

County of Maui Water  
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Shopping Center Conference Room, Kahului,  
Maui, Hawaii, commencing at 9:00 a.m., on June 27, 2002

REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135

IWADO COURT REPORTERS, INC.

A T T E N D A N C E

CHAIRPERSON: PETER RICE

Board Members: CLARK HASHIMOTO

ADOLPH HELM

KENT HIRANAGA

HOWARD NAKAMURA

MICHAEL NOBRIGA

GINNY PARSONS

JONATHAN STARR

EXCUSED: MICHAEL VICTORINO

DIRECTOR DAVID CRADDICK

DEPUTY DIRECTOR GEORGE TENGAN

DEPUTY CORPORATION COUNSEL:

EDWARD KUSHI, JR.

BOARD SECRETARY: FRAN NAGO

ACTING FISCAL OFFICER:

HOLLY PERDIDO

ENGINEERING: HERBERT KOGASAKA

LAWRENCE WINTER

STAFF: ELLEN KRAFTSOW

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

REGULAR MEETING

JUNE 27, 2002, 9:00 A.M.

CHAIRMAN RICE: I will call to order the regular meeting of the Board of Water Supply, County of Maui. It is Thursday, June 27, 9:00 am. We are at the Kahului Shopping Center and the agenda has been published. In attendance Board Members Clark Hashimoto, Adolph Helm, Mike Nobriga, myself, Peter Rice, Howard Nakamura, Ginny Parsons and Jonathan Starr, Director David Craddick, Corp Counsel Ed Kushi, Jr., staff members, members of the public, Mr. Moretti and Mr. Dantes are here. Is there anyone else I missed? Staff?

The first item on the agenda is approval of the minutes. And you will see that minutes from May 14th, 21, budget workshop May 21, regular meeting May 2 , meeting on May 30th, and public hearing on June 13 were distributed.

MR. NOBRIGA: Mr. Chairman?

CHAIRMAN RICE: Yes, Mr. Nobriga.

MR. NOBRIGA: I'd like to move that the minutes of the regular meeting and executive session of May 14, public

hearing on rules May 21st, budget workshop fiscal year 2003, May 21st volume one, and May 30th volume two, the regular meeting of May 28, 2002, and the public hearing on Board of Water Supply fiscal year 2003, operation capital improvement budget on June 13, be accepted and filed subject to 30-day review, at which time if there's no corrections, these minutes shall be filed.

MR. STARR: Second.

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

(Ayes).

Opposed say "nay."

(None).

The minutes will be accepted and filed. If there are no changes or deletions, they will be filed.

At this point on the agenda we have testimony from the public, Section IV. Members of the public who are here to testify, you may testify at this point on any issue that's on the agenda, or you can wait if you're here for a specific issue and when that issue comes up on the agenda you may testify at that time. I sometimes get rolling along when we get on the

individual items, so shoot your hand up and I will recognize you.

MR. BUCK JOINER: I would be happy to present my testimony now, this is Buck Joiner, if it pleases the Board. If it's going to come up reasonably soon, fine. If you are not going to handling it until this afternoon, then no.

CHAIRMAN RICE: Mr. Joiner?

MR. JOINER: Yes.

CHAIRMAN RICE: Let's see. You're first on the Communications list. I don't think we will be that long if you want to wait. But if you have something to do.

MR. JOINER: That's fine. I want to be able for the Commissioners to ask questions.

CHAIRMAN RICE: That's fine. Really, your pleasure. If you wait, we will go ahead with the agenda. I don't see or hear any other testimony at this time. The

Director's report 02-21. Mr. Craddick?

MR. CRADDICK: Okay. Your approval is requested for the attached resolution, which is a supplement to a resolution of the County of Maui, Board of Water Supply, authorizing a loan program and providing for a loan to Maui Ranch Estates Owners' Association, a Hawaii non-profit corporation, and certain adjoining property owners for the purpose of making improvements to qualify a substandard water system for dedication to the Board of Water Supply, and authorizing and providing for the borrowing of funds from the United States Department of Agriculture Rural Utilities Service for the purpose of financing the loan program, and covenanting as to establishment, maintenance and collection of loan payments, and pledging loan payments to payment of the RUS loan, and establishing certain funds and accounts and making other covenants and agreements in connection with the foregoing.

Now, this resolution amends the resolution that the Board passed in 2001, which is in your packet, and for a loan resolution public bodies, which is Rural Utilities Services Bulletin 17 0-27. And if these resolutions are approved, this is the final step in completing our obligations to close the

loan for the Ulumalu-Peahi Water System Improvement Project.

Also attached is a letter from our bond Counsel, Bill Yuen, with details on the matter, and the concerns that were raised in bond Counsel's letter have already been addressed. We have already signed both forms, which are the Assurance Agreement and Equal Opportunity Agreement. We are also including forms in the construction contract, Diversified Contractor, who was the low bidder on the project.

CHAIRMAN RICE: Members of the Board, I think we all thought we had moved on this. Mr. Yuen brought this to our attention that we need to complete these resolutions, so I think it's just the final step. Yes, Mr. Starr?

MR. STARR: Mr. Chair, I have a little bit of concern, I have had concern all the way through this, and it's deepened slightly when it came to our knowledge that we were not -- with the funds allotted, we were not going to be able to complete the scope of work, and then we reduced the scope of work. And I, for one, never had a clear understanding of whether the reduced scope of work was going to satisfy the people in the community.

So I have a big concern that we are going to go through this and then there's still going to be people up there without water pressure. I know that there was a public meeting held by the department, however Board Members were neither notified or invited to that. So I was not able to go and see if the community response was such that they understood that we were not completing a full scope of work or not.

So before we proceed, I'd like to be sure that what we're doing is what is going to satisfy the community in their needs, A, and B. I'd like to be sure that someone, whether it's the Chair or one of the Chair representatives, has looked through this new wording and made sure that it indeed does not substantially change the deal. If you have looked through it, that's fine with me, but if not, I'd like your support to delegate maybe Howard or someone with the brains to look at it and figure it out.

CHAIRMAN RICE: I have already looked at it, and I have talked to Bill Yuen. It's just some resolutions that are required, so it's nothing that changes the agreement that we had with the Ulumalu-Peahi people.

And I know that Wendy did go and speak with the

members of that community, and I thought that a notice was sent. But in any event, we didn't get a report back from her on what happened at that meeting.

MR. CRADDICK: The meeting was held and notices were sent to Board Members, and the main concern I think that came up in the community was the payment of the fees, the meter fees that they would have to pay in order to get this done. I guess they intend to try to come to the Board for some assistance on it.

But other than that, there were no issues about water pressure or anything like that, because the storage tank that we would have put in has already been put in by the Kulamalu project, and we are making changes to our water system so that that storage can provide this area with adequate pressure and fire flows.

CHAIRMAN RICE: I think we need to have -- I think to satisfy the Board's concerns, we need to have a report from Wendy for the next meeting. But I think this is basically loan document issues here, these resolutions. Mr. Starr?

MR. STARR: I just heard a new issue that I think we should -- it would be better resolved before than after. What it just sounded like, from what David just said, is the people don't expect to be paying meter fees but we expect them to be paying meter fees. So I think some mechanism for resolving this should be put in process before we do it, rather than wait until after, and then I think that it will be very hard for us to resolve it at that time.

CHAIRMAN RICE: Yes, Ginny?

MS. PARSONS: Are we to determine the meter issue right now?

CHAIRMAN RICE: I believe that it was --

Mr. Craddick, correct me if I am wrong, it was our understanding all along that they would pay for the meter fees as they came onto the system. Is that not correct, Mr. Craddick?

MR. CRADDICK: I know they will be sending a letter to the Board, that's all I know.

CHAIRMAN RICE: Why don't you just tell us that

there is a dispute, and is this going to be in dispute?

MR. CRADDICK: I think our rules are clear.

CHAIRMAN RICE: But if there's a misunderstanding and they're going to come back to the Board, I think that's what the Board Members want to avoid at this point.

MR. CRADDICK: You know, I don't know if it's a misunderstanding, it's just an issue that hadn't come up. And I brought it up at the meeting because it hadn't come up.

CHAIRMAN RICE: Yes, Ginny?

MS. PARSONS: Does this have to do with the new rates versus the old rates?

MR. CRADDICK: No.

MS. PARSONS: What does it have to do with?

MR. CRADDICK: They're thinking they will get free meters, but you don't get any free meters.

CHAIRMAN RICE: I think, again, for the Board

Members who are new, the reason we're involved in this project is that it was a private development with a private water system that did not work. And this started long before my tenure on the Board, but there was a commitment by the County to help correct the problem. And the process that we are going through now is our part of that commitment to correct the problem, which is to provide some funds and to provide the loan basis. I don't know that it was ever presented to me that it was for the water system, not for free meters. Mr. Starr?

MR. STARR: This is just to give a little back history. This is a very unusual thing for the Board and County government to participate in upgrading a private water system. But in this case I believe the president of the association was on the Board and was chair of the Board, and that was a priority at that time, to upgrade the private water system for the community that they lived in.

I think our Director had some property there at one

time, but that doesn't -- so we became involved in a project to get a loan for a million three, and we're backing it up. The Board is backing it up and the County is involved in it. And it's not something that I would have gone along with, had I been on the Board at that time, because I feel it's questionable. But since it's going this far, I think I was willing to go along with it. But now if there's going to be a conflict over the meters after we do all of this, and they're going to ask for free meters, I have a little problem with that.

CHAIRMAN RICE: Ginny?

MS. PARSONS: I think we need safe drinking water for the public, period. And if it's not safe up there it needs to be taken care of. And I think that I would suggest that we pass this resolution and also make the statement that the meters are going to cost, there's going to be a cost for the meters. I think we need to get as much accomplished as we can, and to delay this is just another delay tactic. And if you have got unsafe water up there, let's take care of it.

CHAIRMAN RICE: Did you want to say something?

MR. CRADDICK: Just that the purpose of the RUS program is to upgrade these private water systems across the country, rural systems in lower income areas, so this is a program nationwide. It's just the first time Hawaii has -- not the first time, they used it at Hamakua on the Big Island, this is the second time we have used it.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Just to clarify, David, at the present time they have one or more master meters and a private water system serving the lots, is that correct?

MR. CRADDICK: Yes.

MR. NAKAMURA: And after these improvements they will have a standard water system, which will be dedicated to the County and will become part of our system, and they would then have to apply for meters like everybody else?

MR. CRADDICK: Yes.

MR. NAKAMURA: I agree with Board Member Parsons that we should go ahead, Mr. Chair. But I think we should make it clear that to tie into our system they have to pay meter fees. I would so move.

MS. PARSONS: I second.

CHAIRMAN RICE: It has been moved and seconded. Mr. Kushi?

MR. KUSHI: Mr. Chair, I have a problem with that, it's not on the agenda. The issue of meters certainly is a project. I think it's inappropriate to make any kind of decision concerning meters. The agenda item strictly is concerning the resolution.

MR. STARR: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Starr.

MR. STARR: I move to defer to the next meeting when we can have it properly agendized.

CHAIRMAN RICE: There was a motion on the floor with a second. We had a motion to approve subject to meters. We have a discussion period here.

Mr. Kushi, the current rule, the motion doesn't affect anything that is not existing in the rules right now. We are not taking an action that's inconsistent with the existing rule. So would that not be just reaffirming that our position is that the rule regarding a person's application for a meter was standing?

MR. KUSHI: That's correct. If it's in your rules, then you don't need to discuss it. But by bringing it into a motion you are conditioning your approval of this resolution.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Just procedurally, I would be willing to withdraw my motion and make a new motion. Is that okay?

MS. PARSONS: That's fine.

MR. NAKAMURA: Mr. Chairman, I move that we approve the resolution to amend the prior resolutions regarding this project.

MR. NOBRIGA: Second.

CHAIRMAN RICE: It has been moved and seconded to approve the resolutions to amend the resolution as provided in the agenda. Discussion. Mr. Starr?

MR. STARR: I will be voting against because I feel that the intent of this should -- Miss Parsons is correct, we should clarify at this point when we are going into it that bigger fees will be charged, and not leave an ambiguous situation to be fought out later. I would really prefer if we defer it and change the agenda item for the next time, and then add that comment so that it is clear for one and for all.

CHAIRMAN RICE: I don't know that we can't still do that. Mr. Kushi, we can take the motion, we can take action on the resolution, the agenda item as proposed, but we could still indicate to the Director that it needs to be communicated to these members of this community that our interpretation of the rule is that they have to pay for meters. That's not a motion, that is not an action, that's just based on the report from staff from the meeting with the community. We're reacting to their comments. In that way we can satisfy the issue. That's my suggestion.

Go ahead, Mr. Starr.

MR. STARR: I'd be happy to have the Chair take care of this with the Director, but what I would like to see is a response from the community that they do understand that they will be paying meter fees, before we proceed with the implementation of this. If we can structure it so that we have that, I would be happy to go along with the motion, and I think we can take care of it without wasting any more Board time.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Mr. Kushi, in this document is there any referral, any indirectly direct referral to payment or inclusion of water meters?

CHAIRMAN RICE: These are the loan documents.

MS. PARSONS: I know. It's telling what the loan is for. Is there any reference at all to the water meter issue?

MR. KUSHI: My brief review reveals nothing. Of course, I wasn't prepared to address the meter issue, but my understanding of this resolution was basically that it deals with loan documents, and after-the-fact a resolution of what this Board did several years back.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The main purpose of this resolution is to give the staff the authority to sign this RUS Bulletin, that's the main purpose of this resolution. And the RUS Bulletin has in it that you will adopt an ordinance or resolution for the issuance of bonds, which you have already

done. That's the previous resolution that you passed.

Two, to refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates, meaning that if they can find a private source to refinance it, we are getting four and a half percent below market rates, but if somehow a commercial entity would offer those rates, they would like to transfer the loan to them.

Number three, to provide for, execute, and comply with Form RD 400-4, Assurance Agreement, and Form RD 400-1, Equal Opportunity Agreement. Those are the two that Bill Yuen referenced in his letter. We have already signed those, that is not at issue.

Number four is to indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

The way we handled that is we made the Association

pay up front for the first year's payments, so that if we see any problem like that we will know about it in advance.

CHAIRMAN RICE: Mr. Craddick, I know we are just dealing with the meter issue.

