAIR RICE: Okay. Comments, Mr. Kushi?

MR. KUSHI: Mr. Chair, maybe for clarification

and I guess comfort level, maybe the motion should be

that you move to delegate to the Director the

responsibility of accepting the supplemental EIS, the

draft supplemental EIS for publication.

MR. NOBRIGA: I will reword my motion to include

all the comments made by our corp counsel in its

entirety.

MR. VICTORINO: And I second the amended changes
to the motion.

CHAIR RICE: Okay. Does everyone understand the
motion? Mr. Nakamura, you have a question?

MR. NAKAMURA: I was going to make a similar
comment to what the corp counsel said. My suggestion
was to add language to the effect that the Director be
authorized to accept and to process the supplemental
EIS, you know, in accordance with law or something

like that or in accordance with the appropriate legal procedures, which is what he's basically going to have to do. I think that corp counsel's suggestion pretty much incorporates that.

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

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried unanimous.

Okay. Next item, Director's Report 02-20.

MR. CRADDICK: It's stream monitoring project is in our budget, and its program spans a number of years, three years I believe, for monitoring of streams in the northeast Maui. This first year is \$30,000 I believe it says in the contract. The next year would be 50, but the funds get spent over three years.

And the objectives of this study are to assess the effects of existing surface water diversions on

flow characteristics for perennial streams in
northeast Maui, characterize the effects of diversions
on in-stream temperature variations; and three,
estimate the effects that stream flow restoration will
have on habitat availability for native stream fauna
in northeast Maui. And this is a cooperative
agreement with the Commission on Water Resource
Management and U.S. Geological Survey.

CHAIR RICE: Okay. Any questions from the Board

Members? Mr. Nobriga.

MR. NOBRIGA: Any reason why the Board of Water

Supply does not sign the second page of the contract?

MR. CRADDICK: I think this came from the State,

and I don't think we made an issue with it. But it

could be the Board decided it. There's no problem

with that if that's your desire.

MR. NOBRIGA: Move to support this project.

MR. VICTORINO: Second.

CHAIR RICE: Moved and seconded to support the

project.

MR. NOBRIGA: Yeah, by releasing the funds

necessary blah, blah, blah.

MR. VICTORINO: I second the rest of that

motion.

CHAIR RICE: It's been moved and seconded to

support the project and move funds along to perform

according to our agreement. Mr. Nakamura.

MR. NAKAMURA: One question. Mr. Attorney, is

it appropriate for us to basically agree to the

\$50,000 for a subsequent fiscal year, or can we just

agree to the \$30,000 for this year? Isn't there
supplementation?

MR. KUSHI: Board Member Nakamura, I'm sorry, I
had assumed this amount was budgeted. But if what
you're saying is correct, that it's not budgeted, then
we need to amend the budget.

MR. NAKAMURA: Well, the 30,000 is budgeted.

MR. KUSHI: Multi-year?

MR. CRADDICK: Yes.

MR. KUSHI: But your budget is year to year.

MR. NAKAMURA: Yeah.

CHAIR RICE: The request is for \$30,000 matching funds, so I think that's what the Board is approving at this point. Well, Mr. Chair, the Director pointed out on the memorandum of agreement Page 2, Item Number 3, it seems to have a release clause there regarding termination before the end of the term, but I still have other questions.

CHAIR RICE: Mr. Kushi, the request from the Director is for matching funds which are in the budget which we can approve. The request is not to sign a

multi-year agreement, right? So we can approve the request for funds, matching funds, and then if we have to amend the agreement to conform with our own rules, then we have to do that. But if you think the agreement adequately protects us, then --

MR. KUSHI: You know, at this time, Mr. Chair, I need to look at this again. I can't give you a yes or no on that.

CHAIR RICE: Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, perhaps I would

suggest, as you seem to be agreeing to, is if we
approve the \$30,000, which is the amount contained in
the budget and basically leave it up to the Director
and the attorneys to handle the appropriate
documentation.

CHAIR RICE: Okay. No objection to that?

(No response.)

CHAIR RICE: All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed say nay.

(No response.)

CHAIR RICE: Motion is carried. Okay.

Communication 02-14, request from Fred Sherman for

water service, Molokai. Mr. Sherman.

Mr. Craddick. Members of the Board, I've asked

Mr. Craddick for the historical background on this.

Here it is. You're all welcome to have it if you

like. I believe that in terms of service, Mr. Sherman

can have service if he pays for the meter, is that

correct, Mr. Craddick?

MR. CRADDICK: That's correct.

CHAIR RICE: The issue then is not with Mr. Sherman, as I understand it, with regard to getting a meter. It's that in the year 2000, the meter was removed from that property because the prior owner was delinquent. In the year 2001, Mr. Sherman purchased the property I think through a foreclosure and now wants that meter put back at no charge. And that's the long and short of all this correspondence I believe.

MR. CRADDICK: Yes.

CHAIR RICE: So if Mr. Sherman was here, I would ask for confirmation that he actually bought the property in 2001. And I would ask Mr. Craddick if, in fact, he did remove the meter in the year 2000 in April as he's indicated in this?

MR. CRADDICK: We did.

CHAIR RICE: You did, okay. So I think Mr. Sherman's issue is with the seller, if he believes there's a meter that's due him. And I don't know if corp counsel has had a chance to look at this or not.

MR. CRADDICK: It was a foreclosure I believe.

Those are as is where is.

MS. PARSONS: It could have been represented to the seller that there was a water meter on the property. It could have been represented. We don't know, so you're right, it goes back I would think to the seller.

CHAIR RICE: Mr. Victorino.

MR. VICTORINO: Basically that answered the question. I mean when it's a foreclosure, you take it

as is. And whatever results, resulting situations,

you knew that going in. I see we're not obligated in

that sense, Mr. Chair.

CHAIR RICE: I could see nothing in there,

unless for some reason -- there is some reference,

Mr. Craddick, to reviewing the property when there was

a meter there. That's why I asked if it was removed

in 2000. And he didn't buy the property and closed

until 2001. Then it was without a meter for a year,

so I don't know.

MR. CRADDICK: I can't confirm the date when he

actually concluded his transaction. I do know that
meter was removed in 2000.

CHAIR RICE: This is an e-mail from Mr. Sherman
to Mike Quinn, and it's dated April 23rd, 2001. And
it said, "I closed on this property last Monday," so
I'm sure we can figure out what date that was. And
then in this documentation -- I just, I guess I want
to make sure we don't embarrass ourselves here and
find out we actually didn't remove the meter in 2000
and we removed it in 2001 when we found out he was

buying it. Then I think we have an issue.

MR. CRADDICK: We could research that a little bit better and bring that back to the Board if you want. Because we got all the information from Cravalho plantation over there in Molokai and we would be probably looking at that issue sometime in the next month or so.

CHAIR RICE: I think the key thing is when we removed the meter, if we can verify when we did that.

MR. CRADDICK: I can verify that it was removed

in 2000.

CHAIR RICE: Okay. Subject to verification that the meter was removed in 2000, then Mr. Sherman can have a meter and pay the current fee. Do we need a motion to that effect? That's part of the rules I guess, right?

MR. CRADDICK: Yes.

CHAIR RICE: Okay. Let's move on to the fun stuff. Mr. Nobriga, you want to say something?

MR. NOBRIGA: I move Communication 14 be filed.

MR. VICTORINO: Second.

CHAIR RICE: Moved and seconded Communication

02-14 be filed. All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay. Motion is

carried unanimous. I was going to say let's move on

to the fun stuff. Okay. Other business, the three

items under other business, no one has interrupted me

for public testimony until now, so I guess you're all

here for this issue. Mr. Craddick.

MR. CRADDICK: Peter, on the last item, I don't

know whether Mr. Sherman has gone to court yet, but he was supposedly consulting with some judge that referred him to my original letter to him saying that he could come to the Board to petition the Board for relief. Now he sent the letter in.

He's not here, but I think the Board should take some kind of affirmative action either his request is approved or his request is denied, not just filing it, because that leaves it open that no action has been taken by the Board. And if he does go to court, court

is just going to refer him back to you for taking

action.

So if you're going to take action today, I'll

leave it up to the discretion of your legal advisor

here, but it would be my suggestion to take some kind

of affirmative action here, yes or no for his request

to have the meter reinstalled no charge.

CHAIR RICE: Well, and I guess at this point,

you have another fact-finding thing to do before we

can respond.

MR. CRADDICK: So then the best thing would be maybe to defer this item until we get that information to you.

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

MR. NOBRIGA: My motion to file was based on proposed rule amendment allowing for public appeals to the Board that a proposed rule has been transmitted to the Mayor and has not yet been approved or denied by the County Council.

MR. CRADDICK: This rule that the meter fee is

in has its own provision there where the Board can

waive the rule if we want, so you could deal with this

if you wanted to take some action.

CHAIR RICE: Ginny.

MS. PARSONS: May I make a motion that provided

that the meter was removed in 2000, that Mr. Craddick

is to respond to Mr. Sherman, and the purchase was in

2001, that Mr. Sherman may purchase the water meter at

the current rate.

CHAIR RICE: Is that it? That's it?

MR. VICTORINO: Second.

MS. PARSONS: Do we need anymore?

CHAIR RICE: All right. We've got a motion and a second. We have a prior motion to file I believe parliamentarily.

MR. NOBRIGA: I don't remember what the motion is, but there's a motion to rescind. What was the motion?

MR. KUSHI: The motion to reconsider your prior action.

MR. NOBRIGA: Right, right, thanks. Move to

reconsider the prior action, Mr. Chairman.

MR. VICTORINO: Second.

CHAIR RICE: Moved and seconded to reconsider

the prior action. Any discussion?

(No response.)

CHAIR RICE: All in favor, say aye.

VOICES: Opposed, say nay.

(No response.)

CHAIR RICE: Now we have a new motion subject to

confirmation of the facts of the removal of -- the

dates of the removal of the meter and the purchase of
the property that Mr. Sherman be told that he may
purchase a meter at the current rate.

MR. VICTORINO: Second.

CHAIR RICE: It's been seconded. Any discussion
on that motion?

(No response).

CHAIR RICE: All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried. If there is testimony at this point, public testimony anyone? Start in the front row. Come up and give us your name.

MS. BEASOM: Good morning, I'm Susan Beasom, and we've written a couple of letters. We have four-acre lot off Kokomo Road, and we applied for a subdivision in 1994. We've been on the water meter waiting list since then. Our subdivision has lapsed. We wish to remain on the list. We were notified that we may be

taken off the list or that we are off the list.

And I guess the point -- my point of contention is that I understand there are people on the list who have never even applied for a subdivision who remain on the list. And because our subdivision has lapsed, we're being taken off the list, and we don't want to be taken off the list. We are still waiting for -- we would like to still wait for a water meter.

CHAIR RICE: Okay.

MS. BEASOM: I think the reason -- Mr. Craddick

informed me the reason that our -- we were taken off the list or that our subdivision lapsed, Newcomer Lee was surveying our property, and we're -- we're Kokomo Iki subdivision. I don't know if you see that.

CHAIR RICE: Yeah.

MS. BEASOM: We were off island from '96 to '99, and it was during that period, so I don't know if it was a miscommunication or if we were lost, they didn't have our address or what or why. And my husband unfortunately is not here. He would probably know

more about that.

CHAIR RICE: Okay. I can tell you that no final decision has been made on this kind of issue. That's one of the reasons we're having the meeting today is to discuss this, so we appreciate your comment. We've got the list of the subdivision.

MS. BEASOM: I would like to know if there is something we need to do to remain on the list. We did not know it was a requirement to have a current subdivision to stay on that list. And if we had, I

guess we would not have let it lapse or we would have been diligent about looking while we were off island.

CHAIR RICE: Well, there's a lot of issues that are going to come up on the list that we're going to discuss today. We are not necessarily going to make a decision. We may or may not, but we are going to discuss them. So any input you give us, we appreciate it.

MS. BEASOM: So just keep coming to meetings and sending you letters?

CHAIR RICE: No, we're not delaying it, but as

we go through the process, a lot of issues were raised. Board Member Hashimoto went through the list and raised a bunch more, so we're going to try and discuss those today and come up with an equitable resolution.

MR. NAKAMURA: Can I ask one question?

CHAIR RICE: Sure.

MR. NAKAMURA: Your property, you have no meter at all?

MS. BEASOM: We have a meter. We have four

acres. We have one meter, and we want to subdivide that into two two-acre lots.

MR. NAKAMURA: So this subdivision was for the purpose of creating a second lot?

MS. BEASOM: Yes.

MR. NAKAMURA: And that was why there was an application for the second meter?

MS. BEASOM: Yes. Thank you.

CHAIR RICE: Okay. I'm glad you asked that question, so you said your subdivision name was?

MS. BEASOM: Kokomo Iki.

CHAIR RICE: Okay. Right, thank you.

MS. BEASOM: Thanks. Thank you.

MS. DICKSON: Mr. Rice, Chairman, and Members of

the Water Board.

CHAIR RICE: Your name, please.

MS. DICKSON: My testimony today is regarding

the upcountry water meter waiting list and the

issuance rule for the upcountry system on June 12th,

2002, the Board of Water Supply regular meeting. I'm

here this morning to respectfully request that my

husband Cecil Dickson and I be kept on the upcountry

water meter waiting list.

My husband and I own a two-acre parcel on

Omaopio Road in Kula. In 1993, we applied for a

three-lot family subdivision but were told that our

subdivision would not be approved because the Board of

Water Supply had deferred action on our request for

additional water meters due to the fact that water was

not available in our area.

At this time, we were placed on a priority list

for a water meter in the upcountry area and were told

we were number 300 on the list. In 2001, after

hearing through the news that the Board of Water

Supply would soon be able to provide water to those on

the upcountry priority list for water meters, we again

applied for subdivision of our property. I was told

that we were now 404 on the priority list.

I am not sure how more than 100 people got in

front of us on the list and this does concern me, but

we were at least satisfied that our position on the

priority list had been confirmed. On December 27th, 2001, we received primary subdivision approval. After doing some research, I discovered that the audit on the priority list conducted by the independent auditor with the cooperation of the Department of Water Supply recommended that numerous names be removed from the priority list. I also discovered that our name might be removed from the priority list because we did not keep our 1993 subdivision application active.

I appeared before the Board of Water Supply on

May 21st, 2002, to offer testimony to the Board's public hearing regarding the priority list and proposed rule change. I asked the Board to please reconsider removing our names from the priority list and to honor the grandfather clause regarding installation costs and charges of water meters.

At the public hearing, Board Member Nobriga stated that the concerns such as those I expressed had already been addressed by the proposed rule amendment. Further research indicates that despite

the Board's assurances, our concerns are not being addressed. The proposed rule amendment will only apply to those who remain on the priority list. If we are taken off the priority list, the proposed rule amendment will not apply to us and we will have little or no hope of receiving water meters we have waited almost a decade for.

The only reason I stopped pursuing the subdivision was because we were told that the water was not available and no assurance could or would be made when the water would become available. We were

never told that we could be excluded from the priority list because we did not continue to keep our subdivision application active. Had we known this was possible, we would have requested a time extension for our subdivision application. For the past nine years, we have been on the priority list and have relied on the assurance -- on that assurance that when water became available, we would be granted the water meters we were requesting in the order of the priority list.

Therefore, I urge you to please allow us to

remain on the priority list. To remove us from the

priority list would, in my opinion, be unfair and

unjust. I respectfully urge you to please address

this issue before you decide on the proposed rule

amendment. To allow the priority list to be amended

without consideration of those will cause hardship to

many families. Thank you very much.

CHAIR RICE: Ms. Dickson, one second.

MR. VICTORINO: Yeah, Ms. Dickson, I was looking

on this priority list. I cannot find you.

MS. DICKSON: I know, and I was -- I am 404 on
the water --

MR. CRADDICK: It's 95079.

MR. VICTORINO: 95079?

MR. CRADDICK: Teixeira-Medeiros subdivision.

MR. VICTORINO: I was trying to find this using
your name, and I could not find it for the living
daylights.

MS. DICKSON: I don't know why it went as that,
but the that was the original when my dad did it years

ago.

MR. VICTORINO: That's the property we're

talking about?

MS. PARSONS: Since '95, not '93.

MR. VICTORINO: You said '93 also in the

letter.

MS. DICKSON: Sorry.

CHAIR RICE: I have a question, Ms. Dickson.

You made a comment about the auditor recommending

names to be removed from the list. Where did you get

that information?

MS. DICKSON: From the Board of Water Supply and
on the -- in the priority, I mean in the rules, they
said that they were removing.

CHAIR RICE: But the auditor doesn't recommend
anything. The auditor was engaged to check the list.
They didn't make recommendations as to anyone being
included or excluded. That wasn't their job just so
it's clear for the record.

MS. DICKSON: When they said the first 50 were,
you know, considered okay on the list, I just assumed

that there was, you know, this is where they were at.

CHAIR RICE: No, the auditor -- one of the reasons we engaged the auditor was there was questions about the list, okay. I was number five. I'm now number 500, whatever, whatever. Without -- if it would have taken much longer, we would not have this report yet if they did the entire list. We told them to take the first 50. What they found was the first 50 were in correct order, that the documentation behind their listing is legitimate, so no exceptions

were found. They did not -- we didn't ask them to say whether someone should be kept or not kept. That's the Board's decision as you were testifying.

MS. DICKSON: Okay.

CHAIR RICE: Thank you. Any other questions,

Mr. Nakamura?

MR. NAKAMURA: So what is the source, David, of this table on void subdivisions?

MR. CRADDICK: The source of it is names that were not submitted to the auditor because they were

taken off the list because the subdivisions had

lapsed, and that's all I can say.

MR. NAKAMURA: So the source of the list is the

Department?

MR. CRADDICK: Yes. Yeah, these are all -- all

of these names here, I think if you'll look in Clark's

report there, I think we see a total of 17. And I'm

not quite sure how it went from 17 to the number you

have here, but you can see there's more than 17 here.

There's about 36 or somewhere in that order of

magnitude of subdivisions that were dropped off the

list because they had lapsed.

MR. NAKAMURA: What's the difference between a subdivision being voided and a subdivision expiring?

MR. CRADDICK: No difference I don't think. That's done by Land Use and Codes as far as I know, and, Herb Chang, is there some difference between those two?

MR. CHANG: I just used the same term. Land Use and Codes said it's null and void. I just used the same word.

MR. NAKAMURA: So these are basically preliminary subdivision -- they had a preliminary subdivision application and then their preliminary was either because of time or whatever was considered to be null and void?

MR. CHANG: Correct, or expired.

MR. NAKAMURA: Because of the expiration of time?

MR. CHANG: I'm not sure. Sometimes they use the word expired. Sometimes they use the words null

and void.

MR. NAKAMURA: But is it usual the reason one
has expired without any extension?

MR. CHANG: I don't know. I just received a
letter saying it's expired.

MS. PARSONS: Mr. Craddick, do you have to have
a subdivision in order to apply -- do you have to have
a subdivision in order to apply for a water meter?

MR. CRADDICK: No. Can I maybe go at the risk
of --

CHAIR RICE: No, don't take any risks this

morning. If you have a question for Ms. Dickson, I

think it's appropriate, otherwise we'll get into

plenty of this stuff. Thank you.

CHAIR RICE: Any other comments, last row? Dick

Mayer.

MR. MAYER: First I would like to thank the

Board for coming up to Kula and holding a meeting the

other night. That was very helpful for a lot of

people and I think hopefully for the Board to hear

from people. I just want to reiterate one or two

things that I said and that others may have said. We would like very much in the rule an actual public listing of the names. You can see the confusion that's come up today, the need for auditors, et cetera.

We believe it should be on the Internet, and that as numbers go down the list, that they be made public. And I think that should be put on the list and people will see exactly how many more people are ahead of them at all times. The problem with

subdivisions, and we feel that there are some large subdivisions which will deny families the ability to get meters, and consequently, we would urge, whether it be one, two, three, a maximum of a low number of meters being given to anybody on the list. And then they can get back on the list, be put at the end of the list for subsequent meters.

We would like to see oversight by the Board of the whole thing, and so we would like to ask that quarterly reports be given to the Board and that

relates to adequacy. If meters are being given out, we would like to make sure that there's adequate water for the people who already have meters. The problem could be that you give a meter out for a very large user; in other words, it may be only a three-quarter inch or one inch or whatever the meter size might be, but they might be using it up very intensively, be using up a large draw of water, so the number of meters does not relate directly to the amount of water actually being consumed and it may impact people. And

lastly, I would like to remind you of the upcountry

community plan.

I would like to hand out something. There was

an article in the newspaper that was written. If I

could ask -- this is an article from 1993, and in

there, it makes the point where the arrows are

pointing there regarding what was done by the

upcountry plan and the statement that we were making

that rule a priority rule knowing that the Water Board

was required to carry it out, so this was a very

conscious decision that was made.

At that same time, Mr. Craddick came to the Board, and I have here a second article that I would like to pass out. I hope David is flattered. I only have on this one here only a few copies. I hope he's flattered by the photo that's included in the article. And it says basically the same thing. I asked him a question. I asked him a question down on the lower left-hand corner of that article whether -- how the Water Department handled this question and Mr. Craddick did not answer the question at the time.

And it seems to be still the point of the Department that we're not really getting clearly how this list is going to interact with the very strong recommendation that's contained in the plan that's required that the Board follow that plan of how Hawaiian Homes and agriculture will be interfaced with this priority list. And I still haven't heard any word on how that will be handled. That's the end of my testimony.

CHAIR RICE: Thank you. Questions for

Mr. Mayer?

MS. PARSONS: Which Hawaiian homeland are you referring to?

MR. MAYER: It's an area on the southern end of the upcountry district below Keokea and between south Keokea and the telephone exchange, largely in that area. There's another Hawaiian homelands, Kahikinui, which is outside the upcountry district. We do not have a right to specify that land per se, but we -- I think we're in sympathy with -- the problem is the water from our district serves that area, and

therefore, it would impact them, but we could not make

that statement.

MS. PARSONS: Thank you.

CHAIR RICE: Any other questions for Mr. Mayer?

Yes, Mr. Nakamura.

MR. NAKAMURA: Mr. Mayer, you mentioned the

desire to perhaps limit the number of lots in new

subdivisions. What is your suggestion in terms of

what that number should be or what the criteria should

be in establishing that number?

MR. MAYER: I have always been frustrated by the

whole concept of family subdivisions, because I had a next-door neighbor who came to me and said my two sons are going to get those two lots beside me. He went ahead and subdivided. I thought that was great. I knew the two boys, his sons. They were students of mine. He went ahead and subdivided, and within a month I believe after he subdivided, he immediately sold it off to a mainland developer.

That to me is frustrating, so I think a family subdivision, if it is clearly a family subdivision and

if the family keeps it in the family for an extensive period of time, 10, 15 years, would be a way of getting around that. Not 30. I saw that in the first list of 50, one subdivision of 37. I don't think that's fair for one person to get 37 meters when somebody who might be the next person on the list doesn't get a meter at all, so I would like to say one meter per family. And if they can generally show and put in the rule that it is generally a family subdivision, then perhaps, two, three, four.

CHAIR RICE: Ginny.

MS. PARSONS: Mr. Mayer, do you feel that -- I mean when you're looking at the number of meters and limiting it in times and essence on that, isn't that more of a Planning Department issue rather than the Water Board?