MR. CRADDICK: Well, I can tell you, you know, I mean there's nothing -- obviously the Federal Government would not even know about our meter issue, so it's not included in this.

CHAIRMAN RICE: That's the answer then, thank you.

MS. PARSONS: Thank you.

CHAIRMAN RICE: But Board Members, the understanding here is that we are approving the resolution as presented, and that it is the opinion of this Board that the residents would apply for meters. That will be handled separately by the Chairman in possibly a letter to the person representing that group. Mr. Nobriga?

MR. NOBRIGA: Apparently, Mr. Craddick alluded that communication from the Association will be forthcoming and will be noticed, and we will be able to discuss the exact matter anyway. So I think the discussion that we need to focus on right now is passing this resolution -- I wish I knew what the number was -- but just passing the resolution so we can complete the loan documentation.

CHAIRMAN RICE: Okay. Well, if the Board wants, we can put it back on the agenda, I am happy with that. Yes, Mr. Starr?

MR. STARR: I am not satisfied with that. I don't want to proceed with this project until we make sure that the community has the expectation that they're going to be paying for water meters. And if they don't, I don't feel that we should proceed. I think we have given them enough of a gift. So I like the idea that we would be proactive and going to them with that. If we are not going to do that, I will certainly be voting against it.

CHAIRMAN RICE: I have every intention to do that.

Did I hear anyone's disagreement with that?

MR. STARR: That's fine with me.

CHAIRMAN RICE: Call the question. All in favor of  
the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion carries. Director's Report 02-22.

Mr. Craddick, approval of additional funding.

MR. NOBRIGA: Mr. Chairman, move to defer this  
request at this time.

MR. CRADDICK: Well, Peter --

CHAIRMAN RICE: There's a motion to defer. Is there a second?

MR. STARR: Second.

CHAIRMAN RICE: It's been moved and seconded to defer discussion.

MS. PARSONS: Is there a reason why?

MR. NOBRIGA: Yes.

MS. PARSONS: Can we discuss it?

CHAIRMAN RICE: We are. Discussion.

MR. NOBRIGA: Okay. I don't believe that we have day-to-day use of the Hamakuapoko Wells. And the Hamakuapoko Well right now is under, what you call, a pinhole of use that we can only access the water from the wells when we declare emergency drought situations within the area. The Hamakuapoko Wells were actually drilled as part of our East Maui project, which was under discussion last meeting, and that's why we have the supplemental EIS. Because we don't have every day use of the Hamakuapoko Wells, I don't believe this is a project that we should discuss at this time.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The reason why this is here is because there was an allowance by the Governor after 9-11 to allow projects under a quarter million dollars to move forward with not meeting all the requirements of the Procurement Code. For this small of a job it will probably cost about one third this amount just to bid the thing out. They have gotten three quotes; this is the low bidder for the job. And if we can move forward, then we can do it under that allowance of the Governor. Right now we have control cabinets outside in the weather sitting doing nothing, and that's not a good way to have equipment, especially when it's not being used. So for safety reasons alone, I mean if one person got killed because of messing around with this stuff that's sitting out in the weather with a tarp over, it would not be very wise thinking on behalf of the Board to defer something like this. This is a safety issue for the workers in working around that equipment, because we do have very high voltages there.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Can we have engineering describe the scope of the job to us?

MR. NOBRIGA: Could I ask for a vote on the motion for deferral before we go into that? If the motion for deferral fails the item will be up for discussion and the Board can take action whatever way they feel.

MR. STARR: I think this is part of the discussion on the motion and I, for one, would like to understand the scope before I vote on the deferral.

MS. PARSONS: I second that.

CHAIRMAN RICE: I am going to go ahead and allow it. So discussion.

MR. WINTER: I'm Larry Winter, staff engineer on the project. We have an ongoing project for the GAC project, and we have an ongoing project for development of the wells. The well project was designed for a single electrical motor there. The GAC project, which was done as a drought emergency project,

changed the design requirements for the electrical work. Instead of a single electrical motor, we now have three electrical motors, and a significantly increased demand.

The purpose of the additional electrical requirement, you recall, was to pump the water up to Kamole during the drought emergency. So we have an uncompleted project. The purpose of this is to wrap up that work. We have been attempting to do that with the existing contractors, but they are unwilling to negotiate a reasonable price to complete that work. Therefore, we decided to attempt to go outside and get separate bids in order to complete the work.

CHAIRMAN RICE: Thank you, Larry. Yes, Mr. Starr?

MR. STARR: The temporary connection to use this to pump water up to Kamole, that is what I understand is driving this, is that correct, completion of that temporary connection?

MR. WINTER: Yes, in part. We will still have generators involved and temporary feed, even though this work is done. This work upgrades the MCC in the electric building.

Until we have Maui Electric power in, we will still need the generators to operate it during the drought emergencies, and therefore it will still be a temporary connection to the upgraded MCC.

MR. STARR: My concern is that the ultimate utilization for these wells might some day be to add it into the Central Maui System. However, we are prohibited from undertaking any of that work. And this would be part of that if this were to be part of that project, to add it into the Central Maui System. So I'm reluctant to proceed at this time. I am leaning toward going along with the deferral. And I know the Board Members have comments. I see a member of the audience wishes to say something as well.

CHAIRMAN RICE: Adolph?

MR. HELM: Just for better understanding, your primary source, your electrical power comes from your generators, you don't have a primary source from Maui Electric. Okay, so what we are talking about is just basically logistical controls to handle your two booster pumps and your

main pump source, your well pump, is that what I'm understanding?

MR. CRADDICK: No, it's only for the GAC pumps, the ones that pump it through.

MR. HELM: The filtration?

MR. CRADDICK: Actually, not the GAC, but the ground well pump pumps it through that. But the booster pump pumps it up through Kamole Weir, and that is part of the drought project.

MR. HELM: So currently the current status of the system is under grade. We need to upgrade the source so that we can provide --?

MR. CRADDICK: No, right now the control cabinets are outside in the weather with a tarp over them, and it's been sitting there for months in the weather, and it's not safe for the guys to work around. And you can't be changing the whole control setup every time you declare a drought to go use it. If you are going to have it there for drought, put it in a safe

working manner.

CHAIRMAN RICE: Any other Board Members? I know Mr.

Hall wants an opportunity for public comment. I didn't know you were here for this issue.

MR. HALL: I am not here for this issue, but I'm

Isaac Hall, attorney for the plaintiff, but when I heard it

beginning to be discussed I got disturbed because I think I

agree with Mr. Nobriga and Mr. Starr that I haven't even looked

into this, but I think there's a likelihood that you are

violating the court's injunction by awarding this contract.

It appears that this is going beyond the drought

emergency project that's the subject of a separate EA and

authorized. It looks to me, just on its face, that this is

going beyond that. But I can't speak definitively.

I would support a deferral because I'd like to look

at that, because a \$52,000 contract for grade or electrical

service, knowing Mr. Craddick as I do, I think there's some

likelihood that you are violating a court order by awarding it,

so I urge you not to.

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

MR. STARR: Call the question.

CHAIRMAN RICE: The motion is to defer. All in favor say "aye."

(Ayes).

Opposed say "nay."

(None).

Motion carries, that item is deferred.

Director's Report 02-23, request for approval of agreement authorizing waiver of subdivision requirements for the Mary DeCambra Subdivision. Mr. Craddick?

MR. CRADDICK: This is a standard 2-16 deferral of improvements.

MR. NOBRIGA: Mr. Chairman.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: I move that we accept the Department's

recommendations and defer under Section 2-16 for tax map key 2-4-9, the two dots over each other, 70, Mary DeCambra subdivision.

CHAIRMAN RICE: Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded. Mr. Starr?

MR. STARR: Mr. Chair, are we being held indemnified and held harmless? I'll ask our Corp Counsel. I think we usually are in these.

MR. CRADDICK: They are not building anything, there's no additional water service and no building, so there's no additional risk to the Board by approving this. It just says that they can't do anything when they get final subdivision pending doing the improvements. So you are not taking on any additional risk by approving this.

MR. STARR: They are not deferring fire flow?

CHAIRMAN RICE: This is simply a waiver to allow them to transfer the title on the lots, I believe. There are no other authorities given.

MR. CRADDICK: To build anything or get additional water service.

MR. STARR: I'm asking Corp Counsel if we should have indemnification.

MR. NAKAMURA: I believe there is a provision, indemnification provision in the standard waiver agreement, is there not?

MR. NOBRIGA: It has been approved in form by Counsel Minatoya.

MR. KUSHI: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Kushi.

MR. KUSHI: Mr. Minatoya did approve it as to form and legality. Although I am not too familiar, Board Member

Starr, with this agreement, it does seem to call for indemnification. By accepting this, the Department and the Board are allowing the subdivision to provide in terms of improvements.

MR. STARR: Okay.

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

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

Director's Report 02-24, request to increase the insurance appropriation from \$75,000 to \$159,000 in the operating budget. Mr. Craddick?

MR. CRADDICK: Okay, on this item we, I guess, got notice this month that the premium last year in October went up these amounts that you see here. And because I know that this is a fiscal year budget item, I would like the authorization to

pay it. But we are still negotiating with the County on whether this is worthwhile.

And what we could do, a substantial portion of the value is the Water Department's. We have still got I believe June, July, August, September -- not June, but July, August, September, October, four months, so one third of the year where we could just say cut the policy off right now, and there would be a very minor increase. We are seeing whether we can do that. The agent I guess faxed us today that they don't think the underwriters will go back on the policy, but they will discuss with us any future deletions from the property damage coverage.

CHAIRMAN RICE: My experience right now with insurance is that it's going up at astounding rates. So while the department may want to look at other sources of insurance, I'm not sure we are going to be receiving much in the way of lower premiums. So if the request is to amend the budget to provide for a higher insurance number, then I think we should do that. And if we think we can go out and get equal amounts of insurance at a lower premium, then we should be pursuing that.

MR. NOBRIGA: Mr. Chairman, I understood

Mr. Craddick to say that it's still in negotiations, so he may actually need a bigger increase.

MR. CRADDICK: No. This is the amount they're telling us, but if we reduce properties that we want covered, such as let's say a reservoir, what's the likelihood of any property damage on a reservoir? It is nil.

MR. NOBRIGA: Nature.

MR. CRADDICK: No, it is nil. The amount of exposure that you have on a reservoir, of that thing collapsing or some tree falling over on it and damaging it. So when the insurance was cheap, you know, throw it in. We were self-insured before, we didn't have any of this payment, and rarely did we ever have collections on it over \$60,000 a year that we had to pay out. So when they go up by this amount, I think it's appropriate to relook at whether you have to cover these things in the first place.

CHAIRMAN RICE: Again, I would say exactly what I just said, is that if we are looking at modifying the budget to provide for higher premiums, we should do so and then we should look at ways to reduce the insurance.

Mr. Craddick, I don't want anything removed from the insured list unless the Board understands what it is and agrees. The purpose isn't simply to find a way to get the number down. If you remove the property being insured, obviously the number is going to go down, but we want to be all comfortable with what we are insuring and what we are not insuring. So I still think it's prudent to make an amendment to the budget to provide for the higher insurance premium, my personal opinion.

MR. NAKAMURA: Mr. Chairman, I move that we approve the request to increase the number for insurance to \$159,053 and request that the Director look into ways of reducing the expenditure and report back to the Board.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Is there any discussion? All in favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

Okay, Communication 02-15, Mr. Joiner.

MR. JOINER: Aloha. My name is Buck Joiner, I am a 20-year resident of Maui. I sent a letter to the Board of Water Supply, and I assume that all the members were supplied with a copy of that.

MR. STARR: I think you should sit in front of the microphone, Buck.

MR. JOINER: I prefer to stand but -- can you hear me now? Can you hear me now? Okay. As I said, I am a 20-year resident, and I have multiple properties, and I have been on the water system for all that time, paid bills, what have you. Recently I was apparently one payment behind in my water bill, and a Water Department worker came to my door and demanded \$40 or else they were going to turn off my water. The amount of

the overdue bill was \$40.

And I said, you know, "I'll take care of it, I will send in a check today." End of story. The guy left, after pushing a little more, but I got rid of him. I went in, picked up all of the water bills for the other property, wrote one check for all of it, put it in the mail, boom, it was gone. The next morning there were two Water Department workers at my house demanding payment of the \$40 immediately or they were going to turn off my water right then and there. Excuse me?

I said, you know, "I already paid it, I mailed it in." "No, no, we want the \$40 now." They called the office, you know, "I have already paid, I am not going to do this twice. This is ridiculous, out of control." They called the office and they talked to someone, Lisa, Lois, someone with an L name. David, the name? It was Lisa, Lois, what?

MR. CRADDICK: Laurie, maybe.

MR. JOINER: Laurie, maybe. I don't think there's any question. All I remember is it was somebody that started with an L. Okay, I talked to this person on the phone then, and she said -- I said, "I sent the payment" and she said, "We

don't accept that. We don't believe you." Basically calling me a liar. Excuse me? A \$40 payment, you know, it's over and done with.

I had already, after I sent the payment in the previous day, I sent an email to David Craddick. I said, "I believe this is out of control." You don't have one payment -- is there anybody here that can say that you have never missed a payment on something? A credit card, a water bill, a magazine subscription, a newspaper, or something like that. When does that organization send a leg breaker to your home demanding payment? The only group that I know of that does that is the mafia and the Maui Water Department, okay. This is absolutely positively unacceptable.

I want to make it very clear that I am protesting this as a policy, not the individual treatment of me. The concept that the Department of Water Supply has enough people to send out multiple people chasing \$40 bills, the economics, I mean it's ridiculous. How much did it cost them to send those two people and have that office worker involved in that?

It did ultimately come down to something personal because this Laurie, whatever her name was that starts with an L, stated that my specific case had been discussed with the

Director, and he had specifically authorized that my water be shut off because I was \$40 past due. Excuse me?

This is positively ridiculous. I can't believe it's something personal, because just about two weeks before that I had done a \$40 favor for Mr. Craddick. He doesn't have cable television and he wanted to see a couple of programs that had been on Akaku referencing the Water Department, and I made copies of those programs for him. And that is normally \$20 per program by Akaku, and I gave that \$40 gift to him, okay. So I can't believe that it was a personal thing.