MR. MAYER: Well, the Water Board is supposed to carry out the general plan and the community plan. That's your role. And so the technical part of someone who is carrying out the plan is your role. In

this case, if the priority is Hawaiian homelands and agriculture, your obligation is to find or make a rule that carries out that plan. This would be a mechanism to help do that. So I see it not that you're making the plan. The plan is there. Your job is to decide how that is going to be implemented. That's my viewpoint.

CHAIR RICE: Yeah, I think -- go ahead. Did you want to say something?

MR. NAKAMURA: So your view of family subdivisions is that it's either Hawaiian Homes or

agriculture?

MR. MAYER: My thing is it doesn't say

exclusively Hawaiian Homelands and agriculture. It

says that's the highest priority it's stated in

several places. That should be first. And then you

would go to individuals, and that may include in some

cases a small family subdivision of individuals, but

not the type of extensive subdivisions which some

people have on the list.

And there should be a reserve. I suggested a

possibility would be one-third/one-third/one-third.

One-third we're going to keep whatever source we have

reserved for Hawaiian Homelands, one-third for

agriculture, one-third for residential use and the

Director be given -- and you will not know what's

happening unless reports are given back to the Board

on some regular basis, quarterly or semiannually, as

to exactly how the meters are being given out.

That should just be a standard report that's

given back to the Board how this rule is being

implemented, otherwise you will never know what's
happening.

CHAIR RICE: Clark.

MR. HASHIMOTO: So you're not in favor -- well,
you're in favor of mostly family subdivisions and not
so-called commercial subdivisions where they'll have
more than three lots, so there's some commercial
subdivisions in here.

MR. MAYER: And I think that would be unfair to
many families, people who testified today and other

meetings, who have been waiting on the list ahead of people who aren't on the list. They would buy a lot in a commercial subdivision, but they themselves are not on that list. So a developer going and saying I am going to put up 37 or in some cases even more units I think should not be given a higher priority than someone who is further down on the list than a family in Kula or Pukalani or Kokomo who is waiting.

MR. HASHIMOTO: Because there's a lot of lots, some of these are 9, 4, you know, 15, 10, 19, those are all considered commercial, not family

subdivisions.

MR. MAYER: And you may want to put a limit.

You may say no more than four.

MR. HASHIMOTO: That's what we're going to

discuss today.

MR. MAYER: I think that it would be very wise

for you to set a limit, and then show not only that

it's just a four-lot subdivision, but also for family

members.

CHAIR RICE: Any other questions for Mr. Mayer?

Thank you, Dick.

MR. MAYER: Thank you. Thank you for your
attention to this.

CHAIR RICE: Anyone else want to testify? We're
going to take a quick break.

(Recess taken.)

CHAIR RICE: Okay. Before we get into a lot of
deliberation here, we have the auditor's report. You
lady and gentlemen have had a chance to review it in
regards you heard me say the first 50 names on the

list. Is there any questions or comments? I think

the appropriate action would be just to accept it at

this point.

MR. VICTORINO: Mr. Chair, first of all, I would

like to congratulate Clark on an outstanding job

because it took a lot of effort. And I apologize for

not being there, and secondly, I do and I move to

accept this proposal that Mr. Hashimoto has made so

that we can really start moving on on all these meters

and start getting this process moving.

CHAIR RICE: Mr. Victorino, if we could just

take up the Russell Yamane audit report first.

MR. VICTORINO: Oh, excuse me.

CHAIR RICE: He's done the work, and unless

there's questions, I don't think there's anything to

do other than just accept it.

MR. VICTORINO: Okay, I accept. Move to

accept.

MR. HASHIMOTO: Second.

CHAIR RICE: Move and seconded to accept the

auditor's report. Any questions, comments?

(No response.)

CHAIR RICE: All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response.)

CHAIR RICE: Accepted. Now, Mr. Hashimoto has

gone through the list and he has listed issues he

thinks we should address. Mr. Craddick.

MR. CRADDICK: I would just like to say it would

probably be in order for Herb Chang who has done a

real good job in keeping all this information together. I was fairly well convinced when this started there would be a number of things found other than the subdivisions taken off the list which was done at my direction, not his direction. I think he did a very good job there.

CHAIR RICE: Thank you, Mr. Chang. Okay.

Clark, you want to say anything on this report?

MR. HASHIMOTO: Like David said, I think Herb

Chang was the one that really did all the work in

getting the list and putting it together. He had a list of multiple listings, lots that had multiple listings. Some of the lots had three applications, so he had to screen all of that out, but other than that, I think David and George and Herb Kogasaka and Herb Chang, we all met and we kind of decided on -- we kind of came up with a list of concerns, and I think that's what we have, the issues to discuss today. I think the sooner the better to resolve these issues.

CHAIR RICE: Mr. Nobriga.

MR. NOBRIGA: I would also like to express my gratitude to Commissioner Hashimoto for his excellent work. I would like to, if possible, pursue discussion on Clark's report on a number of bases, whereby there is seven concerns. I think we can knock this all off if we go one through seven.

Prior to taking up Mr. Hashimoto's -- no, I take that back. Erase. On issue one, lapsed subdivisions have been removed from the list. We have before us a document showing 36 of these have occurred. In section -- Subchapter 2 of our proposed rule covering

issuing meters for the upcountry area, Section
16-106-04(b), we have in place a provision that says,
"Premises that are not on the priority list and have
expended funds in reliance upon official assurances
dated before November 2, 1994, or have any preexisting
rights associated with the premises entitling the
premises to water service shall be out 60 days from
the effective date of this rule to pay for or reserve
an allocation of service capacity pursuant to
subsection 16-8-9(b) of Chapter 8 of the Board's

rules. Thereafter such rights shall terminate."

I felt in speaking with Ms. Dickson that that section kind of assured her ability to get back on the list. Ms. Dickson now has an interpretation that's telling me that that's not right.

CHAIR RICE: Well, you know what, I don't know that -- that's why we're here today. If we decide these 36 people go back on the list, they go back on the list. I don't know we have to cite any rule for it at this point. I think that particular rule dealt

with people who have been getting meters while these people have not been getting meters so that we could end that practice.

So I think you're right, we go one through seven on the list. The first question is should lapsed subdivisions be removed from the list or not, and that's the question we should address right now. And if we think they should be on the list, then they should be put back on the list. I think it's that easy. Mr. Craddick.

MR. CRADDICK: As long as you do that, it would be that easy, but you can't say that these funds expended are the funds for people that are not on the list. These people were on the list. They have a place in the priority list, so you can't use that provision in the rule to put them in this group that are not on the list. So if you decide they're going to be put on the list, they go in the order where they would have gone on the list following the procedures that we have for getting on the list.

CHAIR RICE: I know. Don't go there with that

expended funds thing, okay.

MS. PARSONS: What about the dates that they,

the date -- what are we going to make the priority

here? Is it going to be to date that they file?

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: All I can say is we would use the

same procedures that we followed for the first 50.

CHAIR RICE: Yeah, whatever date that everyone

else has used to be on the list, these people would go

back in their place.

MS. PARSONS: In their place, okay, that makes sense to me.

CHAIR RICE: I guess my personal opinion is if you're an individual on the list and you have no requirements to do any subdivision kind of things, you're on the list. But if you had a subdivision and you didn't follow through with it, you're off the list. I don't know how that's -- how we justify that with the individuals.

MS. PARSONS: That was part of my question with

David before. When you file for a subdivision, you also ask for water meters, but it doesn't have to be simultaneous or separate. It doesn't have to be separate actions, but sometimes it is, so if it's a separate action that they went to the Board of Water Supply in addition to filing a subdivision, that should be a separate action all together.

CHAIR RICE: Yeah, all we're giving them, I believe, correct me if I'm wrong, all we're giving them is a chance to go back on the list in the order

that they were in, and then when their name comes up, if they haven't done their subdivision stuff and they can't comply with the time frame in the rule, then they're off. They're off, but we have given them the same opportunity we have given everybody else.

It's subject to any other rules that we come up with and subject to all the other kinds of things like availability of water and adequate transmission lines. Somebody can be number one on the list and be in the boonies and not get a meter if we don't have any water there, right?

MS. PARSONS: I agree.

CHAIR RICE: So all we're doing is giving them an opportunity to be on the list and when their name comes up, if they have their act together and they can get whatever is allowed under the rule. Clark.

MR. HASHIMOTO: David might have explained this. Some of them have subdivision voided and others application expired. Herb, did you say that was all the same?

MR. CHANG: Yeah, the same.

CHAIR RICE: If there's some reason that they can't do their subdivision that has nothing to do with water and their name comes up on the list and they can't get their subdivision and they can't get their meter, then they're off. There won't be, you know, you don't go to the back of the line. You're done. We're going to get rid of this list. That's the whole purpose of this.

MR. ZAJAC: How much time is there to get the subdivision complete?

MR. HIRANAGA: Mr. Chair, what was the answer to

Clark Hashimoto's question? I didn't hear the

answer.

CHAIR RICE: Herb.

MR. CHANG: My answer to that question was that

whatever reason why Land Use and Codes decided to use

expire or use the term null and void, the Water

Department didn't really look into that. As long as

we got the letter from Land Use and Codes saying it

was either voided order expired, we took that as

saying our action is to take them off the list and
leave them off the list, so we didn't get into the
nitty-gritty with LUCA why they did that action.

CHAIR RICE: That's not our concern is their
ability to get their subdivision. Does that answer
your question, Kent?

MR. HIRANAGA: Yes.

MS. PARSONS: It's right now where the confusion
I think stems from, and I know Planning is trying to
address this, too, it's where we come up in the
process. And maybe we need to come in first before

they go through their subdivision requests, because what happens is they'll submit to Planning and then come back to us and find out they can't get water, so they've expended funds to get to that process. That's something that's going to be handled internally, but right now the issue is are these people allowed to come back on the list, and if they can reup their subdivision -- because they probably expired because they couldn't get water period.

They just said, well, let it expire. I'm not

saying probably, possibly. So let them have an opportunity to reup their subdivision with the County on the -- on the probability that they're on this list and they can't get water depending upon where they are located.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: What we can do for administrative purposes, we can use the old subdivision numbers so that we can see that it is in order and just put the new subdivision alongside of it, so that, you know,

people can see they are in the proper order on the

list.

CHAIR RICE: Mike.

MR. NOBRIGA: What about the applicants on this

list that have expended funds to keep their

subdivision active?

CHAIR RICE: They're on the list.

MR. NOBRIGA: Well, did you have those people

that have been expending funds?

CHAIR RICE: Versus the people who didn't expend

funds?

MR. NOBRIGA: Yeah.

MS. PARSONS: That's a personal choice. That's a personal choice issue I think. If you want to roll the dice that you're going to get a water meter that it's going to come soon and you can keep your -- you want to pay the money to keep your subdivision going, that's your choice. It's a personal choice.

MR. NOBRIGA: But is the funds being expended to the Department of Water Supply?

MS. PARSONS: We don't -- well --

MR. CRADDICK: Can I use your example?

MS. BEASOM: Sure.

MR. CRADDICK: Since she's here, we won't violate any public names, but for whatever reason, they didn't start their subdivision I guess in '94 and they went off island. And the time came along where I guess a letter was submitted to somebody, whether it was their address or Newcomer Lee, it wasn't responded to and eventually it dropped off the list.

The problem that Mike I think was talking about

are people when they got that letter probably told their engineer, whoever was doing it, yeah, submit another application.

MS. BEASOM: Or a letter of extension.

MR. CRADDICK: Yeah, requesting an extension, something like that, and they had to pay that person whatever, \$5,800 or whatever, something like that, get the letter in and keep their subdivision renewed. And however many times they had to do that would be the money that they probably expended in trying to keep

their subdivision alive, and I think that's the issue where these people let it lapse, and that person did expend money.

Let's say you come up and you're five short of this person that expended money to remain active on the list and then that person can't get a meter that expended money. I think that's -- is that the issue you're trying to bring up?

CHAIR RICE: I know what Mike's point is, right. So does that put that person who spent money

here in a different position than those people who let
their subdivision lapse or dropped or whatever
happened? That's his question. The question -- the
other question he asked though you didn't answer was
did those people whose subdivisions are active placed
any money with us?

MR. CRADDICK: No.

CHAIR RICE: The answer is no. Ginny.

MS. PARSONS: I just look at it as we weren't
very clear to the people upcountry what was going on
with this water for the last ten years, and I think

that it's our fault. If we had have been clearer with the issues on what was going on, maybe these people would have opted to keep their subdivisions going. I don't think it's an issue of whether somebody is spending more money than somebody else.

MR. VICTORINO: Mr. Chair.

CHAIR RICE: Yes, Mike.

MR. VICTORINO: I almost have to disagree with Ms. Parsons on that. If somebody has done their due diligence and kept up with their subdivision fees and

kept redoing it, if I was the person, I would be very
offended if all these people that had let it lapse,
whatever the reason. It's good, justified. If all of
the sudden their name goes above me, I would be kind
of offended, and I think if you were in that position,
you would be exactly the same way.

I don't mind putting them back on or whatever if
that's what the general feeling of the Board is;
however, I think they should fall into an area where
those who have done their due diligence and have been

maintaining and waiting and kept their subdivisions
and whatever else alive by paying whatever they needed
to do and taking care of their responsibilities, they
shouldn't be penalized in that nature. I think
something has to be worked out that way, but that's my
feeling on that issue.

CHAIR RICE: But the question though is the
maintenance of the subdivision. Maintaining it as an
active subdivision has nothing to do with water.

MR. VICTORINO: I'm not arguing that point.

CHAIR RICE: Well, I'm just saying. So someone who has a subdivision application and who intends to keep it active is doing so because they intend to go through with the subdivision and they're just waiting. It has nothing to do with whether water is available or not. They choose to keep it active.

MR. VICTORINO: I'm not arguing that fact. But to reward someone who has let it lapse, for those who have done due diligence, I don't know if that's fair. I'm not talking about, you know, just the water issue.

CHAIR RICE: Well, they have to go back and do, I mean who knows. They have to go back to the County and reactivate it, so maybe that's easy. Maybe that's not. I don't know. I think there's another bigger issue, Mike, before Mr. Craddick speaks, and that is when we publish the -- when we publish the information about the list, we didn't, unless I'm wrong, it doesn't say if you're on the list as a subdivision, you must keep it active in order to be maintained on the list.

It is just you want a water meter, you come in
and you put your name on the list, which is why I said
anybody who is Joe Blow who puts their name on the
list is not going to get knocked off. And the choice
of maintaining an active or an inactive subdivision, I
don't know why that would differentiate somebody.
Kent.

MR. HIRANAGA: I believe you brought up a good
point, because are there people on the list who are
asking for meters who have not applied for a

subdivision, and if they have not, are they still on

the list?

CHAIR RICE: Sure, an individual who wants one

meter.

MR. HIRANAGA: Right.

CHAIR RICE: Sure.

MR. HIRANAGA: I believe the Public Works

Department takes a very or is trying to not grant

these extensions on a rubber stamp basis anymore. You

have to show effort occurring during that six months

for a six-month extension; therefore, a lot of these applicants probably, if water is their only obstacle, would not be able to demonstrate to Public Works that they're moving forward on their subdivision, and Public Works would not grant the extension.

Personally, I feel that the applicants should be placed back on the list, and they have the opportunity at that point when their name comes up to reserve the requested number of meters and pay the fees and to have two six-month extensions, which basically allows them two years to accomplish the subdivision. And

maybe we need clarification from Public Works as to how they grant extensions. Are they willing to grant extensions to people who for the only reason they're not receiving final subdivision approval is lack of water meters?

CHAIR RICE: Personally, I think they should be put back on the list in whatever order they were originally on, but whatever they can or can't do from Public Works is what happens. If they can't go through, then you don't --

MR. NAKAMURA: I just wanted to clarify something that was asked earlier. So, David, when you were maintaining this list, if someone came to you and said we're thinking about doing a six-lot subdivision and we want our name on the list for six meters, you would have put them on the list without them having gone through the process of getting preliminary subdivision approval, or is everybody that has more than one meter presumably have gone through preliminary subdivision?

MR. CRADDICK: To the first part of your question, the answer is yes, people are on the list simply with letters saying they need to do this. The next -- can you repeat the next part of your question there again?

MR. NAKAMURA: Well, I guess I think that answers it. So basically, we're -- I think that reinforces what the Chairman is saying, we have the matter of requesting the position on the list which is separate from the initial subdivision.

CHAIR RICE: So it could be even worse. It

could be that some of these guys could say something

about a subdivision and never really applied for it.

They're just on the list. And the poor guys who

applied for it and let it lapse are off. So somebody

who is up here on the list for the first 25 may not

even have a subdivision application in, and they may

not even be able to comply when the list comes out, so

I think that's even more reason to do it.

MR. NAKAMURA: I think that's why it's important

to treat the list as purely a list. And as people

come up, they're given the opportunity to proceed to either take it or not take it. If they don't take it, then they go off the list for whatever reason. It could be subdivision. It could be some other reason. But if they're not in a position to take it, then I think they should go off the list. If they're in a position to proceed with the building permit or a subdivision or whatever, then, you know, they have the opportunity to proceed.

CHAIR RICE: Mike.

MR. NOBRIGA: The list is basically a
chronological listing of applicants which have been
denied service due to lack of source adequacy
primarily, yeah?

CHAIR RICE: Right.

MR. NOBRIGA: I think we're getting that
confused with this priority issue or who has
priority. It's basically a chronological listing. I
would support replacing these -- the -- I would
support putting the people that have been removed back

on the list in the same chronological order that they were originally situated on the list. I believe that those applicants that have continued paying to reactivate their subdivision will only -- will have a faster chance of actually installing meters once meters can be released.

MR. HASHIMOTO: Is that a motion?

MR. NOBRIGA: I will make a motion at this time.

MR. HASHIMOTO: Second.

CHAIR RICE: It's been moved and seconded that

those people --

MR. NOBRIGA: Thirty-six names.

CHAIR RICE: You want to make it absolutely only

the 36 names, the subdivisions that have been removed

from the list because they're not active, void or

expired or whatever to be put placed back on the list

in their chronological order, is that your motion?

MR. NOBRIGA: My motion specifically -- yes,

Mr. Craddick.

MR. CRADDICK: I just talked with Herb who

prepared this list, and he would prefer it be more general because he's not 100 percent. There might be one or two more.

CHAIR RICE: So that the motion should be subdivisions, not this only.

MR. NOBRIGA: All applicants, yeah, that were removed from the list be replaced to the list in the chronological order that they had originally appeared.

MR. HASHIMOTO: Second.

CHAIR RICE: Discussion?

MR. HELM: Yeah. Basically, I agree with what

Mike is saying there, and the bottom line, the way I

look at it, part of the list is going to be determined

by the water availability and water source, so, yeah,

I agree with what Mike has said.

CHAIR RICE: All right. Shall we call for the

question? All in favor, say aye.

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response).

CHAIR RICE: Motion is carried.

MS. PARSONS: Mr. Chair.

CHAIR RICE: Was there a nay?

MS. PARSONS: No. Mr. Chair, I ask you to make

another motion that the list be published on the

Internet pursuant to Mr. Mayer's request so people

will know where they stand and we have public notice

available to the community.

MR. CRADDICK: Peter, I think that would be an

OIP issue, putting people's personal names. We can

put the list on, but I don't know if we can put

individuals' names on.

CHAIR RICE: But their list is already on the

website by tax map key.

MS. PARSONS: But it is by tax map key.

CHAIR RICE: It is already.

MS. PARSONS: Subdivisions, too?

CHAIR RICE: Well, it will be amended. Okay,

Number 2. Mr. Nobriga.

MR. NOBRIGA: There was no second to

commissioner -- sorry, sometimes you move fast.

CHAIR RICE: That's why you're sitting next to me. Number 2, multiple listings. Clark.

MR. HASHIMOTO: I guess Herb came out with multiple listings in total 88 from 40 different properties, so I guess one of the suggestions was that properties listed multiple times on the list will be evaluated according to the amount of source requested. And then subsequent requests needing more water than earlier requests will be offered water in

the order the requests -- order of the request on the list. So, you know, it's the same TMK with sometimes three different names requesting for the same lots.

CHAIR RICE: Are there two issues here? One is that the same person -- I mean multiple requests for the same TMK, and then you have persons who are requesting for the same person or different TMK's, so they may have three pieces of property.

MR. CRADDICK: Same property.

MR. HASHIMOTO: Same property.

CHAIR RICE: And your suggestion on the same property is evaluated according to the Maui source?

MR. VICTORINO: Mr. Chair.

CHAIR RICE: Yeah.

MR. VICTORINO: Am I correct, Clark, you're saying if I applied, first of all, say I applied as an individual, and then I came back six months later and I applied for a subdivision or farming, which my source now increased the amount of water I was requesting. Is that how you're saying by when I came

in, or by the source amount?

CHAIR RICE: Go ahead, David.

MR. VICTORINO: Just so I get that clarified.

MR. CRADDICK: Maybe I should let Herb do this,

but my understanding, as Howard pointed out, people

could have gotten on the list simply by submitting a

letter. So let's say they got on the list once that

way, and let's say they actually applied for a

subdivision and their name got put on the list again.

And then let's say, for example, because I know some

are on there three times, let's say they applied for

further subdivision of that other subdivision and
asked for more meters. And I think those are some of
the issues that are out there, so in our discussion,
what we said was evaluate these things according to
the request.

If the first one, they wrote in and said, I need
two meters for a family subdivision, okay. That has a
date, let's say 1994. The next one, their subdivision
actually got submitted. Let's say it's 1996, but it's
still a two-lot subdivision. Then we would take the

earlier date. If it's for three meters or some other number of meters, then those extra meters would be handled at the time that name came up on the list, not before, and I guess one issue could come up is if the request wasn't clear what it was for in first place.

But I would have to defer to Herb if that may be an issue. But I think most of them are relatively clear what they want to do.

MR. VICTORINO: So you're going by when the request was made, the date of the request, yeah?

MR. CRADDICK: That's I think the suggested

language here.

CHAIR RICE: So let me clarify this. If

somebody has been on the list three times and there

are people whose names are on three times, and let's

just assume it's not -- they did make a mistake.

Let's say they started with a three-lot family

subdivision. Then they decided they bought the

adjacent property and they wanted five meters and then

they later want ten meters just for an example. It's

not real that I know. When their name comes up, they

don't automatically get ten meters. Or it will depend

on what we decide in terms of limiting the meters.

What are we saying? It goes by the first request?

MR. VICTORINO: The first request.

CHAIR RICE: In some cases, they might be right

after each other.

MR. VICTORINO: Still the first request.

CHAIR RICE: So then their name is next, so they

get their first three, and then their name is actually

next on the list and they get the next.

MS. PARSONS: Right, but they should have the opportunity reject or accept the first name, the first position. If they accept the first position, they take the first position. And when their name comes up again, otherwise, their name goes off the list for the first one. They can't say I'm going to wait until I get all three names up and take it. Is that fair?

CHAIR RICE: I don't know that it's fair. In some cases, multiple names follow each other. And in the case where they come back and want more meters, if

we're thinking about trying to get meters to people,

that person becomes a large user all of the sudden.

Is it fair that they then before anyone else gets a

meter, they may get nine, because they're listed three

times in a row, for example?

MS. PARSONS: That's got to come in for our

decision though.

CHAIR RICE: I'm just raising the question.

MR. HELM: I guess, Chairman Rice, the question

I have if the applicant who has duplication of

applying based on duplication of TMK's, not

necessarily a name because he changes the name, but

the TMK's are the same. He applies for a five-eighths

meter and then applies for a three-quarter meter and

applies for a one-inch meter. And what we're saying

is actually we're going to recognize that he applied

first for the five-eighths meter, and that's what

we're intending on giving him and not the one-inch?