Therefore, I would like for this, whether this is a written policy -- I'm sure it's not a written policy, I am sure this is an unwritten policy or practice, or whatever you want to call it. It's way out control and it is a waste of the resources of the Water Department. I think that the people that are out there doing that bill collection should be reassigned to something more meaningful or discharged, and Lois, Laurie, Laura, whatever her name is, should be sent back to preschool for remedial sand box on how to get along with people. Thank you.

CHAIRMAN RICE: Any questions for Mr. Joiner? Go ahead, Mike.

MR. NOBRIGA: I defer to Mr. Starr.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I wanted to hear from, I guess, Holly what the policy is, and then still have the opportunity to ask Buck a question after understanding the policy.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Mr. Joiner, how many days over were you?

MR. JOINER: It was one payment over. I don't know. It was one payment behind, you know. I got an overdue statement for \$40, and that's what I had, okay, that's it.

MR. NOBRIGA: So 60 days?

MR. JOINER: Whatever.

MR. NOBRIGA: I don't pay -- okay, whatever, never mind.

CHAIRMAN RICE: Holly?

MS. PERDIDO: I gave a copy of our policies regarding meters. Have you guys had a chance to read through them? They're in the packet, all the documentation. There's a little bit more on this incident, but we are just going over policies. I don't want to go directly over Mr. Joiner's account. I have written statements from all the people involved on it.

But what I just want to go over is exactly what our policies are. The final notice goes out, bills get processed, bills are due 30 days later. After that, we send the customers a final notice on the 3<sup>th</sup> day. The 52<sup>nd</sup> day the computer generates an SR to lock the meter. The cashiers review the SR's, and then they can cancel if the customer is late only on the current bill, or they go ahead and there's a lock list that is printed. This lock list is then sent to the meter readers, who then go out and schedule it for locking.

Basically, we lock around 200 meters a month. I have a listing of locking, if you need to see that. In April

we scheduled about 300, approximately 250 to 300. Once they're off, the meter readers go up. An SR is a service request that the computer generates, just to clarify that.

Once the lists are generated, the supervising meter reader prepares it and gives it to the meter readers as they are in between their reading shifts, and they're sent out to lock meters. Basically, it's a courtesy call. They go and if someone is home they talk to the customer and just explain that they're going to lock the meter.

And if the customer tells them, "Oh, I have a payment in the mail" or works with the meter readers or the department, there's usually not a problem. And we have had people tell us that, "Oh, we will get a payment in" or "I will bring one in by noon." Usually our policy is by 12:00 noon. That way we don't have to send someone out on overtime, then we have to charge the customer to open up the meter if they do get locked.

CHAIRMAN RICE: So, if I understand your explanation, when the first gentleman arrived at Mr. Joiner's and accepted his "I am going to pay it and put it in the mail," we shouldn't have sent two guys the next day. That sounds

unusual, according to your explanation.

MS. PERDIDO: It does, correct.

CHAIRMAN RICE: So maybe we stepped on some toes here in this case inadvertently, and we owe an apology to Mr. Joiner, because that is not our policy. We recognize the delinquency at 52 days, if I am understanding this correctly, then we send somebody who talks with the customer. The customer says "misunderstanding, I'm paying," he goes away, we accept that. And that obviously generates a payment, or then if it doesn't generate a payment we do go lock the meter. In this case it appears that something more drastic took place. Am I kind of characterizing that correctly?

MS. PERDIDO: Right.

CHAIRMAN RICE: Ginny?

MS. PARSONS: May I ask Holly a question before she answers, because she said something that I picked up on. These

are the normal policies, as I understand it, of things on a first late basis, right?

MS. PERDIDO: Right.

MS. PARSONS: You said something about a lock list, that there's a multiple late issue.

MS. PERDIDO: Correct.

MS. PARSONS: Apparently Mr. Joiner was on that multiple late list?

MS. PERDIDO: I think there were -- it registers how many late notices are sent out, and I guess Mr. Joiner's account has five late notices that have been sent out.

MR. JOINER: Over 20 years.

MS. PERDIDO: This is a new system, we have only been on this since 1999, May of 1999. And this system registers it in the last year. So these, the number over the

last year has been, I guess, five.

MR. JOINER: I dispute that.

MS. PARSONS: And you have multiple meters, so it could be multiple meters all over. So it doesn't necessarily mean that you're habitually late, just maybe that checks didn't go out timely on many of the meters because you were writing them all at once.

I do agree thoroughly that we need to handle our public relations and our community relations a lot better than we are doing now. We are going to look into that, I think. I just wanted to say that the reason that he had a double day call was because he apparently was on this list, and that is something that we probably need to research, how you handle that list.

CHAIRMAN RICE: Clark?

MR. HASHIMOTO: My question was, were the workers courteous in their manner or were they rude? The reason I'm

asking is because when Mike was still working, I got a complaint from one of the farmers that the workers were not courteous at all. And the thing is, they had paid their bill and they had made a mistake, you know.

I think if the workers are courteous and not rude, I am not sure how the workers were, but I think if the workers are courteous, I think it can be handled and I think the situation might not be as bad. If they come in here and demand and be rude to the customers, I think it doubles the anger.

I think customer relations is very important, and Mike had handled the situation. But I think we have to look into when they do the collections, are they courteous or are they rude or are they demanding. I think that's something the department has got to look at. Were they courteous?

MR. JOINER: Well, first of all, I believe just the very presence of a person saying, "You give us the money or else we are going to turn off your water right now" is discourteous on the face of it. No matter how you say that, it's a very confrontational thing. The worker himself on the first day was as courteous as could be expected under the circumstances of what he was required to do.

The presence of two people on the second day demanding \$40 or they absolutely had been authorized to turn off my water was just reprehensible. Their presence, two people, very intimidating, very threatening. Those people on site were courteous, but their very presence was offensive. The person on the phone was not courteous. The person on the phone, I said, "I have sent the check, I sent the email to David Craddick." She said, "No, you didn't. We don't believe you." Excuse me, she did not say, "No, you didn't," she said, "We don't accept that the check is in the mail." I found that extremely offensive.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yes, I'd like to ask Holly, in this case when the follow-up people were sent the second day, was that done as a special case or was that done at the request of the Director, or was that just part of the automatic normal process?

MS. PERDIDO: I'd have to go through all these in detail. I have a statement from each of the people involved.

But if they say, "The check is in the mail" or "Work with us" and tell us that something is coming, or "We had put it in the mail today," we wouldn't have followed that.

MR. JOINER: I said that the first day, that I was going to do that. I said that I would, and I said that I did, and I was told by this person in the office, "We don't accept that."

MS. PERDIDO: I'd have to research this even more than I have already. But I have spoken to the people involved, and I think they should have handled it a little differently. They should have come to a supervisor first to talk to us. So I think we resolved that. We will look at our collection policies. I guess they're locking the meters a little differently now. But that's all I can say.

CHAIRMAN RICE: Well, if we tell people we are making a statement to the public that in the case of your first delinquency, and we are working with you, then we have got to be sure we don't send henchmen the next day. That's not

working with somebody. If the case is different and we have a chronic late person -- collecting money is a difficult thing to do and it's a thankless job, but we should have people who are trained to do that. And sometimes they aren't necessarily nice, but that happens to be the way you have to deal with chronic late payers. And I am not putting Mr. Joiner in any way, shape, or form in that category. I'm just talking about general policy here.

So it appears, as I started to say earlier, that through some misstep on our part that we had sent these other guys the second day when we shouldn't have, and we owe an apology to Mr. Joiner. And that would be my position at this point. We should also review this entire policy with regard to collection and make sure that the Board is in agreement with that.

Mr. Joiner, would you accept my apology?

MR. JOINER: I will.

CHAIRMAN RICE: Thank you, sir.

MR. JOINER: I would hope that the Water Department

would review this. I am also concerned about the fact that with a single overdue payment that they're threatening to turn off the water. I believe that that is over the line also.

CHAIRMAN RICE: Thank you, sir. We will absolutely be looking into the whole policy.

MR. JOINER: Thank you.

CHAIRMAN RICE: Anything else? I don't think any action is needed other than my apology.

Communication 02-16, Mr. Hall.

MR. HALL: Good morning Chairperson Rice and members of the Board of Water Supply. My name is Isaac Hall, I represent Harold and Dudley DePonte, owners of property at 17529 Haleakala Highway, TMK 2-23-13:52. The DePontes' property and other properties in the area is served by the County's Upper Kula water system. That property was part of a subdivision that was initially subdivided in 1942, and the State Land Use Commission put the property in the rural

district in the 1960's.

As early as 1992, ten years ago, the County Water Department engineers recognized that this system was inadequate for fire protection purposes. If a fire took place in that area now, the DePontes and the people in that area could not be assured that that fire would be put out.

It's black letter law that if you have a system you are not obliged to extend it and you don't, somebody outside the system can't require you to extend it further than you have. But if you have undertaken to provide a system, as you have here, you have got to provide adequate flows in that system. And since it is your system and you have provided it, the law of municipal corporations requires you to provide adequate fire flow.

So in my letter on behalf of the DePontes I demanded that the County take some step to upgrade that Upper Kula water system so that it provides adequate fire flow. And that I believe that in this ten-year period the department or the Board has been negligent in not having done anything to put it on its Capital Improvement Project budget to upgrade it. I know, just look at your budgets and your agendas, you have done that, as is appropriate in other areas, but this one you

haven't done that.

This matter did get referred to committee quite awhile ago; I don't know what happened in the committee. Supposedly Corp Counsel was going to review it for some issues, I don't know what the issues were. I don't know what happened with that. There is no staff report, I understand, so I don't know how the staff has analyzed this. We don't have the benefit of that.

I heard rumors that one possible position or issue that was going to be raised was that if Mr. DePonte potentially might want to subdivide his property in the future we should just wait until he potentially subdivides his property in the future and let him upgrade the system, but that's not the way it works. I don't think the Board can do that. I don't think the Board can say, "Well, we are just going to let the system remain inadequate and wait until somebody comes along and subdivides, and we will just sit here and wait. If somebody comes along and subdivides, great, we will let him take care of it at that time." In between now and then, if somebody's house burns down you are going to get sued because you didn't do anything to upgrade the system.

So basically what we're here to ask you to do is to

immediately place the Upper Kula water system on your CIP or authorize its upgrade, at least the fire protection part of it, and upgrade so the fire protection part of it is made adequate for that area. That's my presentation on this.

And I know Dudley wants to say a few words on it too, so I will yield to him.

MR. DePONTE: I'm Sherman Dudley DePonte. I'm a licensed land surveyor in the State of Hawaii -- I'm a licensed land surveyor in the State of Hawaii and also in California. I am born and raised here, and I'm fifth generation Portuguese, pure Portuguese. My great-grandfather was one of the people that put some money in for the Upper Kula water line.

From my understanding, it was from way back that Kula had inadequacy for the water. The demand and how much water was coming was just not quite right. We had a lot of droughts and things that was happening through the years. And one of the things was the Kula Church. It's like a hundred years old and they were praying for water, praying for water for one hundred years, and the Water Department has still not come up with adequate water for Upcountry Kula.

I worked on a project with Norman Saito, which I see

some of the workers that I worked with over here, for that Wailea. There was a 36-inch water line that went all the way to Wailea from Waiehu. And they got their water, they got a lot of water. They had a lot of money over there, so all of a sudden we have a lot of development, a lot of things happening. Kula got left in the dust. We got the scraps, we got the little chicken feed, or whatever you call it.

My concern on this one here is it was brought up that, "Oh, you want to subdivide." And my answer to that is, "Duh." I'm buying two-and-a-half acres, half acre zoned, rural zoned, and I have two children. Being from coming from where I am, being Portugese or anyone, I'd like to give my children something. And in the future, yes, I do want to subdivide and give them a little piece of land that's close to home, away from Kahului and all that, because I was born up there, born and raised up in Kula.

The thing what gets me about this one is ten years ago when we bought the property I came down to the Water Department and I spoke to Herb Chang and asked him, "What would it take if we were to subdivide in the future, what's it going to take to do it?" He said, "Well, we don't have adequate fire protection so you would have to improve that line up the

street."

That line is about 500 to 600 feet from my property. It was crossing another person's property and there was a 2-inch line that's coming across about 500 feet, 400 or 500 feet of 2-inch line. Roughly it ran \$50,000, \$200,000 it would be to upgrade that line to do it. I didn't have the cash at that time because I just had purchased this property, and my kids are right now they're 12. So we're looking at another ten years down the line before I am looking at giving them anything or trying to get it.

But being a surveyor, I understand that I have to be in line, because I have seen so many people on the list that ten years down the line they still don't have their meters. So I put myself on a list. You see that I am on the list for a meter. And I am watching this. Okay, the next thing that I find out is that when I call up the department, "What's going to happen here when they start passing out the meters, if they pass out the meters? If we get the adequate water, what's going to happen?"

The answer from the Water Department was I have to upgrade the line. "But now we want you to go around the curve, the switchback that's up the line," so that we can provide

water to somebody else down the line, over further towards Keokea from our property. The cost on that was, when I got an estimate for it, was something like \$200,000 to \$300,000, the cost to put on a family that was born and raised here.

And it's not only happening to me, because I deal with subdivisions one after another. It's happening to a lot of people, a lot of people that come in for family subdivisions. And you guys hear it over here, they come in and they talk to you and they beg you, some of them, to "Please help us out."

I think Kula has been neglected, and I believe that in each and every one of your hearts you are going to look and feel it and you are going to say, "Yeah, Kula was left behind in the dust."

You have a fire hydrant down there, what the Japanese call shibai. There's a full fire hydrant out on our street. There is not fire protection for that, there's not enough water to fill that fire hydrant, but yet the fire hydrant stands. Everyone down the street uses that fire hydrant as a fire insurance level. You pay so much fire insurance because you are close to that full fire hydrant. That's fraud, because it's not right. It's not going to

provide that water.

And if that gets brought up to the people, each one of them now is going to have to go to their insurance company and say, "We don't have fire protection over here and how much am I going to have to pay for fire insurance on something that's supposed to be real, which is not?" It's fake. I know it's fake. They don't know it's fake. How do I know? Because I came to the Board and I had to find out -- not the Board, the Water Department.

In any case, that's my request. I say that we do need fire protection there. I think it shouldn't be my obligation. There's another subdivision that's trying to go in which is a two lot family subdivision trying to subdivide. They have to bear the cost of this \$300,000. Okay, the Water Department is going to pay half of that five years down the line, but we're the ones financing this. I'm saying come on, it's time to get this thing together and get us taken care of, please. That's about it.

CHAIRMAN RICE: Questions? Mr. Starr.

MR. STARR: What's the zoning where you are?

MR. DePONTE: Right now my zoning is RU 0.5.

MR. STARR: So it's half acre rural?

MR. DePONTE: That's right.

MR. STARR: One thing you just stated is the first rule of hydraulics, which is water flows downhill or toward money. I recently was at the water convention in New Orleans with some of the other Board Members, and one of the things that I went to a number of seminars on and talked to people in other water systems and consultants about was what the level of expectancy in the United States should be in terms of adequacy of water systems. And it seems that through just about all of the United States in urban or rural areas water systems are kept up to at least fire standards in terms of flow and in terms of pipe sizes. That's considered the ordinary level of service.

We unfortunately don't have that, we are more in a Third World type of situation, where a lot of our system is inadequate. And as Mr. Hall stated, we do depend on the new

subdivider or new people wanting to get a meter to upgrade the system for us. And I really wish that we were able to move to a point where we had the finances and the ability to bring our system up to where there was this adequacy. I feel that that is our duty, and we have been lacking in performing our duty.

However, I also don't feel that we can do it on a squeaky wheel basis, that that's not the right way to do it, nor is it the right way to do it when we are dealing with, you know, if someone comes to us for their particular reason. We have to bring the whole level of the system up. We're broke, we can't do it now. We are about to work on our budget and we are going to be told that we don't have the money to put aside that we know we need to put aside for pipeline replacement.

So we have a real conundrum here, and I don't know if I want to deal with it on a case-by-case basis. I think the Board needs to find a way to do our job properly. And myself included, this Board has not done its job in the past. We are substandard and we are operating more at the level of Third World countries than what one would expect to see either in the United States or Europe or throughout much of the world. I think we have got to do something about that.

CHAIRMAN RICE: Any other questions from the Board Members for Mr. DePonte or Mr. Hall? Mr. Nobriga.

MR. NOBRIGA: I don't remember hearing Mr. Starr's question.

MR. STARR: My question is what their zoning was.

MR. NOBRIGA: Sorry, thanks.

MR. STARR: If they were agricultural I wouldn't have made that speech.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Mr. Craddick, can you address the issue for us?

MR. CRADDICK: In this particular place the only difference between it and Ulumalu-Peahi is the fact that there's a public road that goes through there right now. And the system that is currently there that was given to us by the developers, that was the system given to us by the developers,

it wasn't intended to do further subdivision.

I am looking at the map here. They're at the last, just before the last bend going up to the crater where the houses are. And the DePontes' is already the result of one subdivision from the original subdivision. There are other lots that have subdivided also. And there is at least one case where the Board, where we said one of the lots had to provide adequate water service, and that was the very last lot going up. The first one down from the tank.

The Board deferred the improvements for them because it was a request for the first meter. And if they were building a house with that, it wouldn't have been required in the first place. So I presume that's why the Board said it was okay to go ahead.

As far as financing these things, I think the Board has known for a very long time that we didn't have adequate financing to do this. And how do you do it? Let's take Ulumalu-Peahi again for an example. It's costing us, the full project in there, \$16,000 per lot. That's about the average that it costs Upcountry for smaller size lots to provide a distribution system for them. And that doesn't even include the source transmission and storage that is also required.

However, we get it to where people pay a pro rata share.

Also on the County's books is the improvement district where the people in that area all go together and the County would issue bonds for them and they would be able to make the improvements. So there are a number of mechanisms available for people to be able to do this, other than the current practice, which is to wait until one person fixes it up and everybody jumps on for free.

MS. PARSONS: Can I ask one more question? When you say we have an inadequate fire flow, is it inadequate for expansion or is it inadequate for what's sitting there now?

MR. CRADDICK: I don't know if all the original lots in that subdivision have meters right now. The Board felt it was, even though the person was coming in for the years after the subdivision was made asking for their water meter. And the system had totally degraded, there's basically no system. The Board still waived the fire requirement for them to allow them that first meter. The DePontes' lot is already the result of a previous subdivision from the first one, so already there's two meters on subdivided lots within the original subdivision.

MS. PARSONS: But as far as the fire flow itself, the hydrant that's there, is it inadequate for what is there or for further subdivision?

MR. CRADDICK: I am not sure what he's talking about. Are you talking about one that's holding up a mailbox or one that's actually hooked to the water system? Are you talking about the yard decoration?

MR. HALL: The question is whether the system as it exists now is inadequate for fire flow purposes.

MR. CRADDICK: I'm trying to find out if the hydrant is connected to the water system. I don't know if the hydrant is connected to our water system. It could just be a yard decoration, for all I know.

MS. PARSONS: You mentioned that there was a hydrant, Mr. DePonte, that you referred to for your insurance.

MR. DePONTE: Yes, there is a hydrant about 500 or

600 feet up the road from me. It is a full hydrant, not a standpipe. It is hooked up to water.

MS. PARSONS: That's what I'm asking you, Mr.

Craddick, is that sufficient fire flow for what's existing?

MR. CRADDICK: I know the line going in the road in front of the lots up the street from his house is a 6-inch line, but from there it goes to a 3-inch line.

MS. PARSONS: Is it sufficient for what's there now?

MR. CRADDICK: No.

MS. PARSONS: That's what I wanted to know.

CHAIRMAN RICE: So is it insufficient because of the flow in the line or the size of the line?

MR. CRADDICK: If the size of the line was correct, the flow would be correct.

CHAIRMAN RICE: No, not really. If there's a fire hydrant you wouldn't have a 2-inch line connected to it, right?

MR. CRADDICK: Well, if the tank -- there is a 3-inch line going up to the tank, that's what supplies it in the event of a fire.

CHAIRMAN RICE: Then it goes to 6-inch. We don't know. Are you telling me you don't know if it then it goes into the hydrant, or is it 3-inch?

MR. CRADDICK: It's in the road slightly up from his house, so I am going to guess it's connected to the 6-inch line. Because in that road there's only 6-inch line, and then the pipeline takes off through peoples' back yards.

CHAIRMAN RICE: Mr. DePonte?

MR. DePONTE: Coming from the tank on the upper level road or the upper switchback, I am almost certain, well,

they have either a 6-inch or an 8-inch line. When it hits the cattle guard and doglegs down to the ocean and it cuts across another person's property, it's going down to a 2 to 3-inch line. That is really not a 2 to 3-inch any more because it's galvanized.

The next thing is, when it reaches the bottom level where we attach to the road, that level there's a 6 to 8-inch line. And right there where it comes, where it taps, where it hits that bottom road, that 2 or 3-inch line goes into that fire hydrant that's there. It's all connected. That's one system that had to be put in place for somebody else. Some other subdivision did that.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: It's my understanding, and I'd like to get this clarified by Herb, that for residential purposes adequate fire flow, according to our rules, which is based on a national standard, the minimum is 8-inch. Is that correct?

MR. CHANG: For residential zone.

MR. STARR: So anything below 8-inches it does not provide fire flow?

CHAIRMAN RICE: I think Mr. Craddick informed us of that at some previous meeting. I just was curious about the flow of water in whatever size pipe was there. That's another issue. Certainly it would affect one's ability to fight a fire through that hydrant.

MR. CRADDICK: Can I elaborate a little bit on Sherman's point there? I think what his point is it's 6-inch up until the line goes off the road. And actually I am mistaken, it's two-and-a-half inches. Once it goes through the backyard and up to the upper road it switches back to 6-inch again up to the tank. I guess is your issue why can't you just fix up that section rather than going along the road?

MR. DePONTE: Yes.

MR. CRADDICK: That would change the distance. That's about a third of the distance if you can go through the back yards rather than along the road.

CHAIRMAN RICE: Now let me ask, I need to ask one more question. What I heard during this discussion is that this system that Mr. DePonte is on is a system that we inherited through a developer at some point. This water system in his subdivision, in his area is something that was put in by a developer at some past date, and we inherited that?

MR. CRADDICK: That's right, yes. It was put in, I believe, in the 1950's.

CHAIRMAN RICE: That's just for the Board Members' information. I think I made that speech awhile back, about how easily sometimes we allow private systems to be put in and we end up getting stuck with them. And maybe that's not entirely the issue with Mr. DePonte, but some similar issues come up all the time. Ginny?

MS. PARSONS: I agree with Jonathan's sentiments, Mr. Starr's sentiments that we don't necessarily mean to do things piecemeal. But you know what, when they're brought up

before us like this and the issue is brought forth, I think we need to deal with it. And you know the squeaky wheel does get oiled, and it probably should be when there's issues like this.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The squeaky wheel was Makena. The Board put in a line for Makena, about two miles of Driscoll pipe, and solved the problem that is now the second major pipeline with breaks in our system. There's 25 people served by it. It cost about a million dollars to replace the line, and that is exactly the kind of stuff that the Board said they don't want to be doing. This one here has one, two, three, for, five, -- 12 lots that will be served by it.

CHAIRMAN RICE: I don't think Ginny was suggesting that we throw 2-inch Driscoll on the top of the ground.

MR. CRADDICK: If somebody comes in and complains, that's what happened with Makena. And I know there are judges, relatives of Board Members, things like that that were coming

in to the Board trying to get the Board to get that line fixed up. And when the service is providing basic minimum service, it's substandard as far as fire flow, but it's been that way since the subdivision was built. When these people bought into it doing their due diligence they would know that, especially a surveyor.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: I assume this is not on our present capital improvements program, but is this project or a portion of this project included in our six year program?

MR. CRADDICK: I don't know if it's in six years. I know it's in our 20-year Capital Improvement Program. I don't know if it's in the next six years.

CHAIRMAN RICE: I was going to say something similar. What this brings up is the discussion that we had the last meeting with regard to the budget about what items -- how items are prioritized and how we select items for replacement. As Mr. Starr says, if then from that list we determine that

there is a multitude of these systems that are inadequate, so to speak -- I will use that word as a layman -- and we don't have the funds to do that, then we have to look at how we get them done through our sources.

We need to have that basic document first that says, okay, here is all the things that are in Condition A and these are all the things that are in Condition B and C, and we can go about prioritizing them and then deciding how much money we need. We're all the way back to that point again, and I don't want to get off on that discussion, but I think that's why we had such a lengthy conversation about the need for that model, or whatever you want to call it.

Mr. DePonte?

MR. DePONTE: Okay, Mr. Craddick, I need to respond to that, being a surveyor I should know that. I need to, being from my ancestry, I do need to comment on that. Yes, I am a surveyor; I am not an engineer. What happened is I look at things as physical above the ground. Sometimes we locate stuff that's below the ground. On this instance what happened is I saw a fire hydrant, a full fire hydrant, and that's what I saw there. When my insurance guy asked me for fire insurance on my

house he said, "Where is the nearest full fire hydrant, where is that fire hydrant?" I am not talking about a standpipe, I am talking about a fire hydrant.

I said, "Well, I am going to go up the road and check it." And I paced off and I went up the road and it's 500 or 600 feet up the road, and he said, "Well, you fall into this bracket because it's that far away from your house."

Now, being a surveyer is not the only issue here. The issue that I'm trying to say is all the other people that's on there that's believing that that is. And we have an artist, maybe that artist should know about it, or maybe the guy up the street that's a retired guy that maybe won't be able to make it out of the house in time, or all of his valuables gone. That's what we're talking about here, it's what we are talking about, protection that we need as citizens of this County, and we are a part of this County.

CHAIRMAN RICE: Thank you, Mr. DePonte.

MR. HELM: Just one comment. My past experience is with these kinds of issues, I have seen them several times come in front of the Board. And I am not trying to create a

disparity here, but a lot of our oldtimers, people with roots to this island, to this community, a lot of times we tend to neglect the needs of those people.

And I think we have got to pay a little bit closer attention to those people who have a lot of connection to this island. And we see a lot of them losing their lands to subdivisions and all of that because they don't have adequate fire flow, they don't have those kinds of things that we need to service them with as a public utility.

So when we spend the time to sort of make the list as to how we are going to prioritize areas and communities that are in need of water system upgrades, we need to also take that into consideration.

CHAIRMAN RICE: Thank you, Adolph. Mr. Craddick? I don't want a rebuttal.

MR. CRADDICK: It is not a rebuttal. Adolph, I presume, is talking about what I call the customer years. And as I told you before, that is how we prioritized. Nobody is saying one way or another whether that's a good way to prioritize lines, but customer years is one thing that we look

at on the system.

CHAIRMAN RICE: We understand that, but I don't want to get into that. We don't have a document that we can all understand that outlines everything that's adequate or inadequate. I know we can't do all of them tomorrow, I am not saying that. But we need to have -- the Board has to come to grips with it, because there's obviously a funding need and that's how you are going to get the funding.

Ginny?

MS. PARSONS: Can we on this issue, since this issue is before us and it's our discussion at this point, David, can you put together an assessment of what it would cost to upgrade the fire flow for Mr. DePonte's purposes?

CHAIRMAN RICE: For the subdivision.

MR. CRADDICK: I believe he gave you the number, he said it would be about \$200,000.

MS. PARSONS: Would that \$200,000 service that entire community?

MR. CRADDICK: Those customers that I told you about, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 people. And that doesn't fix up the tank, that just gets a line up to the tank. The tank is actually inadequate too, it's only 50 thousand gallons. So the tank is pretty small too up there.

CHAIRMAN RICE: Mr. DePonte?

MR. DePONTE: Okay, to bring that fire hydrant up to fire standards, it's the line that's going right across the property, which is the 2-inch line, the 2 and a half inch line. That line, to replace it, you are looking at \$60,000 to roughly \$100,000, maybe. That's where that number comes from. What Mr. Craddick is talking about is taking it around the switchback to attach other owners to give them meters. Bring the meters closer to their property and put another fire hydrant down in that corner. Or if you are going to add on more fire hydrants. That 2 and a half inch line is restricting pumping. When they're pumping the water up to the

tank, that line is holding back. I mean duh again. 6-inch, 2 and a half inch back to 6-inch, and it's galvanized. He knows it, the department knows that it's restricted. You are paying money to pump water uphill that is getting restricted. So if they replace that line, we will have adequate water flow to that fire hydrant. End of story.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: I think what Board Member Parsons was asking the Director to do was to look at that entire area, recognizing that the system is probably inadequate, and see what needs to be done. Not just to solve Mr. DePonte's problem individually, but what needs to be done to deal with that area. And I believe that's what Ginny is asking, what the magnitude of that is. I can't see us putting in \$200,000 to solve one person's problem, and still have half a dozen other people still unable to benefit.