MR. CRADDICK: That's the way I read this

suggested language there.

CHAIR RICE: We need to be real clear on that

because there's a lot of variations because I see

people on the list in succession with different

TMK's. George.

MR. TENGAN: Mr. Chair, there's another

scenario. Let's say for one tax key, there might be

two meters and subsequently for five meters, or if

they say seven meters, and then on the third one would

be five meters. I believe the way we were discussing

it, the request for the seven meters would take

precedence over the five meters, so that let's say you

couldn't use it for -- couldn't take the seven meters
at the time it was offered to you, you could revert
back or go forward to the five meters.

CHAIR RICE: That's the question.

MR. TENGAN: That's another scenario.

CHAIR RICE: What about this to make it
simpler? What if we said if you're on there for
multiple requests, you have one request? You decide
whatever it is, and you get one, that's it. You don't
get three. You don't get two. You don't get three.

You get one. You decide, if it's for the same piece of property now. If it's for the same piece of property and you've got three requests in, you need to make a decision. You can choose the earliest filing so you don't lose that early filing space, but you only get one request, whether it be for three, five or seven, whatever it is. You say, okay, I'm going to take my early request, and it's for nine. That's it.

And if you don't get it, you're off. And if we decide to limit the number, that's all you get. And

that's it. I'm talking about for the same TMK,

multiple listings for the same TMK. David.

MR. CRADDICK: Let me try and get a scenario

here. If somebody has an early request for more

meters than they made in a subsequent request, I'm not

quite certain why they would come back on the earlier

request and ask for more. What they've probably done

is written in and said I want seven meters and

actually tried to subdivide it and probably found out

they can only have five lots. So I think other

portions of the rule, one meter, one lot covers that they wouldn't be able to still get seven meters on those five lots on the first request just by that one lot, one meter portion of the rule.

But if, you know, let's say a subsequent request was for less meters and you put in, let's say a quarter million dollars of improvements, and I don't know if you're saying that you take the request with the lowest amount of water. I don't know if that's what you're saying.

CHAIR RICE: All I'm saying in your scenario, if

the person, let's say they came in for seven meters,
but they found out later they could only get five lots
so they reduced it to five, when we asked them you
know, you've got to choose one. You go to the
earliest priority. Why are they going to choose seven
if they can only do five, right? So then they do
five.

MR. CRADDICK: That's what I'm saying. I think
the existing rules cover that. What I heard you
saying is that if they come in, let's say they're on

the list three times, first the written one, next the family subdivision two lots, and then subsequently, let's say they want to do another two lots and they knew when they did the planning and stuff for that two-lot family subdivision that they're going to have to put in a quarter of a million dollars in improvements. So they said, oh, well, geez, if we're going to spend that much money, I'm going to get these other two meters when my name comes up on the list.

And they may have purposefully got on the list for

that reason because they're shelling out a big chunk
of money.

CHAIR RICE: And my proposal is, yes, they would
be allowed to go from that four meters, for example,
earlier. But we have the other part of the rule yet
to go. Limiting meters we haven't talked about yet,
so, right?

MR. CRADDICK: I don't think you're
understanding what I'm saying there. What I'm saying
is let's say the person consciously had stepping up

requests for water.

CHAIR RICE: Right.

MR. CRADDICK: And they -- the reason why they stepped up the request is because they found out how much it's going to cost them to make improvements to get their let's say two meters.

CHAIR RICE: I understand.

MR. CRADDICK: Then they will have spent that money in reliance of being on the list where they are for the subsequent requests for more meters, so to arbitrarily make them pick one, I'll defer to corp

counsel, but I'm going to guess that's going to be a substantial change in the rule on something that people would want to comment on.

CHAIR RICE: What you're saying is someone, let's say they've spent a quarter million dollars already, and they haven't gotten any meters?

MR. CRADDICK: No, no, they're on the list for some number of meters.

CHAIR RICE: And they realize in order to get two meters, they have to spend, for example, a quarter

of a million dollars, so they might as well get four,
and they later come in for two more, is that what
you're saying?

MR. CRADDICK: So on the first request, they've
got to put in the quarter of a million dollars of
improvements. And they get the two meters, and they
sit and wait until their name comes up again. And
what I'm telling you is if you do that, I would expect
that's going to be a change that is going to probably
require this going back up to public hearing again.

CHAIR RICE: That's not what I'm saying. I'm saying, just to make sure we understand each other, if they've got a request in for two meters and go to six because they know they've got to spend a quarter of a million bucks, they decide that the request for six goes into the first position is what I'm saying.

MS. PARSONS: Peter.

CHAIR RICE: Right here first.

MS. PARSONS: I think it might give an unfair advantage to people with multiple listings because

there may be folks that are on this list ahead of them
that could do the same thing and really could use four
meters instead of two and they didn't -- I think it's
where your request falls, give them the right to say,
no, I don't want the two meters. I'll wait until my
four meters come up. But don't give them an earlier
advantage to getting something.

CHAIR RICE: Except we haven't made a decision
on limiting meters.

MS. PARSONS: I'm just saying I don't think
their request should be just because they have a

letter in for one meter in '93 and they come back in '94 and they want four, that they should jump up to the next position. It's an unfair advantage. You're going to knock those guys out in the middle.

CHAIR RICE: If we give them four.

MS. PARSONS: If we did, yeah.

CHAIR RICE: Mike is next.

MR. NOBRIGA: The question is what is the deciding factor in determining -- in determining what is actually listed? Is it a tax map key that we are

focused on as the determining factor, or is it the applicant, the actual person, the name which is the deciding factor of the determination of the position on the list? I feel that the list is people. It's flesh and blood. It's not the tax map key.

CHAIR RICE: But the tax map key just represents the property. The individual can be on there five times, for example, for five different pieces of property in whatever order.

MR. NOBRIGA: The tax map key could change

already, so that's one different body.

CHAIR RICE: The TMK can change?

MR. HASHIMOTO: It's all the same.

MR. CRADDICK: The list is on there according to

TMK. Because, you know, let's say a person didn't

even live upcountry and they submitted a letter saying

I want X number of meters and went out and tried to

buy a property as they saw the Board coming up to get

meters I mean. There's nobody on the list that didn't

have some sort of a land position.

CHAIR RICE: Yeah, that's exactly why --

MR. CRADDICK: So these requests definitely run with the land, not with the person. I mean a person couldn't be on the list for one property, sell it off and go somewhere else and say, hey, I had a request for two meters on this other property, but now I want it over here and this other guy, you know, was cut loose.

CHAIR RICE: Clark.

MR. HASHIMOTO: I don't know if it would be legal. Can we issue if you have multiple requests on

the same TMK, issue the meters on the first request only, and if they have a second and a third request, will the same TMK be on it after the whole list has been honored? In other words, you know, they've got the same request or a different request for the same TMK three times, but we'll honor the first request and any subsequent requests will be honored after, in all fairness, after everybody else has been issued their meter.

MS. PARSONS: I think we've got to determine

whether we want to go by date. And what's the most important thing here is the TMK. Secondly, how do they get positioning? And it's by the date of their request.

CHAIR RICE: That's already set.

MS. PARSONS: So we can't move their second request down to the end of the list because it's dated.

MR. HASHIMOTO: But it's the same TMK.

MS. PARSONS: It doesn't matter. They can

reject. If they reject the first one, they wait until their second request comes up.

CHAIR RICE: If you take that argument, then you wouldn't limit meters then.

MS. PARSONS: Why?

CHAIR RICE: All you're doing by -- all Clark is saying is he's limiting meters to multiple applications for the same TMK.

MS. PARSONS: Let's stay on the subject though.

CHAIR RICE: That's what the subject is.

MS. PARSONS: We're not there limiting meters yet. That's their determination call, and we make our determination if we're going to limit the number of meters. So if they have a request in for two, four and six and we're only going to give two out, then they're going to have the right to take the first one, and then they take the first one. Then the other ones fall by the wayside or stay on the list until we up the number or whatever.

But I think we've got to determine first what the priority is or put these guys back on the list by

the dates they came in. After we finish determining that, we determine how many meters we're going to issue. And then that's their determination if they want to stay on or get off.

CHAIR RICE: I don't disagree with that, but I think that's what he said.

MS. PARSONS: He said go to the end of the list I think. That's what I kind of understood. They go to the end of the list, and I don't think you can review the end of the list. You leave them where

they're in there by their dates.

CHAIR RICE: Howard.

MR. NAKAMURA: I think we can come up with all

kind of hypothetical situations. It could get

complicated. We could have undivided interest, two

people with the same tax keys applying for meters.

And I think the simple solution that was mentioned

when we started, which is that you basically go down

the list and when the person's name comes up, you give

them the opportunity to get his meters and he either

takes it or he doesn't.

If he chooses to wait until his name comes up a second time because he wants more meters, so be it.

You just work your way down the list. The guy takes it or he doesn't take it. I think that's the easiest way to handle it.

MR. VICTORINO: I move to accept Mr. Nakamura's conclusion.

MS. PARSONS: I second.

MR. VICTORINO: That's the best way I can figure

it. It's clear-cut. When your name comes up, Peter

Rice, you want it? Now. Done. Mike Nobriga next.

We move it right along, and we keep moving in that

chronological order instead of trying to move you up

and bring you -- how you got this. I think if we keep

it simple would probably be the safest way.

MS. PARSONS: Yeah.

CHAIR RICE: It's been moved and seconded. If I

understand the motion correctly, that you just stay on

the list where your name is no matter whether you have

multiple names, the same TMK or whatever, right?

MR. VICTORINO: Exactly.

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

VOICES: Aye.

CHAIR RICE: Opposed, say nay.

(No response.)

CHAIR RICE: Motion is carried.

MR. VICTORINO: Thank you, Mr. Nakamura.

CHAIR RICE: Inadequate distribution pipelines.

MR. HASHIMOTO: I guess what Mr. Craddick has

been saying is that should people on the list be notified that they will not be able to get water unless the distribution lines are upgraded. I guess some of the staff thought that this is covered under the current rules, but a lot of people, they're up on the list, but if they don't spend the \$250,000 to upgrade, they're not going to get their water meter, so maybe we should notify these people or I don't know how it's going to be done.

CHAIR RICE: Yeah, Kent.

MR. HIRANAGA: I believe that situation is an evolving situation because someone above them may put improvements which may bring adequacy to their lot, so I think that question shouldn't be answered until that point in time when he's being offered the meters because someone could be putting a subdivision in now. I would hate to see him forfeit his position until the question is asked to him do you want your meters.

CHAIR RICE: And so in terms of people who are

on the end of the list, that would be good. But if you were in the beginning of the list let's say and you didn't have adequate distribution and couldn't get a meter and you don't apply within 30 days, you're off the list. Now you have no chance, and then let's say two years later, somebody else puts your --

MR. HIRANAGA: They had ten years to bring the system to adequacy if they wanted to.

CHAIR RICE: Ginny.

MS. PARSONS: Well, wasn't that more of a

Planning determination? I mean we're talking right

now about lines going in to make -- that on the list

now in the world that we're in in this scheme right

now, we're talking about or not there's sufficient

lines to provide for them. Now, they can stay on the

list if they can't use it. We're just going down the

list, right?

CHAIR RICE: No, when we're done with this list,

when we're done with this rule, there's no list. This

list thing should never have started in the first

place in my opinion. We're going to be done with the

list.

MS. PARSONS: It's still a Planning determination not for us, not in our scheme. And if they could show us something else is being developed in the area in the near future, then we could give them an extension of time.

CHAIR RICE: I don't think so.

MR. CRADDICK: Because this list is going to be available to everybody, anybody high up in the list can look. If there's other people further down that

may have to make the same improvements that they do,

nothing prevents them getting together with that

person and saying, hey, let's share in this.

I mean the information is out there to

everybody, so administratively we could tell people

without making a rule change that lines may be

inadequate. Do some early planning on your part, so

when your name does come up, if there are people in

the near vicinity that could work with you, start

working with them now. Don't wait until the 11th hour

and you've got 60 days to come up with an agreement
with somebody.

CHAIR RICE: Kent.

MR. HIRANAGA: If the system is inadequate to a
specific lot, they can still go ahead and reserve
meters in the anticipation that based on their
efforts, it will bring the system to adequacy in those
two years. It's a gamble, but they can say it's not
adequate, but I'm going to go ahead and pay the fees
because I believe in two years it will be adequate.

MR. CRADDICK: Well, I suppose they could,

yeah.

MR. HIRANAGA: You know, my belief is nothing is certain in this world, so when your time comes up, you make your decision am I going to pay the fees because I feel I can bring adequacy there. Joint ventures or whatever, joint property owners, but the two years elapses and you lose your fee.

CHAIR RICE: So it just sounds like we want to make a general notice that you need to be aware of the adequacy of the distribution lines in your particular

area; is that right?

MR. VICTORINO: Yes.

MR. CRADDICK: Actually, Ed points out something in the new rules, in the meter fees, I think that was the three years now in the new rules, so it's more than two years.

MR. KUSHI: Subject to the Board's approval.

MR. CRADDICK: The Board has already approved that one.

MR. KUSHI: No, if they want to go more than two

years.

CHAIR RICE: It's an option if they want to come and ask for an extra year. Mr. Nobriga.

MR. NOBRIGA: On the subject of notification of adequacy of the lines, I think it is the Department's purview to notify everybody whether they're upcountry or some place else that the line is inadequate. And being that we just went to CIP and we had a request for the Planning Department to tell us where they're proposing to put pipes, that should also be public

knowledge so that people that are waiting can see

three, five, six years down the road, if the

Department is going to have one CIP project to approve

the area. That's all.

CHAIR RICE: Kent.

MR. HIRANAGA: I feel the responsibility of

determining the likelihood of having adequacy for the

meters should be placed upon the applicant, not upon

the Department. They should meet with the Department

at that point to determine what is the likelihood. Is

it adequate? If not, what is the likelihood when it

will be adequate? You're putting too much of a burden
on the Department.

CHAIR RICE: Mr. Craddick, probably a live
question here. Looking at this list, how many just
ballpark have adequacy problems?

MR. CRADDICK: I don't think I could give you an
answer to that, at least not right now today.

CHAIR RICE: All right. Have we agreed on that,
general notice would be concern with the distribution
adequacy in your area?

MS. PARSONS: Yes.

MR. VICTORINO: We agree.

CHAIR RICE: Clark, subdivisions already

approved.

MR. HASHIMOTO: I need help from David on this.

I kind of forgot why this issue was -- I guess some of

the subdivisions are private water systems and they

were approved. And they're still on the list.

CHAIR RICE: So they developed their

subdivision?

MR. HASHIMOTO: They developed the subdivision under the private water system, but they're still on the list.

MR. CRADDICK: Yeah, that's the 36-lot subdivision you see up near the top of the list there is like that, but they will actually not have an option of joining up with the system without coming to the Board because they did not build to standard, so that subdivision will basically be dropped no matter what happens unless they rebuild and redo all their

subdivision and build it to standard.

CHAIR RICE: I don't know if we can say we're going to drop them. We already made a decision they're on the list. If their name comes up, and they say, all right, we'll throw away this water system we did, we want our meters.

MR. CRADDICK: They could. They could.

CHAIR RICE: Is this only one property that's on this issue?

MR. CRADDICK: No, I think there's A, B and C sub issues there. And the other issues are, you know,

let's say somebody came in and actually made the improvements that they were required to make at their own risk, but then they want final subdivision approval by going with the private water system, you know, let's say catchment or something like that if they're in Haiku.

And so they get final. At the time they get final, you know, chances are we have a question on the list, you know, you got what you wanted, you should be off the list. But this person here consciously went

ahead at their own risk, made the improvements, got

the fire system up to standard and said I want final.

I'm going to put in a catchment system until then, but

I don't want my name off the list. Hey, I put the

system in. I want my meters.

CHAIR RICE: That's what I think they're going

to do.

MR. CRADDICK: I'm trying to -- we talked about

all the issues there, and so to me, I have absolutely

no problem letting the person be -- have their place

on the list if they build the system to standard if

it's inadequate. And I guess that would be the same

for the other subdivision also, if they did build to

standard, let them build, but I think they're pretty

far along on the construction. I'm not sure.

CHAIR RICE: Mike. Mr. Nobriga.

MR. NOBRIGA: But didn't we, as a board, have to

waive fire requirements for them to get the

subdivision with their private water system?

MR. CRADDICK: Some maybe you did, but some may

have actually been with improvements.

CHAIR RICE: So they've done their own system,

and they've done adequate improvements to satisfy the

Fire Department?

MR. CRADDICK: Well, to bring our system up to

standard. I believe that was the testimony at the

public hearing from one person sitting in the audience

here.

CHAIR RICE: So somebody who has a subdivision

and went ahead and provided their own private water

system is going to still be on the list, and at the

time that their name comes up, depending on what we
decide about meters, they can get their meters, is
that it?

MR. HELM: I've got a question. Dave, the
bottom line, that's subject to their water system,
their private water system being in compliance with
the standard of the Board of Water Supply?

MR. CRADDICK: It's -- in this particular
instance, it's in compliance with the fire
requirements, but we can give them a meter. So

they're saying I want to do catchment or some other method of getting water to these lots other than using our water.

MR. HELM: Yeah, but the only way you're going to approve them having a meter is their water system has to be standard.

MR. CRADDICK: That's correct.

MR. HELM: That's not an issue until you know definitely their water system is up to standard?

MR. CRADDICK: That's correct.

CHAIR RICE: Okay. I think that's, forgetting the upcountry list, I think the private water systems have to be done to our standard. I mean they don't have to be. They can do their own, but we're not going to take them unless they're to our standard.

We've had that problem several times already, inherited systems that aren't up to standard. Okay.

Did we answer all questions there? No, because C has not been discussed. No waiver of fees.

MR. VICTORINO: I agree.

CHAIR RICE: Okay. B again, David, were they

approved without water subject to making

improvements?

MR. CRADDICK: That's the item B there where

they got final subdivision approval under our rules,

but in order for them to get meters, they would have

to make the improvements.

CHAIR RICE: So when their name came up, they

could apply for their meters, but they would have to

make their improvements before we issued?

MR. CRADDICK: Right.

CHAIR RICE: That's not an issue I think, is it? Okay. We're moving off of four.

MR. VICTORINO: Yeah.

CHAIR RICE: Five, limitation on the number of meters. Let's just leave it at that, can we? That's a question. A legal question is can we limit meters? Yes, Mr. Craddick.

MR. CRADDICK: One other item that, and I don't know if this is the 40-meter example here, but there is a subdivision that has some kind of subdivision

agreement signed back in the '80's that gave us an easement for a water line. And it is just I believe maybe in the due diligence portion or coming out of a bankruptcy proceeding.

We have gone to corp counsel to check and see if they can still get the meters. This is an off-list subdivision, one that was approved a long, long time ago. If they do the improvements, can they get those meters? And they have already been given -- well, we've gotten an opinion from corp counsel that they

can get those meters if they do the things they said

in that agreement, so that's one issue for the Board

to consider there that there are some off-list people

with a large numbers of meters. The one in particular

that I'm talking about is Kula Manu, not Kula Malu,

but Kula Manu, which is Bill Alice.

MS. PARSONS: Is it different owners than the

original grant? You said it went through a

bankruptcy. Was the grant to the bankrupt to the

debtor?

MR. CRADDICK: When you say the grant, the

subdivision agreement?

MS. PARSONS: Yeah.

MR. CRADDICK: It was two partners I believe.

MS. PARSONS: The original grant?

MR. CRADDICK: Well, when you say grant, I'm not

sure what you mean.

MS. PARSONS: When you granted the original

subdivision meters that you said we already had an

agreement.

MR. CRADDICK: We didn't grant any meters. The

subdivision just got final approval subject to making the improvements, but until the improvements are made, they'll never get meters. But I guess my point here is this is an off-list subdivision. If you're going to try and limit meters to subdivisions, how is it going to apply to those types?

MS. PARSONS: How would it apply to those? Why would it apply to those?

CHAIR RICE: I didn't understand what you were saying until now.

MS. PARSONS: I mean we can't -- you're telling me there was an agreement, this is what I'm understanding you to say, there was an agreement. And the guy went bankrupt. And somebody else bought it out of bankruptcy. The agreement does no longer apply that I can see.

MR. CRADDICK: That's the finding of corp counsel.

MS. PARSONS: Well, I think we need a bankruptcy attorney's opinion. Because once somebody goes into

bankruptcy, it goes to their bankruptcy estate is what I understand. And the bankruptcy estate is no longer the debtor's possession. It belongs to the trustee, and once the bankrupt is out of bankruptcy, whether or not the receiver or the trustee sells the property, it's a transfer. The rights don't necessarily have to transfer with it.

CHAIR RICE: That's another question, but I think what Mr. Craddick's point is is that if we're going to limit meters to people on this list, there

are people who are outside the list who want meters.

Does it apply to them? That's what you're point is.

You're just using that as an example. That other

issue may still be relevant.

MS. PARSONS: Right, okay.

CHAIR RICE: Well, yeah, Mike.

MR. NOBRIGA: Doesn't our rules already provide

additional requirements for larger subdivisions than

the majority of the requestors which are prevalently

like less than four meters?

MR. CRADDICK: There were substantial

improvements that they had to make off site including storage tanks. Actually, I take that back. The agreement had them doing all those improvements but it was on site, a private water system where they got a master meter I believe; is that correct, Herb, a master meter?

MR. CHANG: I don't think the improvements were approved yet for the master meter.

MR. CRADDICK: The construction drawings are not approved yet in this and we've asked that the

improvements -- we've asked that the improvements that they make be to the entire system, not just their own subdivision.

CHAIR RICE: Let's not focus on this particular issue. That's not the point. That may be something we have to deal with. The point is if we're going to limit meters to people on this list, we're limiting meters to everybody. That's the question.

MS. PARSONS: Yes.

CHAIR RICE: We're not -- by dealing with this

list, we are getting rid of this two-tier system that's been in existence. We would not have a two-tier system, and if after we clear the list and there's not adequacy, then nobody will get a meter.

MS. PARSONS: David is bringing up a good point in that is this list, are the names -- we've already said it goes with the TMK and the person who is applying for the meter, is this a transferable right?

CHAIR RICE: Put that as Number 8.

MR. ZAJAC: If you don't limit the number of

meters to people, you're not going to go very far down
the list.

CHAIR RICE: We didn't get there yet, but I hear
what you're saying. We're discussing our ability to
limit meters, first of all, and whether the Board
wants to and there's a legal question that needs to be
addressed by esteemed counsel, Mr. Kushi.

MR. KUSHI: What's that?

CHAIR RICE: Do we have the power to limit
meters?

MR. KUSHI: Why not? You've done everything on

this list. You created this list.

CHAIR RICE: Yeah, Dick, quickly.

MR. MAYER: When you originally set up the list,

what was the direction that was given by the Board to set up that list? Did it specify the number of meters, the TMK or the people? It didn't say anything to that effect.

CHAIR RICE: David.

MR. CRADDICK: This list came at the suggestion

of corp counsel after the Jim Smith court case in the

latter part of 1994, and the Board really had nothing to do with the list and how it was formed, why you were on there or anything other than and it actually started off with three lists. It started off with one for meter size increases, additional meters and subdivisions. And then I think the only Board action in there was to meld it all into one list, so people got on the list for multiple lots.