CHAIRMAN RICE: I think that's appropriate action, Mr. Craddick. And I would make a note for the public that when

we approve the budget and we set a precedent of doing this last year, I believe, or the year before, our capital improvement monies are approved on a lump sum basis and then the department, even though there may be a list, that gives us the flexibility of reviewing each project when they come in and possibly altering the allocation of those funds. So that's one of the reasons we do the lump sum allocation.

MR. NAKAMURA: If I could add that one of the things that this Board has tried to do is to address what you folks have raised, which is inadequacies of the existing system. And a couple of years ago the Board asked that a research study be done to assess the systems countywide, which was done. It established the cost, which was significant.

I think the Board has tried in the last two or three year budgets to set aside a larger amount for pipeline replacement, and more recently has asked the department to come up with some kind of, as the Chairman has indicated, some kind of a rational plan to prioritize where these improvements should go. So I think we have been trying to move in that direction. But in terms of promising Mr. DePonte that we are going to give him instant relief, I don't think we can do that

at this point.

CHAIRMAN RICE: Ginny, and then Mr. Starr. Mr. Starr?

MR. STARR: Mr. DePonte, one of the things the Board has done before in, you know, being able to justify moving a certain project up in priority is if someone in the community were willing to help to participate in the project, you know, to a small extent. I was wondering whether this is something you might consider, to provide some degree of participation if we were to move it up on the priority list and spend considerable funds on upgrading that line. Whether you would be willing to participate to some extent, and that would give us a justification for doing that, to put up some of the cost. Maybe some of the other people on there might be willing to contribute as well. But if you could, I know that that would certainly touch my heart and move this project ahead.

MR. DePONTE: Okay, I think David has a very good suggestion on the pro rata thing. I think you know everybody in the community or in that area has a certain obligation to help out with the line. I brought up a thing about my

great-grandfather helping with financing the line coming to Kula. It was from way back. We, the community, in fact our tax dollars come in here, our monthly fees or whatever. It's just not going to cut it. So with developers and everything, it does come back. I will throw this out on the table for you, David. I will do the surveying. (applause).

MS. PARSONS: Peter, may I ask David a question?

CHAIRMAN RICE: Yes.

MS. PARSONS: David, could we please have that report prioritized by the next meeting, at this time of the month the next month?

MR. CRADDICK: Which report?

MS. PARSONS: The report on prioritizing those issues, fire flow issues that the Board has apparently asked for in the past.

CHAIRMAN RICE: Did we give you a five-year list at

the last meeting? I'm sorry, we didn't, it was handed out at the budget hearing. But I think in answer to Ginny's question about that subdivision needs to be answered by the staff and brought back to the Board to look at the whole entire community. We can look at that in the context of the other projects that we have planned.

I might add, if I remember correctly, we do have a disproportionately large amount of the capital budget planned for Upcountry this year, so that is the good news.

MR. DePONTE: The main thing here too is when those water meters come out I don't want to be thrown off the list because I have to go and improve the line up the road. That's the one thing, my concern. They said I only have a certain amount of time. It was rumors. That was my concern.

CHAIRMAN RICE: We are not throwing anybody off the list at this point, nobody. We haven't thrown anyone off the list. In fact, we added people back.

MR. CRADDICK: Do you understand what he's saying?

He's saying when his name comes up on the list, the way the rule is written right now you have got a certain amount of days to put up or move to the back of the list.

CHAIRMAN RICE: All right, that's what you are talking about. We can't make any promises regarding that, that's a different issue. But we will take that up when we talk about the meter.

MR. HALL: So what's going to happen, this is going to come back at the next meeting?

CHAIRMAN RICE: I don't know if it will be the next meeting, but no later than two meetings from now.

MR. HALL: Will somebody notify us?

CHAIRMAN RICE: Yes, we will notify you.

I am going to call a short recess.

(Whereupon a brief recess was had).

CHAIRMAN RICE: Back to order. Communication 02-17, Mr. Jorgensen representing Mr. Moretti. We also have testimony, a request for testimony from Mr. Torres. Would you like to go first?

MR. TORRES: He can go first.

MR. JORGENSEN: My name is Dave Jorgensen, the attorney representing Francesco Moretti. First, I want to apologize about wearing a coat and tie, that's just me, out of respect for the Board. I hope nobody is offended by it. Also, I want to apologize on behalf of Mr. Moretti. Last month he came and he understood from his discussions with the department that his request was fairly routine. He appeared on his own behalf. I did not actually get involved in representing Mr. Moretti until after the May 14th hearing. English is not Mr. Moretti's first language, and it would have been better in hindsight in reviewing the minutes if he would have had somebody representing him at that time. So I apologize for coming back and taking more of your time. Our main point in all of this, maybe it's my misperception, but I think there seems to be a misunderstanding

that what Mr. Moretti is asking for you is to cancel this agreement. That's not what he is asking. This agreement runs with the land, that is true, and it is binding upon the land. The point is that the substance of the agreement, the requirements of the agreement do not apply to this particular project that he is proposing. The rules of the department specifically say that subdivision requirements do not apply to private water systems. Further, that the department does not have jurisdiction over private water systems. Mr. Moretti is developing this project with two wells which have -- and this was unclear at the last meeting -- they have received approval from the Department of Health for those two wells. He does have the two permits for the private wells.

A question had come up about fire protection, and I provided Mr. Kushi with information after the last meeting, prior to this meeting. The subdivision requirements require that there be a provision for fire protection. Mr. Arakaki is his engineer. He has designed the private system to account for fire protection. That issue is taken care of.

The bottom line, and I did have Mr. Moretti -- and I did have a meeting with Mr. Craddick and his staff. I have met

with Mr. Kushi, I have met with the department's attorney, Mr. Minatoya. The bottom line from those meetings is that this agreement is binding on this subdivision because, and simply because it's recorded against the land and it runs with the land. Not because there's still a shortage, not because there's no water source available. The only reason is because it was recorded against the land. Again, we don't dispute that. It is recorded against the land; it is binding on the land. But the department's rules do not give the department the power to impose and require the normal subdivision requirements for water on a project that uses a private water system.

Our request, our suggestion, our proposal is that this project be permitted to move forward with a private water system if and when that project, the subdivision, anybody in that subdivision were to say, "I don't want private water, I want to be on the public system." They come to the County, they come to the department. This agreement is still binding on them. Whenever any request is made to the County for water, these improvements have to be made. But unless and until that time, the subdivision requirements simply don't apply to this subdivision.

Again, I had submitted a letter to Mr. Craddick with some information. At Mr. Kushi's request I submitted a letter to him with more information. A prior project that I had worked on, the staff report in that case actually says the same thing that the staff report in this project says in Section 4. Section 2-1 requires water systems connected to the department be in compliance with department standards. Compliance is not required if no connections are made. And that's a consistent position that the department staff has taken in interpreting rule 2-11.

It should also be noted that 2-11 was modified, amended in 1996 to specifically remove the requirement that water systems in areas where there is not service by the County have to comply with the County standards. That was taken out of the rule in 1996.

So we were a little confused that the item on the agenda says request for it to be placed back on the agenda. I would request that this matter be resolved at this time, rather than -- I don't know if the intent was to consider whether it would be on next month's agenda. We would ask not that the Board approve this water system or approve this subdivision, but acknowledge that under these circumstances the department

does not have jurisdiction to impose the requirements, with the understanding that this agreement is binding on any future request for County water. Thank you.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I remember the previous discussion, and you, I guess, were not here at that time and may not have been privy to this. But my concern, and it runs very strongly, is regarding another individual who lives down in Maliko Gulch. Now, you know, I'm all for private systems if they're going to stay private and not, you know, we are not going to try to accept them if they're substandard or anything like that.

But in this case the Board has indemnified an individual who has lived and has a small agricultural operation down in Maliko Gulch, and has been there for many generations. There was a concern that the spring that they were receiving water from, which comes out of the side of Maliko Gulch, might at some point dry up due to pumping of the County's Hamakuapoko wells. So far it doesn't seem that there's been any real affect to that extent. But we indemnified that individual saying that if their spring ever went dry we would supply them

water for free forever.

I for one, before approving a private water system based on a well right above this gentleman's spring intake, would want to see Mr. Moretti indemnify the Board or directly this individual, so that if their spring went dry then he would provide water for them in perpetuity. And then I will maybe create a million dollar bond, or something like that, to make sure that there was money to fund it after Mr. Moretti moves along. So that's what it would take to convince me.

MR. JORGENSEN: If I may, a couple of points.

Number one, I wasn't at the last meeting. I did get the minutes off the Internet and reviewed those, so I am aware that this discussion came up. However, the agreement with the Hokoano family, who I understand the agreement was with, is not part of the staff report, it has not been put before you, it's just a statement that there is this agreement out there.

Number two, again, we are not asking this Board to approve this private water system. What I'm saying is, and Mr. Kushi can speak to this point, but what I'm saying is, there's no jurisdiction to deal with this private water system. It's not that the Board is saying, "Okay, we will let you go do

private wells." It's the opposite. They're saying, "We don't have jurisdiction, the department doesn't have jurisdiction."

For there to be any liability on the part of the County you would have to be in a position to say, "We're going to let you put in a well here, we are going to let you do this." If there's no jurisdiction to require the improvements, it is more an acknowledgment that this agreement does not apply to this project.

At the same time, the actual agreement itself has an indemnification provision in it. Section four on page 2 of the agreement contains an indemnification provision requiring that the subdivider, its successors in interest and assigns, and then it goes on, but agrees that defendant indemnify and hold harmless the County from claims made against the County.

The main point I am making is that by you acknowledging there's no jurisdiction over this project and these wells, you would not in my opinion be creating liability to somebody else under some agreement which is not before the Board. But even if there was a claim about accusing the County or the Board of doing something that would damage this spring, there is this provision in there which is an indemnification provision.

I am not an engineer or surveyor. As far as geologically, I think the spring is not going to be impacted by these wells, but I can't confirm that. As you said, the drilling for the H'Poko wells has not seemed to have an effect. My understanding is the springs come from a different source. But my point is that the department and therefore, with all due respect, the Board does not have jurisdiction over a private water system, therefore there would not be the liability.

CHAIRMAN RICE: So my question, Mr. Jorgensen, would be if that were the case, and I believe that it is the case, then why did you ever come before the Board in the first place? Because if we have no jurisdiction over that subdivision approval, even though that document is recorded, it runs with the land. In the future case it shouldn't be an issue for us.

MR. JORGENSEN: I agree. The department is asked to sign off on all subdivision applications. And Mr. Craddick, I believe, said he could not because of this agreement.

CHAIRMAN RICE: Why wouldn't you then go to the subdivider, go to the County and say they have no jurisdiction over this? In a normal subdivision where the subdivider puts in his own water system, Mr. Craddick doesn't have to sign off on that, does he?

MR. JORGENSEN: Yes. All subdivisions applications and all building permits come before the Water Department, whether there's a private system or whether there's jurisdiction or not. I may be wrong, and Mr. Craddick can correct me if I am wrong, but this subdivision application came to the department for comment, and I believe the comment back was that this agreement -- they have to make all these improvements because this agreement runs with the land. And because that was disagreed with by Mr. Moretti, the request came to the Board to say, "Please acknowledge" -- and I'm paraphrasing here, because again, I wasn't involved -- "Please acknowledge that this agreement does not apply to this project." It applies to the land the project is on, but this subdivision application, this project is not covered by this agreement, because the department doesn't have the

jurisdiction.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: One quick question which may not be totally relevant. But Mr. Jorgensen, you mentioned that the two wells had been approved by the Department of Health. That's for use as a source for a private water system?

MR. JORGENSEN: Right. The well permits have been approved. They haven't been drilled yet, so the water would have to go through that whole process to be certified as potable. But the well drilling permits have been approved. There's two that have been issued.

MR. NAKAMURA: By the Department of Health?

MR. JORGENSEN: By the Department of Health.

MR. NAKAMURA: What about the State Water Commission?

MR. JORGENSEN: The State Water Commission approved

the well drilling permits, I misspoke. So these wells would not be activated until they have received the proper approvals from the state.

MR. NAKAMURA: I guess that's more for my information. But I agree with the Chairman that if in fact the argument is that we have no jurisdiction and if our attorneys agree with that, then I don't think it's even appropriate that the Board take action on this request.

CHAIRMAN RICE: I would think that would be my advice if I was a learned counsel, which I am not.

MR. JORGENSEN: We are in a bit of a Catch-22. I acknowledge Member Starr's concerns as far as the other water system. But again, that's something that is outside of the parameters of this. We are in a Catch-22 because the department is saying, "You can't because of this agreement which was approved by the Board," but then our position is, "But you don't have any jurisdiction to say that." What we are trying to avoid is essentially costly

litigation to go have a court say to the department, "You're wrong." We are hoping that the Board would acknowledge that this is outside of the parameters of the department's jurisdiction.

CHAIRMAN RICE: Mr. Craddick, if a subdivider comes in and they ask for -- they're going to do their own water system, do you still sign off on that?

MR. CRADDICK: I can. It's in the Maui County Code.

CHAIRMAN RICE: What do you mean you can?

MR. CRADDICK: It's in the Maui County code, the requirement.

CHAIRMAN RICE: So every time something like this comes up, you do sign?

MR. CRADDICK: Not necessarily. A lot of times the County does not send them to me. The example is Mauna Olu.

CHAIRMAN RICE: So why don't we send a letter to the

County and say, "While our agreement runs with the land, they are not asking us for anything and our approval is not needed." I don't want to -- I think by acting on something that is not within the scope of our authority, that we are taking on some liability that we don't need to take on.

Mr. Starr?

MR. STARR: What I don't understand is that Mr.

Moretti bought a piece of land with an agreement that had been made with the Board regarding water and water development. And I assume that due diligence on his part made him aware that he had purchased a piece of land with a specific commitment to certain specific steps to be taken regarding water. And I don't really understand why, when he has that commitment, he is -- you don't seem to feel that he has an obligation to fulfill that agreement that ran with the land, and that it's not our jurisdiction to see that that is followed.

CHAIRMAN RICE: Mr. Jorgensen?

MR. JORGENSEN: Well, again, that's not what we're

saying. We are saying the agreement does run with the land, but the agreement, this type of agreement and these agreements that the County enters into quite frequently are in contemplation of a subdivider asking the County for water.

This agreement was there, Mr. Moretti knew he was going to do private wells, which in our legal opinion takes it out of the application of this agreement to this project as proposed.

So again, we are not saying that he should -- you're right, before he bought the property this agreement was recorded with A&B, between A&B and the Board. It does run with the land and it is binding on successors and assigns. What we're saying is under these circumstances, these subdivision requirements cannot be imposed on a private water system. There's no provision in the rules for that to happen. It is imposed if and when somebody would be connecting or want to connect to the public water system.

So I don't think we're saying different things. The agreement runs with the land, but it only applies when somebody is coming to the County, as A&B did to do Haiku Makai. They came and they made another deal about giving water, but they made improvements because they were going to tap into the County water system. This would be a private water system,

which I think in the minutes Member Hiranaga had asked if this agreement wasn't in place would it be a different situation, and it was acknowledged this absolutely would be a different situation because it's a private water system.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Mr. Kushi, could you address this from your esteemed legal opinion, please?

MR. KUSHI: What question? There's a whole list of questions.

MS. PARSONS: Whether or not it should even be before the Board, one.

MR. KUSHI: Well, technically it's a reconsideration of what you did a month ago, two months ago, so I think it's properly before you at this time, the issue. As I recall, and I reviewed the minutes of the meeting, from the testimony and the staff report at that meeting it differs very significantly from what the allegations are today.

This Board considered various facts, and of course

Mr. Jorgensen wasn't there at that time, unfortunately. My recollection and in review of the minutes of May 14th was the concern, as Boardmember Starr said, this alleged previous agreement with the Hokoana family. The effect of a well up stream to their private system.

Two, the Department of Health stated that they didn't approve these wells. That was our big concern. Three, fire protection. And of course four, the existing agreement, like any other agreement that's recorded.

Today, as I understand it, according to the applicant's attorney, they met with the Director, I wasn't there, and this agreement with the Hokoanos does not apply. Now, you know, you may want to get into that. I have never seen the agreement itself. Secondly, the Department of Health has subsequently approved these systems, or basically said, "Hands off, we are not involved."

The other issue of fire protection, they will comply. And the last question about the agreement itself, like any other agreement, you have to figure out what is applicable to this. Discussing this with my colleague Minatoya, we tend to agree with the Counsel for the Applicant that on private systems the department used to have jurisdiction over private

systems pursuant to your rule 2-11. In 1996 it was amended to take that section out. And what the Director has told you today is not that he hasn't signed off on private systems. To my knowledge, it's inconsistent, he has signed off on private systems. So I am not sure what to tell you at this point.

Where it is right now, I believe, and correct me if I am wrong, Mr. Jorgensen, is that you're asking the Board for a ruling or a direction from the Board whether or not this project applies, is applicable to the existing rules. Therefore, your client can get on with his subdivision. Because without the Director's acknowledging that or signing off on the application, the Director of Public Works will not process the subdivision, correct?

MR. JORGENSEN: That's correct.

MR. KUSHI: If this Board refuses, based on whatever is before you, the Applicant also has the alternative. And assuming that the Public Works director maintains the position that the Department of Water Supply Director does not sign off, he could then appeal the Department of Public Works director's decision to the Board of Variances and Appeals in denying the

processing of the subdivision. At that point in time they may take up this issue of whether this Board has jurisdiction or not.

So in either forum, I think you have to make a decision whether you are going to cover, review, inspect private systems or not. And if you do, you have got to make sure they comply. But the reason is if the private system is not going to be dedicated to the County, what is your basis?

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The story is going around that the health department has approved it. The health department has not approved anything, because they say the wells aren't even drilled. They have to turn in a water quality report and what they call a preliminary engineering report. That is what the health department finally approved for water quality.

What they're doing is they're doing wells, a sufficient number of wells to keep it from being part of the health department regulations. This is what was done with the project over in Kauai. I think it was 32 lots, and I forget if they had 8 wells or 32 wells, but they were doing it

specifically to bypass the health department's regulations, and that's what's going on in this case. He's doing two wells for 8 lots, so the argument is with four lots the likelihood of there being 25 people on four lots is remote and therefore it doesn't come under a community water system and the health department has no jurisdiction in the matter. So that is what the health department has told him, not that they approve anything, because it hasn't even come to them for review yet, and won't until they drill the well and test it.

Now, what I was trying to tell you is if he complies with the agreement that runs with the land, does the water system in conformance with their standards, turns it over to us, we are going to operate it in a fashion that we don't hurt our agreement with the Hokoanos. If they do their thing privately, put the wells in, we have no jurisdiction over the operation of them and they harm that well, we are the ones who have to satisfy Hokoano.

CHAIRMAN RICE: Well, yes, I was going to get to that before we finish this. But Mr. Jorgensen, go ahead.

MR. JORGENSEN: Well, again, I just wanted to

clarify. I admit I misspoke, I said the Department of Health, but the well permits were obtained from the Well Commission. And we will be going back to the Department of Health when the wells are pursued.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I think we should really stick to the agenda item and kind of separate out the issues. What is before us is, no matter what Mr. Jorgensen has asked, all we can act on is what's on the agenda, and that is whether we should put this back on the agenda for reconsideration. It's a request for reconsideration. So I think that's what we should be acting upon. And then as far as if we do decide to do it, we will have another opportunity to look into the issues.

I had kind of changed my mind after hearing Mr. Kushi, and feel that perhaps we should have reconsideration simply based on what our Counsel said. But I'd like to hear what other Board Members feel.

CHAIRMAN RICE: Mr. Jorgensen?

MR. JORGENSEN: Just for clarification, obviously we didn't prepare the agenda, but the request to Mr. Craddick in my June 7th letter was that his department look at this matter again, request the matter be placed on the next water board agenda, and advise the Board that the agreement is not applicable to my client's project.

So again, the agenda says what it says, but our request was that the determination be made that this is not applicable, this agreement is not applicable.

CHAIRMAN RICE: Okay, at this point we have another testifier, and I think it's important that we hear Mr. Torres. Would you come forward?

MR. TORRES: Can I just stand right here?

CHAIRMAN RICE: We want to make sure we can here you.

MR. TORRES: My name is Peter Castano Torres, I've been 57 years in these islands of Hawaii, born and raised on the Big Island. My concerns are -- and excuse me, I am not a

lawyer, I'm a local boy. My first language would probably be Hawaiian but I'm going to talk to you guys in pidgin, because that's where my heart is at.

My mother was Portuguese-German married to Hawaiian people. My father is a Filipino-Chinese fisherman. We are very concerned about what this project is going to do to Maliko Bay, because of what's happened on the Big Island at Kealahou Bay. They developed the fishing grounds and the big rains came and it destroys our fishing grounds. Maliko Bay has all the potential of that.

I thought I would get to know this man. He invite me to his house, me and this other brother, and he tell me he's not a developer. Yet I sit in one of his two homes in Spreckelsville, and he wants to build eight more in Maliko. I say if he's lying to me, he must be lying to himself, because that sounds like a developer to me.

So for some of us local buys we are kind of leary. He's telling us one thing, then he wants to do another thing, and we see just destruction of another fishing grounds coming. And again, the water, what is a private water system when we live on the island and all the water goes into the ground. And I have been told ever since I was little that "This is artesian

well water, take care of your water."

My grandfather would say, "You go to the mountain, that's your supermarket. You go to the ocean, that's your ice box." These people come from these foreign countries and they don't realize that we try to talk to them and we try to tell them this, but all they see is money and the change of our lifestyle. Money no can buy this lifestyle.

Please, people, you sit in the positions that help make these changes. Please don't take the very essence why we all live here, don't take that away from us and our children. The water is a precious thing. Without this water we no can grow taro, no more can fish, no more any river up Maliko Bay.

I come from the Big Island, there's three types of fish we cannot eat along the ocean because of the golf course runoff and all the pretty yards these people have with their big homes. They put fertilizer in the ground and it runs off. The old people, when they eat this fish they die and their young kids, they get paralyzed. Please don't let that happen to Maui. Please look at what these people are doing.

I am just representing -- right now there's a group of us getting together. We are going to get together and fight this project heart and soul. And I have connections with big

lawyers in Texas and in California. They are willing to come here and give us all the money in the world to fight this project. Please help us local boys and our lifestyle and the people that have come here to live the way we live. Please help us keep Maui Maui and not destroy our very precious bay and fishing ground. Mahalo for your time.

CHAIRMAN RICE: Ginny?

MS. PARSONS: I think you brought this up the last time too, Mr. Moretti. And I may not have any jurisdiction into commenting on this, but I still cannot understand why you would not put a well in to the codes of the County and dedicate it to the County in order to get your project done. It would seem so much cleaner, neater, and amicable to the entire community, and less liability for you, sir.

CHAIRMAN RICE: Mr. Moretti wanted to speak.

MR. MORETTI: If I may, I just wanted to say hi, everybody. I wanted to add some more information because I

think sometimes you don't have the correct information in front of you so it's hard to make a decision. I invited Ricky into my house because of my presentation to the Haiku Community Association. I wanted to show that this is one more step of effort that I am doing to make that community know about what I am doing there.

And what I am doing there, it's actually I am keeping half of the land, half of this 44 acres. I am keeping half of the land for me and for my family. And we are actually making a fish culture, an aquaculture of Maui, which is a Hawaii fish, and this is our project. It's why we need the low cost water source. And it's an agricultural operation that's going to be carried through with a private water system.

Now, my house in Spreckelsville is for sale, and the reason why I'm selling it is because I need the money to build the house there. I'm leaving one place to move to another place. I am leaving a residential lifestyle to go to an agricultural lifestyle, and this is going to be my main occupation.

Now, to respond to your question about when I have to drill a well for agricultural purposes already, why do I have to also connect to the County water system and spend the

money twice when the rules and regulations allow me to do this? I am allowed by the rules and regulations to provide water, clean water to the subdivision with the private water system and the wells.

I reserve the right to use the County's water system if one day the new owners or me, which I own half of the lot, would like to do this. And I have all the rights to do this.

These agricultural operations I am doing is completely ecological, it's self-sustained, there's no fertilizer, it's aquaponics. I don't know if you know about it. Basically the greens, they grow on top of the pond where the fish fertilize the greens. So you only feed the fish, and the greens, they benefit from all these ecosystems going on.

I'm building my house with an architect that does Polynesian designs, and he works for Hawaiian Homelands. I think I am doing a lot of steps and a lot of effort to fit into this community.

CHAIRMAN RICE: Okay. We are not the Planning Commission, we do not provide subdivision approval. We are not that authority. We are not here to be that authority. I have one comment, one question. My comment would be that -- I'll

ask my question first.

Mr. Kushi, the question that's raised I believe by Mr. Starr is that based on how the agenda was published, are we obligated to deal with the placing back on the agenda, or do we deal with Mr. Jorgensen's request here?

MR. KUSHI: I believe it's broad enough that you can act on the request and schedule it for another meeting.

CHAIRMAN RICE: Because I guess my comment would be I think if you believe that you have the right to produce your own water system and do your own development, then you should go ahead and do it.

Mr. Jorgensen, is it acknowledged that the agreement runs with the land? My greatest fear would be that we would have another Mr. DePonte sitting here in a few more years, because all of a sudden something would happen and he would want to be on the County water system, and he wouldn't want to pay for it. I think there needs to be adequate disclosure, because I would like to tell that gentleman or lady, or whomever it is, "I'm sorry, if you don't like what you bought, you want what we have to offer now, it may cost you \$20,000 or

\$30,000 or \$40,000."

That's not going to be a fun thing, but that's the reality of us signing off, and I think with the history of us signing off on inadequate private water systems. But if you have the right to do that, so be it, and the County can allow you to do it, let them allow you to do it. That would be my position. Mr. Starr?

MR. STARR: Mr. Chair, I'd like to move that we deny the request to put this item back on the BWS agenda.

CHAIRMAN RICE: Is there a second?

MS. PARSONS: I'll second it.

CHAIRMAN RICE: Discussion? Mr. Nobriga.

MR. NOBRIGA: I believe Mr. Moretti's first instance with the Board the item was agendaed as a request for a waiver of subdivision requirements. And because of the request to waive subdivision requirements, I think that's why the recommendation was to not go with it. I am trying to review the minutes now and I haven't gotten to that point in the

minutes. But I think that was what it was all about.

I think the matter needs to be explored considerably more than it has right now. I think it's going to be a matter that we need to ask Corporation Counsel and the staff for more feedback on the proposal. Because there isn't enough staff feedback right now, at this time and place, I am not against relooking at the issue, but I would prefer that the matter be deferred to another meeting to give staff time to come up with some information for us.

CHAIRMAN RICE: Well, there's a motion to deny the request as it's been agendaed. Mr. Nakamura, then Miss Parsons.

MR. NAKAMURA: Mr. Chairman, I wasn't at the meeting when this issue was taken up, however I do think that there have been enough, there has been enough information provided. And some of the things having been summarized by Corporation Counsel that some of the factual elements appear to be at least questionable. And because of that, I think that it would be appropriate to kind of clear the air and make sure that what we're doing is in accordance both with law and the facts that

are accurate.

And because of that, I believe we should look at it as Board Member Nobriga has suggested. So I would be voting against the denial of reconsideration. I believe I can vote. I cannot make a motion to reconsider because I wasn't here, but I can vote on this motion. Is that right, Mr. Kushi, Mr. Corp Counsel? Can I vote on the motion to reconsider, to deny reconsideration?

MR. KUSHI: Yes.

CHAIRMAN RICE: Ginny?

MS. PARSONS: If we don't have the jurisdiction I see no reason for us to have to come back to this issue again. It's just taking up more time of the Board, of the public, and everything else. If you feel that we don't have the jurisdiction, then we don't even need to act on this. However, if you have lost that right to jurisdiction because you came in here last time with a request pursuant to the building department, then that's a legal issue for the Planning

Department. That's a legal issue for Mr. Kushi. Once they have come forward, is it now our jurisdiction?