CHAIR RICE: I don't want to get off on my other

tangent, but we don't operate this Board as different

entities here. It's one entity. Corp Counsel advises the Department of Water Supply, which we are the Board of, period. So we're going to deal with this, and we're going to be one organization here.

MR. PARSONS: I'm not sure whether Mr. Kushi said it was legal. Can we legally do this?

MR. KUSHI: You're creating rules. You're promulgating rules, and I don't think it's a legal opinion that you need. I think it's --

CHAIR RICE: It's just if we write it into the

rule, it's the rule.

MR. KUSHI: Right.

CHAIR RICE: But if we limited -- now,

Mr. Kushi, the legal question is if we decided to limit the number of meters per name on the list, would that be a material change and would we have to go back to public hearing?

MR. KUSHI: Well, Mr. Chair, you know, the rules that went out to public hearing is on Page 106-4, which is Section 16-106-04(e) which says, "Request for water service shall be limited to one meter size," and

then it goes on and says "or a single five-eighth inch
meter per request for planned subdivided lot, but
shall not exceed the number of lots created by the
subdivision."

That's your proposed rule. Now, as I recall in
your two public hearings, you had a lot of testimony
from the public as well as the internal discussions
about maybe revising that. That being the case, and
you haven't acted upon this rule yet, I don't think
you need to go back.

CHAIR RICE: I see that can certainly fall into this section. Thank you, Mr. Kushi. Brilliant as usual. So we're at the question, shall we limit, and if we say yes, what is the limit on meter size and how shall it be applied. Ginny.

MS. PARSONS: I mean are we saying are we going to apply it to TMK or to name, is that what you're asking?

CHAIR RICE: We've kind of already made that decision on TMK, and we decided that everybody stays

on the list in their original order whether there are multiple names on the same TMK or whatever.

MS. PARSONS: Okay. We're going to use -- but there's no conflict there if we're doing it by name, by TMK and by name, that goes back to that question if I'm on the list and I sell my property to you, do you get to pick up my right? Is it a transferable right? And it has a value to it as well. We've got to look at that because if I'm on the list and I'm Number 23 and I sell my property to you and I've got a water

meter and I can subdivide my property, there's a big value on that.

CHAIR RICE: You're right. Mr. Nobriga had his hand up next. You want to defer to Mr. Craddick?

MR. NOBRIGA: I will speak. Mr. Chairman, I move that pursuant to public input that meter issuance is limited to no more than six meters on this list.

CHAIR RICE: By?

MR. NOBRIGA: By what?

CHAIR RICE: TMK or name?

MR. NOBRIGA: TMK, sorry.

CHAIR RICE: It's been moved. I know what
you're going to -- it's been moved. There's no
second?

MR. NOBRIGA: To limit.

CHAIR RICE: Limit to six.

MR. NOBRIGA: Up to six. You can change the six
by amendment, you know.

CHAIR RICE: Is there any -- okay, guys.

MR. NOBRIGA: Okay, guys.

CHAIR RICE: Any other motions?

MR. NOBRIGA: Recess, Mr. Chairman.

CHAIR RICE: Yeah, we can have a recess, one
minute.

(Recess taken.)

CHAIR RICE: We're still on the same issue. Are
we going to limit the number of meters?

MR. HASHIMOTO: Do we have to decide today?

CHAIR RICE: We don't have to decide today.

MS. PARSONS: Can I make a suggestion?

CHAIR RICE: Sure.

MS. PARSONS: Can I ask David, if we were to say -- this is a hypothetical -- if we were to say we were ready to issue five-eighths inch meters and we were going to go down the list, we were prepared to issue five-eighths inch meters, no more than six per TMK per name, would you be able to take that and work with it, and how much would you be able to provide?

MR. CRADDICK: Can I expand on that question a little bit? The direct answer to your question is yes, but let's say the Board passes this with that

restriction in there and it goes on to the Council and
all the lawyers we had in the audience as we discussed
this before show up before the Council, then this
whole thing is going to get shot down. And it's going
to be Christmas time, and the economy is going to be
decided before this comes back to the Council.

It wouldn't be my recommendation to the Board to
take that chance with this rule for the few number of
lots that will be affected by it. I would say go
through the list one time and, you know, the
likelihood of that Maunaolu subdivision coming in for

meters I think is relatively remote, and the other ones on the list it can't be more than three or four of them that are beyond six, so why risk the whole rule for those three or four subdivisions having a whole rule knocked down when it gets to the Council?

MS. PARSONS: Why do you feel it will be knocked down at Council?

MR. CRADDICK: Because every time the Board discussed that, we had more lawyers in the audience than people to protect the interest of the those

people that had larger subdivisions. They're going to have to make very large improvements to get those, and I think there's going to be a reliance of having gotten on the list for that purpose.

MS. PARSONS: How far down the list do you feel you could go with a six minimum just looking at the list as we have it now?

MR. CRADDICK: You're making the assumption that they can do all the improvements, subdivision improvements?

MS. PARSONS: Uh-huh.

MR. CRADDICK: My estimate is I think Herb has
got somewhere around 128 on the list.

MS. PARSONS: Twenty-eight?

MR. CRADDICK: Yeah.

MS. PARSONS: The top 28 of this?

MR. CRADDICK: 128.

MS. PARSONS: Oh, 128?

MR. CRADDICK: Yeah, and that includes the
Maunaolu subdivision.

MS. PARSONS: And putting the subdivision list

back in?

MR. CRADDICK: It doesn't include putting the

voided ones back in, so that number would be reduced

somewhat.

CHAIR RICE: Well, now you need to tell the

Board that you're making an assumption there's only

200,000 gallons available.

MR. CRADDICK: 300,000.

CHAIR RICE: My list says we go to 220,

220-ish.

MS. PARSONS: Is that putting those guys back
in?

CHAIR RICE: No, that's right, we've got to put
those guys back in, too. Yeah, go ahead.

MR. ZAJAC: On your Internet site, there's a
list of properties, and on that property -- on that
list, there's properties that are across from Hookipa,
H'Poko, big parcels of land on there for water
meters. There's some land owned by Maui Land and Pine
and A&B. I don't know if your Internet site is

accurate or not, but there are large parcels that

would take --

CHAIR RICE: It's not on the list.

MR. ZAJAC: This list is how many --

MR. HASHIMOTO: This is the official.

CHAIR RICE: That brings up a good point in

that's why the public is coming in and making comments

about large subdivisions if our website has that

information on it, and the information that the Board

is getting doesn't have it on it, number one, we look

stupid, and second of all, now we -- if that's really
on the website, again, this guy probably knows how to
use a computer to look at it, so then what's the
problem here?

MR. ZAJAC: How many -- is that the entire list
that you have?

MR. HASHIMOTO: 470.

MR. CRADDICK: 470.

MR. KUSHI: Peter, get his name for the record.

MR. ZAJAC: My name is Frank Zajac.

CHAIR RICE: Thanks, Frank. My question stands,

Mr. Craddick.

MR. CRADDICK: I don't think I can answer that exactly.

CHAIR RICE: You know, we're trying to make some decisions about a very important rule and we're telling people one thing and they're telling us another because we've got two different sources of information.

MR. CRADDICK: The list on the Internet is that April whatever it is 2000 list, and that is not the

list sent to the auditor. I can tell you that for certain.

CHAIR RICE: Well, I have a list that I got before the auditor came on, which is what prompted me to ask for that, and that is not on my list either.

MR. CRADDICK: We would be posting the list that the auditor has looked at with the addition of these subdivisions.

CHAIR RICE: But how do the people get on the list that's on the Internet then? Those people exist

that are not on this list, so now we're going to say

-- now we're going to create another controversy

because now we're going to publish this list with

those names added, and all these people who are going

to be off the list are going to say we're off the

list.

MR. CHANG: Can I explain what happened? The

list that's on the Internet is April 1st, 2001. And

we tried to do it like in six months to do an update,

so the next one would have been October 2001, so we

did prepare a list. And then these questions came up about all this voided stuff, so we didn't want to put another list thinking it may cause more confusion, so the plan was to get all these questions answered and then redo the list and put it on the Internet.

MS. PARSONS: Peter, if we're publishing a list on the Internet, we're publishing it to the public, so we've got to look at that, too. Let's move forward, and we've only got 300,000 gallons to deal with right now. We have more water coming on board eventually.

We can go back as long as we're not limiting the amount forever, let's just get some meters issued and maybe even by the time he's even working through this list, we can reevaluate it again. Let's get something going for these folks who have been waiting for too long. We're prepared to give five-eighths inch. He said we can do it. He said yes. We're prepared to give five-eighths inch meters up to six per TMK per name nontransferable rights.

CHAIR RICE: Well, except we're talking about a rule that we're going to send to Council. Once we

pass this rule and send it to Council, it applies to the whole list. And my own point, and I'm not disagreeing with trying to get something to the people, but if we don't have the list to look at, we're making decisions about how to deal with the list, and let's say that you're -- what happens if your hypothesis is true and for whatever reason people get way down the list and we haven't addressed those concerns, I think we've not done the right thing.

MS. PARSONS: You're right on that. But I don't

know that we're making a new rule. Are we, Ed?

CHAIR RICE: Yeah.

MS. PARSONS: It says, "shall not exceed." It

doesn't say you can't be prepared to give out. It

just says shall not exceed the number of lots created

by the subdivision. We can -- we can give, from what

I would think, and this is Mr. Kushi's call, we can

give a number that we're prepared to give out without

making a new rule for right now, is that right, Ed, or

do we have to have a whole new rule?

CHAIR RICE: No, no, no, I'm not saying that,

Ginny. I'm saying we're talking right now -- what

Mike was suggesting is we limit the number of meters

to be given out. Okay, if we're going to do something

like that in the rule, then we're going to be stuck

with it, right.

MS. PARSONS: Right, but do you want to make a

rule out of it or --

CHAIR RICE: What you're saying is leave the

language as it is, leave it open-ended?

MS. PARSONS: Right, and then be able to go back
and address larger subdivisions when more water comes
on.

CHAIR RICE: Then you need another rule because
this rule says if later on there's a 500-unit
subdivision, this rule says, all it says is not more
than 500 meters. And then if you were to go back then
and say but we're only going to give them 20, now I
think you would need a new rule.

MS. PARSONS: That's an Ed call, Mr. Kushi.

MR. KUSHI: Mr. Chair, I'm looking at that

Subsection (e) of 16-106-04, which is correctly stated as, "shall not exceed the number of lots created by the subdivision." You could read it how Board Member Parsons is reading it; however, I believe the intent and the testimony from the public hearings was that if you had a 10-lot subdivision, you were -- the intent was to give you 10 meters, not 11.

MS. PARSONS: But then --

MR. KUSHI: I believe that was the discussion, the intent, the purpose in all of these meetings

because previously before this final rule was even issued, as you recall in our committee meetings, we did discuss limiting it to three.

CHAIR RICE: Right.

MR. KUSHI: And we just said whatever the subdivision was planned for, you issued the number of meters available.

MS. PARSONS: But then we would be limiting -- then we would be limiting ourselves. Number one, we would be stalling everything again, but we would be

limiting ourselves to be able to provide for big subdivisions because right now you would never be able to -- you would only be able to get so far down the list, and that would be it.

CHAIR RICE: From a practical standpoint, you're saying we're only going to get so far down the list, so why worry about the later guys. What I'm saying is while we're doing the rule, I think we need to worry about the later guys. Let's think this through and not do some half-okole rule. We're spending some time

to deal with all these issues, and we were about to

say, and Mike I know you're next, we were about to say

it's not a big deal to worry about limiting the

numbers of meters because the list that we have in our

possession has very few applications for large numbers

of meters.

But the other side what we've just heard is

there's a bunch more people there with big meter

requests. We ought to know what those are. I don't

know what they are.

MR. CRADDICK: And I don't know if we could tell

you either. I know the only one I could tell you about is Kula Manu. I don't know why all those attorneys came to the Board meeting, but they were probably watching.

CHAIR RICE: What do you mean we don't know how many meters? The list is published on the Internet.

MR. CRADDICK: On the off-list.

CHAIR RICE: We're not talking about off-list.

Right now we're talking about the difference between the list that's published on the Internet and the list

we're holding in our hand right here.

MS. PARSONS: Can I make a suggestion? I think the way we're taking applications for meters is very antiquated, I mean to take a letter for a meter. I think there should be a form. I know that comes in later. But right now he's just telling me people put their phone calls in, and they're on the list. How do we know when their phone calls --

CHAIR RICE: That's why we have to get rid of this list.

MS. PARSONS: Let's deal with this list,

period.

CHAIR RICE: We don't have the right list. I'm

suggesting at this point I think we need to get an

updated list and we have to meet again and talk about

it. Everything we've said so far I think stands. I

don't have a problem with the multiple listing, the

lapsed subdivision rule, all that kind of stuff. But

we're down at the point of limiting meters. Mike made

a suggestion. Nobody wanted to buy into it, and now

we've got some testimony that there's other names on a list. I would like to see that list myself. Mike.

MR. NOBRIGA: The discussion at hand on Item 5 pursuant to Commissioner Hashimoto's request was that an official legal opinion is needed to determine if the Board can limit the number of meters for large subdivisions. Mr. Kushi clearly stated that because this rule that we're making specifically looks at a situation with people on this list that have been refused service, the answer was yes. I think we have already answered the question of question 5.

MR. NAKAMURA: Very good, Mr. Nobriga.

MS. PARSONS: I concur.

CHAIR RICE: Mr. Craddick.

MR. CRADDICK: On the list up to 120 -- when I

say the list, I'm talking about October 31st, the list

sent to the auditors. I don't even consider the one

not sent to the auditors as even a valid list, and

we'll get it off our website today.

CHAIR RICE: No, you won't get it off our

website today. If people called in and that list was

created and we put their names on it, then that's a list we have published it to the public. We're not going to take that list and just ignore it.

MR. CRADDICK: Then that's the list we should have sent to the auditors. That's why we tried to get it cleared up before, which what do we send to the auditor? And you said only send to the auditors the ones that would be a valid request that needs water.

CHAIR RICE: Then why do we have those names on the list?

MR. CRADDICK: Because that's the list that was created back in 1994. A lot of people already got meters for the water that was given out through the A&B agreement, and what was it, 1996 got their water. If people provided their own water, they got water. They're not on the list.

CHAIR RICE: There's nothing wrong with people who have got water who are on the list. We're talking about people who don't have water who are on the list who we haven't seen. That's what we're talking

about.

MR. CRADDICK: If they haven't got water,
they're still on the list. I can tell you that.

CHAIR RICE: If they haven't got water, they're
still on the list. So you mean the top 50 is going to
be different on that list than on this list?

MR. CRADDICK: Yes, Peter Stolle is still on
that list.

MR. VICTORINO: I'm confused.

CHAIR RICE: Mr. Kushi.

MR. KUSHI: Mr. Chair, in hopes of moving along,

whatever list, and I would think the auditor's list would be the one, however. As you mentioned, there's another one floating around, in the rule itself, the proposed rule is there is a section for waiver modification, that if one -- let's say I was on your list. I'm not on the auditor's list. And I feel strongly I should be on the list. I could come to the Board and ask you to please review the circumstances of my case, and then you act on it. So within the rule itself, there are mechanisms for adjustments

for --

CHAIR RICE: But if there was one or two,

Mr. Kushi, I wouldn't have a problem with that. We

don't know what the extent of that is. You're right

from a mechanical standpoint. But we won't -- you

know, we go through that process and pass a rule and

send it to counsel and we find out that there's 100

people coming in and grousing at us. We haven't done

any -- we have created 100 times more meetings and

we're going to be wasting everybody's time.

MR. HASHIMOTO: How many names are on the list that is published on the Internet? We have 470 on this list.

MR. CRADDICK: On that list, there's in excess of 800 names. On this, there's 530 names. No, 470 names.

CHAIR RICE: Some of those names are added to the list after the date here. We understand that.

MR. VICTORINO: You know, Mr. Chair, it's hard to make decisions when you don't have everything in

front of you, and I don't know why -- I know the

auditor's list was really crucial because these people

have been supposedly waiting forever and ever and I

thought that's what the auditor's list was all about.

Am I incorrect in saying that?

CHAIR RICE: Don't call it the auditor's list.

We gave it to him. He didn't create it. All he does

is audit the list, so he doesn't create it.

MR. VICTORINO: This was given to the auditors.

Why was this list given and not the 800? I guess

that's my next question.

MR. CRADDICK: Because there were many people on the list that already had meters. There's no sense auditing them.

MS. PARSONS: David, on the list that's on the Internet, were there people after 1995? Most of the people on that list on the Internet that made up the 400 difference from the 400 we had, that makes it eight, did they come before 1995?

MR. CRADDICK: I don't know if I could answer that question. I don't know.

MS. PARSONS: Why wouldn't they be on the auditor's list?

MR. CRADDICK: Try your question again.

MS. PARSONS: Okay. On the Internet list that you have that's different from the auditor's list, it's about 400 people difference. People that would be different on there, were they -- were any of them prior to say 1995?

MR. CRADDICK: Yes.

MS. PARSONS: Wait a minute, wait a minute, that

haven't gotten water meters?

MR. CRADDICK: No.

MS. PARSONS: No. So the people that may have

been 1995 have already gotten the water meters and

they wouldn't be different than what we have right

now?

MR. CRADDICK: No.

MS. PARSONS: Okay. 1996?

MR. CRADDICK: I don't know if I could go year

by year and where the split is.

MS. PARSONS: I just don't think it's fair to the public that we not start issuing something somewhere. If you've got to do it by date, then everybody from 1994 that's on the list that we have plus the list we're putting back in, let's give them some water meters and take some action.

CHAIR RICE: It doesn't happen until we process the rule anyway. We can't make the decision to give out meters. We're making the decision to send the rule to Council.

MS. PARSONS: Why can't we do it then by year by

capacity then?

CHAIR RICE: My suggestion would be that the staff print the list that's on the Internet, get copies to all the Board members, get a copy to Mr. Hashimoto. Mr. Hashimoto can reconvene his committee and come back to us so that we know if there are people who have gotten water who are off the list, great, fine, take them off and make sure we're not missing somebody. But the public is looking at the list on the Internet. So if there's no objection,

that's what we're going to do. Okay, so ordered.

MR. DANTE: Mr. Chairman, may I ask a

question?

CHAIR RICE: Sure.

MR. DANTE: My name is David Dantes. It will

just take a second. I wanted to verify that the

current version of this rule that we're considering

provides for upgrading to the next highest size of

water meter, not just issuing a new water meter

because the version that was distributed in March at a

Haiku community center meeting allows for an upgrade
or a five-eighth inch meter, and the version that's on
the Internet doesn't mention anything about an
upgrade.

CHAIR RICE: This section (e) that I'm looking
at says, "A request for water service shall be limited
to one meter size upgrade to the next larger meter
size or a single."

MR. DANTES: Thank you.

CHAIR RICE: Thank you, sir. Mr. Hashimoto, do

you accept that?

MR. HASHIMOTO: Uh-huh.

CHAIR RICE: Thank you, sir. So that means we are moving on to the last item on the agenda, which is review and discussion of the legislative report.

MR. CRADDICK: Peter, Item A that you wanted to add on the place on the list, is it transferable?

CHAIR RICE: We're going to get together again on that.

MS. PARSONS: Let's decide how long he has to pull this list together.

CHAIR RICE: Just print it up.

MS. PARSONS: How long are you going to give

him?

CHAIR RICE: Tomorrow. The list is printed.

MS. PARSONS: I know it's printed. By the next

meeting?

CHAIR RICE: Clark has to get with his committee

and look at them, so it's not going to be at the next

meeting.

MR. CRADDICK: It could be.

MS. PARSONS: It could be?

CHAIR RICE: Well, Clark is going to New Orleans.

MR. CRADDICK: So is Mike, and we can have the list there with them.

MR. VICTORINO: If you can get them there, we can review them. Mr. Chair, I have to leave. I do have a pressing appointment at 12. Sorry, yeah.

CHAIR RICE: If you want to talk, there's two other issues on Clark's original list, which is people

on the list in the Kula ag park.

MR. HASHIMOTO: I'll check on that, and then the other item I think was fixed, so we already solved that.

CHAIR RICE: Okay. Legislative report.

MR. NOBRIGA: Mr. Chairman, approval to submit to the Mayor, to the County Council, we're going to defer that.

CHAIR RICE: We have to finish the list. We need to know if the list is final. Clark is going to

review the Internet list with this list. We're going to get another report and make our final recommendations with these other items.

MR. NOBRIGA: Thank you, Mr. Chairman.

CHAIR RICE: In my opinion, you guys can differ with me and make what decision you want. But I think we need to feel comfortable when we're looking at the right -- what everyone else is looking at. Agree, disagree?

MS. PARSONS: I agree.

CHAIR RICE: Legislative report, it was in your

packet. Anything you want to bring to our attention,

Mr. Craddick?

MR. CRADDICK: No. I guess one thing is in the state budget, there was, does it say that in here about the state budget? They got -- okay, yeah, capital improvement project for various state irrigation systems. There's substantial funding for the upcountry dual line, so that's of interest.

CHAIR RICE: Okay.

MR. NAKAMURA: One quick question,

Mr. Chairman. In the context of legislature, did the Department make any appearances or efforts in terms of soliciting some of these projects?

MR. CRADDICK: Yes, we submitted testimony and I think some of our testimony may be included in here.

And George, did you make any trips over there this year?

MR. TENGAN: No.

MR. NAKAMURA: So there was no lobbying as such?

MR. CRADDICK: Well, I wouldn't say that. WE

communicated back and forth on the Internet on a
number of occasions, but nothing in person this year.

There weren't that many burning issues.

CHAIR RICE: Just for your information, the

Chair feels that we need to have a little bit

different process with the legislative representative

next year during the session rather than after the

session.

MR. NOBRIGA: It's interesting to note there was

a bill relating to condominium property regime also died. Kind of interesting that we're also pursuing similar paths.

CHAIR RICE: Now, as I understand it, we aren't taking anymore names on the list getting back to the old issue, are we?

MR. CRADDICK: No, we're still putting names on the list. Until the list is gotten rid of, names are added.

CHAIR RICE: We want to know from today on when names are added so we don't get into this position.

And, Herb, you're the one who is responsible for it,

right?

MR. CHANG: Yes.

MS. PARSONS: Let's find someone who is going to

handle the Internet for you and make sure that corp

counsel reviews any data and any lists or anything

before they get published on the Internet so we know

they're current.

CHAIR RICE: Okay. Any other business? Okay.

One reminder, Mr. Craddick, we were going to get a

list, a project from Ellen. The due date was last

Friday.

MR. CRADDICK: This is the prioritizing?

CHAIR RICE: Yeah, she said she had them by year

for the next five years, and that's all we were asking

for the list, so I'm just reminding you.

MR. CRADDICK: Yeah.

CHAIR RICE: Thank you.

MR. CRADDICK: They're not prioritized. I do

have the projects listed.

CHAIR RICE: We should circulate them.

MR. CRADDICK: I'll get that around to you
today.

CHAIR RICE: The public hearing for the budget
is slated for tomorrow night at 6 p.m., and I'll be
there. And you guys have a safe trip to New Orleans.

MR. CRADDICK: Also, if you've got your ticket
badge to get in there, don't leave that behind. It's
in that envelope that you got.

CHAIR RICE: Anything else? Meeting is

adjourned.

(The meeting concluded at 12:05 p.m.)

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