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: Mr. Chair, Board Member Parsons. Maybe

I should clarify. Reading the staff report that was dated May 8th, before your board meeting on May 14th, the request was that the Board allow the Maliko based subdivision to obtain final subdivision approval with source from a private water system. The staff recommendation was that it recommended that the request for a waiver of the agreement provisions be denied, and it went into the agreement with his predecessor, A&B.

The applicant's request by letter dated April 5th to the Board was that they were basically requesting that -- his position was that "the requirements of the agreement do not apply in this case, and I am asking this department to grant subdivision approval."

So there's in essence two issues. Whether this agreement applies, it applies to the facts of his case now because he's going to a private system, and the other issue about the department stopping the subdivision process. So I

think that was what the Board considered, and they denied both. They denied basically the request.

MS. PARSONS: Can I ask a question?

CHAIRMAN RICE: Yes.

MS. PARSONS: Does Planning know when they're making these determinations that the applicant is planning on drilling two wells, and what that means as far as the public health department? Are they up to date on that kind of thing before they put their Planning stamp of approval on this?

MR. CRADDICK: Planning doesn't get this.

MR. JORGENSEN: Public Works.

MS. PARSONS: But does Public Works understand that two wells would maybe eliminate the health department's testing?

CHAIRMAN RICE: That's not for our consideration.

MS. PARSONS: I'm just asking that question. Do they know that? Because I think the issues that are before us are do we do this waiver? Do we go ahead with subdivision approval? If we have no jurisdiction in this issue, number one, what difference does it matter whether or not we have allowed him his waiver? Or what difference does it make whether or not we give him approval to go forward? If we have no jurisdiction, we have no jurisdiction.

CHAIRMAN RICE: But it does make a difference on the waiver, because we have an agreement in place that we are not waiving. So if at some future time, no matter what they do, they want County water, they have to comply with the agreement. So that is in place.

The request to waive that was denied, we are not entertaining that. What Mr. Jorgensen has said is that that was not the correct request, and he was maintaining that we don't have -- that they're not asking for that agreement to be waived or in any way changed. But in making the point that we don't have the authority to rule on this, in which case then we don't need to rule on it.

MR. STARR: I think we're getting two different messages here. One is that he says that we are not being asked to waive that, but in the letter it seems that we are being requested to advise the Board that "the agreement is not applicable to my client's project."

MR. JORGENSEN: That's right, same thing.

MR. STARR: So I'd like to be clear. Are you asking us to waive this agreement?

MR. JORGENSEN: I apologize, it is a bit of semantics, but what we're saying is that the agreement does not apply to this project as proposed because it is a private system. We are not asking for the agreement to be released, cancelled, discharged, whatever. It still is in place and it will still bind the property and successors in interest to the property if they request County water, but under this system, this project.

MR. STARR: Let me be really clear on this. As I understand it, are you asking for us to take any action in regards to this agreement?

MR. JORGENSEN: We are asking you to instruct the Director that the department does not have jurisdiction to deny, to refuse to sign off on this subdivision application because of this agreement. We're asking the Board to say that this agreement does not apply to this proposed subdivision.

MR. STARR: There's an agreement in place where both sides agreed to do certain things. And even if we say that it is not bearing, to me, that would be creating a very terrible precedent in that basically all agreements of this kind would then have no bearing if there was some kind of substandard private system.

CHAIRMAN RICE: I agree with you. Which raises now another question, Mr. Kushi. This is not a question for the Water Board. Again, as Mr. Jorgensen has raised the question as to whether the Director should be signing off or not on a project that has nothing to do with the County water system.

So the question, again, that's not our decision. We don't make a decision about whether the County should give approve for this. They're not asking for County water. Why do we sign off, why should we get involved? I would prefer us not to, that way the agreement runs with the land.

MR. STARR: I don't think that there's any action that we need or should take, and that is why my motion to not put it back on the agenda at this time has been made and seconded and is waiting for the question to be called.

CHAIRMAN RICE: All right one time. Mr. Torres?

MR. TORRES: In my simple local boy'S way, it sounds like he wants you guys to rubber stamp something that you guys have no authority about. Thank you.

CHAIRMAN RICE: Mr. Jorgensen?

MR. JORGENSEN: Right at the beginning I said we are not requesting this Board to approve this project or approve

these wells. Mr. Craddick, as I understand it, serves at your pleasure. Your employee is saying that he will not sign off on this because there is an agreement between you and A&B which runs with this land. I am saying the agreement runs with this land, but it does not apply to this project, contrary to what Mr. Craddick is saying.

We are asking for this Board to say that's correct, we acknowledge that this does not, this agreement does not apply because it is a private system. And I am not asking you to rubber stamp anything. I am asking you to acknowledge that you aren't passing on the validity or legitimacy of the wells or the subdivision.

CHAIRMAN RICE: Ginny?

MS. PARSONS: I believe it's more of a judicial question.

MR. JORGENSEN: I am trying to avoid judicial.

MS. PARSONS: I don't think we as a board can make that determination as to whether that agreement does not apply.

CHAIRMAN RICE: That's not what he's saying. It's not about the agreement applying, it's about who signs off on this subdivision approval, that's what it's all about. For some reason, whether it's true or not true, the County is asking Mr. Craddick to sign off on the subdivision. You might shed some light on this, Mr. Nakamura.

MR. NAKAMURA: If Mr. Craddick is refusing to sign off on it because the Board instructed him not to, based on the last meeting, then I think we potentially have a problem. If he's not signing it because he feels that he has jurisdiction and the attorneys advise him that he doesn't, then I think the Board is out of it. But as I said, again, if he's not signing off because he feels the Board has instructed him to, and the Board's action was based on perhaps questionable legal authority or facts that were not correct, then I think we have some obligation to deal with that.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I think Howard is exactly right, and

I think this matter is already going to court with Mauna Olu, because on that one I also -- mainly because they said it was conforming to our water system standards I simply would not approve it. The Public Works Director approved it anyway. And it's the Maui County Code that requires the signature of the water director, not any of our rules.

So from there, I guess because of that, now the Public Works Director is saying you must get the Director's signature. And yes, the last time had the Board said they were going to waive this requirement, I would sign off on it.

MS. PARSONS: I don't think that we can waive that agreement that goes with the land, and we have already stated that.

CHAIRMAN RICE: That's not the request.

MR. JORGENSEN: That's not the request.

MS. PARSONS: But it does sound like that's the request.

MR. JORGENSEN: That is not the request, and I'll

state that very clearly.

CHAIRMAN RICE: The agreement runs with the land in place as it is.

MR. STARR: We are not being asked to waive it, we're being asked to say that it doesn't matter that it exists.

CHAIRMAN RICE: To a particular case.

MR. STARR: Can we call the question? Let's move on.

MS. PARSONS: Peter, one more thing. Let's just call the question.

CHAIRMAN RICE: The motion is to deny the request to place this back on the agenda. All in favor of the motion to deny the request be placed back on the agenda say "aye."

MR. STARR: Aye.

MS. PARSONS: Aye.

CHAIRMAN RICE: Nay?

(A chorus of nays).

All the rest. Okay, denied. So we are no where.

Ginny?

MS. PARSONS: If we have to review this, I would like to suggest that we have some separate counsel to review the issue so that we can get another input as to whether this agreement, if this agreement is being waived, independent counsel for it.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I think when we met with them and Corporation Counsel, that's why I put this on the agenda, to get that determination. Now, once you decide you are going to look at it, whether you want to get some additional counsel, that's another issue. But as he said, they want to avoid the court. And to me, I don't think there's any reason to

needlessly go to court if we can somehow resolve this amongst ourselves.

So if you want to look at it, who you get for counsel, that's up to you. But I think it's a legitimate request, to have a review of it. If nothing more than to really look at the facts more and maybe get the health department in here, or whatever, and see just what is going on.

MS. PARSONS: And Public Works.

MR. CRADDICK: Maybe, yes.

MS. PARSONS: I think everybody needs to be in here so we understand what all the facts are.

MR. CRADDICK: But that was the recommendation. Corp Counsel put this thing on so you could decide whether you wanted to reconsider. And if you did then --

CHAIRMAN RICE: We have no motion to do anything at this point.

MR. NOBRIGA: I move to reconsider the request.

MR. HIRANAGA: Second.

CHAIRMAN RICE: Okay, now discussion.

All in favor of moving to reconsider placing back on  
the agenda say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. STARR: Nay.

MS. PARSONS: Nay.

CHAIRMAN RICE: Okay, motion carries. I guess the  
motion carries to place the motion back on the agenda for  
reconsideration.

MR. CRADDICK: You only had two votes.

CHAIRMAN RICE: Okay, all those in favor of placing  
the item back on the agenda please raise your hands.

(Messrs. Nobriga, Helm, Hashimoto, Nakamura).

All those opposed raise your hands.

(Mr. Starr and Ms. Parsons).

Motion carries.

Now, the request, Mr. Craddick, for this to be placed back on the agenda, is to have either comments or representation by the Department of Health and Public Works, and the full staff report for us.

MS. PARSONS: And Planning.

MR. STARR: Mr. Chair?

CHAIRMAN RICE: Mr. Starr.

MR. STARR: And the Water Commission, because this relates to the other user right below him.

CHAIRMAN RICE: Okay.

MS. PARSONS: And Planning.

CHAIRMAN RICE: And Planning.

MS. PARSONS: Planning needs to be in here too.

This is a subdivision.

MR. CRADDICK: Planning or LUCA?

MS. PARSONS: Just a representation of someone in there so they understand what this entire issue is about. We are going to have so many more of these if we don't get together and decide where water comes in on this.

CHAIRMAN RICE: Okay, thank you, Mr. Jorgensen.

MR. JORGENSEN: Thank you very much.

CHAIRMAN RICE: Okay, Communication 02-1 , Mr.

Marino. Mr. Marino, front and center.

MR. MARINO: I don't think I want to be in this seat.

CHAIRMAN RICE: It's nice and warm.

MR. MARINO: Hot.

CHAIRMAN RICE: Quick break.

(Whereupon a brief recess was had).

CHAIRMAN RICE: Mr. Marino's request. Mr. Marino?

MR. MARINO: Good morning. This is bound to be a lot easier than what you guys have just been through.

MS. PARSONS: You don't have any substandard wells, do you? (laughter).

MR. MARINO: No. I transmitted a color-coded map. I made enough copies for all the members. And essentially I am in the process of purchasing a 21-acre parcel in Kula. Preliminary subdivision approval has been granted. It has two water meters.

Now, to provide fire flow protection, which we have

been discussing all morning, I would have to put in nearly five thousand feet of 8-inch water main. And what I need from you, this 21-acre parcel has two water meters on it. Now, according to your engineer, Mr. Herb Chang, typically the Water Department will not sign off on and allow individual lots to be sold until there are water meters on every lot. So I am asking for an exception to this to allow me to sell the two lots that already have water meters on them.

Now, if I have a bonded subdivision final and I only use those two lots that have meters on them or the meters are on those two lots, then by selling those lots that will help me put in that five thousand feet of water main that I need to get in. And of course, I am proposing to do this to the County Codes and standards, but I need to be able to do that.

CHAIRMAN RICE: Where did Mr. Kushi go? My question is, I don't know that we can prevent you from selling the two lots.

MR. CRADDICK: That's what I was going to say. I think what he's telling us is a little bit incorrect. What would happen is if he does a bonded final he can sell the lots,

there's no doubt about that. We probably wouldn't allow people to build or whatever on the lot because there's no fire improvements in there.

CHAIRMAN RICE: I am talking about the two lots that have the meters. If you want to sell those two lots, I don't know that we can prevent you from doing that.

MR. CRADDICK: It's two meters on one big lot, right?

MR. MARINO: Two meters on one big lot, yes.

MR. CRADDICK: So he's going to do the subdivision and get one lot with each meter.

And are there dwellings on them right now?

MR. MARINO: No, nothing.

MR. CRADDICK: See, there's no dwellings.

CHAIRMAN RICE: He's proposing to do the fire flow, but the two lots wouldn't have fire flow.

MR. CRADDICK: Right, they wouldn't have fire flow until the project is in. So we would be saying, "Sorry, you can't build anything." But once they get the final subdivision and sell the lots, then you have got the two-house waiver.

CHAIRMAN RICE: But subject to whatever limitations exist at the time of the sale, Mr. Marino can sell -- no, he's got to subdivide it. He can't get subdivision approval to sell the two lots.

MR. CRADDICK: He can. If he gets bonded final then he can do it.

CHAIRMAN RICE: Then you can sell those two lots with meters on them, that's your prerogative.

MR. MARINO: And the buyers can start building their house with the knowledge --

CHAIRMAN RICE: Not until the improvements are done.

MR. MARINO: But I can sell the two lots?

CHAIRMAN RICE: I believe you can.

MR. CRADDICK: With a bonded final they can sell the lots.

MR. MARINO: May I ask Herb Chang?

MR. CHANG: What the situation is, my understanding of the situation is Mr. Marino wants to do a seven-lot subdivision but he has only two meters on that one property. So I believe that the discussion here is if he wants to do a two-lot subdivision, no problem under the current restrictions on shortage. There's no shortage any more. But if he wants to continue to do a seven, then the department wouldn't be able to approve because they don't have meters. In order for the department to approve a final subdivision there has to be meters, they have to issue meters. Right now we don't have the meters to give, so it's either seven lots, which he wants to do, which we can't recommend final. But if he wants to downsize to a two-lot subdivision, he can go.

MR. CRADDICK: But he can sell the lots once he gets the preliminary subdivision approval with bonding.

CHAIRMAN RICE: Herb is bringing up a different scenario, where he has a two-lot subdivision and sells them with the meters. But what you are saying, correct me if I am wrong, David, is that he can do a bonded preliminary seven-unit subdivision he can sell two lots, subject to whatever restrictions exist.

MR. STARR: Can he do a three-lot subdivision and retain one lot with no meter on it?

CHAIRMAN RICE: Which would then be ultimately the other five-lot subdivision later.

MR. STARR: He could then subdivide it into five lots later when he gets meters.

MR. CRADDICK: What's the difference between that

and the seven-lot one?

MR. STARR: Because he is not subdividing without meters, he's ending up with one unsubdivided lot with a meter on it.

MR. CRADDICK: Well, you couldn't do it with any lots with no meters. If he could divide it into two lots with the two meters on.

MS. PARSONS: Is he on our list?

MR. MARINO: Yes, both of my properties that I addressed on this are on the list.

CHAIRMAN RICE: So final subdivision approval can't be given unless he has meters on every lot?

MR. CHANG: From my understanding, we have had a situation in Haiku, one lot with one meter in a two-lot subdivision. He had to get Board of Water Supply approval. And my understanding was that the two lots without meters have

to wait until the shortage is pau, and then they can get the meters. That was the understanding. So I just assumed if Mr. Marino wanted to do a seven lot, two meters final approval, he has to go to the Board, that's why he's here.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: You know, my question again is that can he do, whether it's a three lot, say it's a three lot to simplify it right now, and he separates out the two lots with meters on them and sells them and ends up with a third larger lot that doesn't have any meters but which he cannot develop until he has meters for it? Can it be done that way, assuming that he does fire flow protection?

CHAIRMAN RICE: Yes, I'm sure he can, but I think David's only comment was if you are going to go to the trouble of doing the subdivision, make it seven and sell the two. And you couldn't do anything with the other five until you had fire flow meters. Herb says no.

MR. CHANG: My reaction is that he would need the Board's approval and not the department's approval, because the department can't recommend final approval because we don't have meters to give.

MR. NOBRIGA: They physically don't have meters.

The department physically doesn't have meters.

CHAIRMAN RICE: I know that. He's asking to sell two lots. His request is for us to give him permission to sell the two lots. I'm saying he doesn't need our permission, we are just trying to help him here.

MR. STARR: I have no problem as long as he is not creating any developable lots without meters at this time. I would think that separating out the two with meters and making other nondevelopable lots until meters were available would be a reasonable thing to do, assuming that he's actually building the fire flow, willing to do the fire flow requirements within a reasonable amount of time, possibly before the first two lots get built on.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: Herb, the example you are talking about is Chris Mamiya, right?

MR. CHANG: Virginia Caires.

MR. CRADDICK: I am not familiar with that one.

Anyway, is this Board familiar with the Chris Mamiya one, where he wanted to do a big subdivision. Part of that was building a tank. The tank cost too much money and he needed to sell two lots in order to build a tank. Okay, and he was going to put the fire improvements in and stuff to these two lots, and he wanted to be able to sell them prior to getting final on the other lots, or actually even subdividing the other lots, and the Board said okay.

And in my estimate, Chris could have gone ahead and sold the lots but they couldn't have done any building on it. I would expect the same situation would be here too. Once he bonds those final subdivision approvals, I think he can sell the lots, I'm pretty sure he can make a deal to sell the lots,

it's just I would expect it would be the same thing. Without Board approval he can't build on it. If that's the case, then it's probably properly before the Board.

CHAIRMAN RICE: That would be a request for a waiver of something, wouldn't it?

MR. CRADDICK: I would expect so.

CHAIRMAN RICE: Mr. Marino is asking to sell two lots to provide the funds to put in the -inch line. Then he has adequate fire flow protection. And he still can't get his final subdivision approval because we don't have meters to give him for every lot, but he gets that far down the road. Do you understand that? Do you have any legal counsel?

MR. MARINO: No, I am doing it myself.

CHAIRMAN RICE: Let me make a quick statement here, that the Board is not giving you legal advice, we are just trying to help you here. And to the extent that you need to

know the law, you need to ask somebody who is versed in it.

You know what I'm saying? What I understand so far is that you can't get your final subdivision approval until we have meters in there.

MR. MARINO: All the meters.

CHAIRMAN RICE: Right. Is that correct, Mr. Craddick?

MR. CRADDICK: Yes.

CHAIRMAN RICE: But in order to fund the -inch line project you could sell two of the lots, but they would still be subject to the final subdivision approval before those owners of those lots could build.

MR. MARINO: But I can't get the final until all the other five meters are in. So those people -- I could be on that meter list for ten years.

CHAIRMAN RICE: That's why the suggestion here was

to do a two-lot subdivision with the two meters.

MR. MARINO: And respectfully, I have already gotten preliminary approval for seven lots. I am not going to risk going before another board and having that board say, "Well, you know what, you had these seven lots, but we don't want to give you seven lots now." I am not willing to take that risk.

What I need right now is a commitment that you guys will give me final subdivision approval so I can sell those. I am asking for an exception. And this is five thousand feet of water line, and you just heard about the horrors of Upper Kula. Well, you know, I would like to have fire protection on my property that is this nice little yellow piece of property right here (indicating).

I have no fire protection. In fact, a member of the Water Department very politely told me that I could not put up my detached garage because I did not have fire flow on this property. So this would give me fire flow so I could put up my garage. It would give me insurance at more reasonable rates. So I am trying to give you guys something that's worth something. I mean if it's 50 bucks a foot it's at least a quarter of a million bucks, and I am trying to hand it over to

you and give it to you.

CHAIRMAN RICE: I realize that. It seems to me we are in a different question, and that is we can't give you final subdivision approval without having the meters to give out though, right? Did Mr. Marino understand that before he came in here today?

MR. MARINO: I think that's why I was asking for an exception.

CHAIRMAN RICE: So you're asking for us to give you five meters more in exchange for putting in the line. That's not what it says here.

MR. MARINO: Well, that isn't what I was asking.

MR. CRADDICK: I think what he wants to do is to be able to build and do whatever you can do on the two lots with meters, even though it doesn't have adequate fire protection, right? Because you are going to be putting the line in, I guess.

MR. MARINO: That's correct.

MR. CRADDICK: He will be bonded to put that line in so we know it will get done. I mean we can put a time limit on it.

CHAIRMAN RICE: Mr. Starr was first and then Mr. Nobriga.

MR. STARR: I think what he's asking for is a deferral of requirements. And in lieu of the deferral he will not have -- the five lots will not be developable. And the two lots will not be developable until the fire line is in. And then once the fire line is in, the two lots will be developable. But the five lots won't until meters are available in the normal course of events. Is that correct?

MR. MARINO: That sounds right, yes.

CHAIRMAN RICE: Okay, I can deal with that. Mr. Nobriga?

MR. NOBRIGA: I was going to ask the department to

provide us with a resolution that we could move. But I think if Mr. Starr is on the right track, then I would support that measure.

CHAIRMAN RICE: How about everybody else? We want to make sure we are in agreement. If that's the agreement, I think we are in support of that.

MR. MARINO: I believe I understood what he said. Maybe I need an attorney.

CHAIRMAN RICE: I just said that so we don't get into a dispute later. Would it be appropriate then for us to draft something for you to review, make sure you understand it?

MR. MARINO: Yes.

CHAIRMAN RICE: So we will make a motion to approve this concept subject to final approval by yourself and the department.

MR. STARR: I so move.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded that a draft resolution will be prepared for Mr. Marino to review and approve, and the department to review and approve as outlined by Mr. Starr. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion carries.

MR. MARINO: Thank you.

CHAIRMAN RICE: David Dantes. Communication 01-19, request from David Dantes, M.D., for modification to DWS requirements for Transient Vacation Rental Conditional and Special Use Permits. Yes, sir?

DR. DANTE: Thank you for your attention and also

your endurance this morning. I am here to ask for the Board's acceptance of an agreement which has been negotiated between myself and the Water Department. The agreement has to do with the types of comments that the Water Department makes when applications for Conditional or Special Use Permits to operate a transient vacation rental are circulated.

Right now there's a surplus of these applications, mine among them, because of a recent change in the zoning enforcement policy which has required businesses, which in some cases have been operating for 20 years or more, to apply for these Conditional or Special Use Permits because short-term rental less than 180 days is not a permitted use in most parts of the island, except for hotel zone. There is no bed and breakfast ordinance that covers the agricultural or rural district.

So I am in the process of applying for these permits, along with maybe 40 or 50 other people who are similarly situated, and there are probably another 900 to 1000 people who are kind of waiting in the wings to see if we get burned at the stake before they come forward.

When the application gets circulated it goes to 25 agencies, the Water Department among them. The Water

Department makes comments, and the comments are of the nature of, "The Applicant should be required to meet fire flow standards." Even though they may have been entitled to a two dwelling exemption to live there themselves, they can't have a paying short-term guest in one of the rooms of their house or their ohana without meeting fire flow standards. And to meet the fire flow standards in most cases in rural and ag districts requires some substantial infrastructure improvements.

In my case the infrastructure improvements would cost at least \$73,000, which amounts to bypassing 400 feet of bottleneck at Five Corners where the main water line is 6 inches. So it would be inches all the way from distribution origin down to my street, and then there's a standpipe that would need to be replaced by a fire hydrant.

Well, when these comments occur, the Planning Commission then has a public hearing where they review the application, they consider the comments of all the agencies, and they may or may not choose to adopt Mr. Craddick's comments. And then finally the Council is ultimately going to review the thing and pass on it or not, and they may choose to accept or ignore the Planning Commission's recommendations.

The point is, every time the Planning Commission is

put in the same bind, the applicant says, "I don't have \$73,000." I can put a fire extinguisher on every level, all these rooms are on the ground floor, there are smoke detectors hard-wired outside and inside the bedrooms, evacuation plan. Please don't make me upgrade the County water system. And the debate goes on and everybody is scared of liability. And sometimes the Commission, Planning Commission says, "Okay, put the fire extinguishers in" and sometimes they say no.

This situation, I think, would result in the adoption of a policy that would relieve that difficulty. It would give the applicant a choice: Either they have an engineer calculate the fire flow, and the engineers in David's department would say, "Well, you need to upgrade or improve these infrastructural elements" and the applicant to do it. Or instead, he could name the Department of Water Supply as an additional insured on a policy, a general liability policy.

Well, all these applicants already have to name the County and they have to provide a general liability policy in the amount of a million dollars. So Mr. Craddick and Corporation Counsel said they would be satisfied if someone wanted to make the choice to name the department as an additional insured under that million dollar policy, except if

the combined replacement cost of the buildings touching the subject property was more than one-and-a-half million dollars, then it would be a two million dollar general liability policy.

So we have worked out the exact language, everybody is happy with it, and I am here asking for you to give it your blessing.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I believe Dr. Dantes has come here trying to get a policy issue resolved. And as a policy matter, having our hold harmless agreement backed up with insurance is good. I was just discussing here with Counsel on the proper type of insurance, whether it would be just liability insurance or property damage and liability, and what's the deductible and if there's going to be any deductible that probably should be in some kind of an escrow account until such time as there is adequate fire protection. And the \$2 million is what we would be recommending the insurance be, not \$1 million.

CHAIRMAN RICE: Well, you know, if you start to add

property insurance to this policy on top of the liability, I am not necessarily opposed to it. But we are not talking about -- are you naming us as an additional insured on the property owner's property policy?

DR. DANTE: No, this is a separate general liability policy having to do with the fact that there's been a Conditional or Special Use Permit granted. And there may be some nuisance or injury or property loss or death resulting from the applicant's exercise of his rights under this permit. That policy specifically deals with those issues.

CHAIRMAN RICE: So then we don't have to worry about property damage. Maybe this agreement should say that the applicant has to show proof of property coverage so that there isn't a claim for -- go ahead, Mr. Craddick.

MR. CRADDICK: In the hold harmless agreement it says that because of the Board allowing this waiver from the fire requirements, if other people's property gets damaged they hold us harmless from any claims that they may have. Well, Corp Counsel has come back and said that that very agreement

gives a road map for the other people to come after the department.

Now, the person who is giving this agreement, if their place is burned down, depending upon their financial status, they're maybe not in very good shape. So this puts the teeth in it to cover the properties outside of their own. Now, the exact mechanism of how you do that, whether it's a separate policy or whether you can actually add it on would be subject to Corp Counsel's review. But we would want to make sure it covers the properties outside of theirs.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I have some concerns about it, although I'd like to find a way to get this done. My concern is that if we do this, I believe that we're setting a precedent whereby anyone, not just vacation rentals, but any person who is building not only residential but a commercial type of thing where normally they would be providing fire flow, they could just indemnify us. We would be forced to accept their indemnity to the extent of \$2 million.

Now we have to remember that fire flow, it sounds

like an innocuous term, but we have to remember what we are talking about is the ability of the fire department to fight a fire in the vicinity of that property. And \$2 million may be a lot when it comes to the value of a structure, but if several children are burned in a fire then \$2 million becomes nothing.

So we may be giving away the right to demand fire flow not only in residential but in commercial structures, and this is something that we should look at very carefully before we do that. Because I for one feel that when we give up fire flow requirements in urban and residential areas, we are giving up the ability of the fire department to fight a life-threatening fire, and we are creating substandard neighborhoods that we will have to come back and deal with in the future.

CHAIRMAN RICE: Doctor?

DR. DANTE: I appreciate your concern, but this policy modification that is being requested here specifically states that this has to do with Special Use and Conditional Use Permit applications for transient vacation rentals in areas where single-family residents are permitted. It has nothing to

do with commercial. The National Fire Protection Agency has an entirely different set of standards for commercial life safety than for residential.

And as far as creating substandard neighborhoods, right now I don't have to have a fire hydrant or an 8-inch line at Five Corners in order to get a building permit to live in my house. And if I rented a room in my house to a tenant for 180 days, I wouldn't need to. But if it's 179 days I do need to. I guess the point is that these people don't become suddenly less flammable on the 180th day of their tenancy.

We are trying to just offer an option that would allow -- see, the County is threatening to shut these people down. They give you 30-day notice to cease and desist and they are going to fine you a thousand dollars a day or you can get this permit. Once the person applies for this permit, every one of these 25 agencies comes down with their recommendations.

Public Works would like a ramp instead of stairs leading up to a one-bedroom ohana so that it's wheelchair accessible, and they want all the doorways and bathrooms to become consistent with handicapped access because it is now a public facility. It's insane. We are talking about one thousand square foot ohana.

But the most expensive, stringent, impossible requirements are the ones that are offered by the Department of Water Supply, because nobody can afford to make those improvements. And if they really were a matter of life safety, the County would have to do it just to let people live in the building, not just rent it.

CHAIRMAN RICE: Mr. Kushi, would you bring back to the Council that I think this needs to have at least one modification, and that the notice of cancellation of the insurance policy needs to be given to us. There's a standard clause that I can supply to you when I get back to my office. The insurance company would like to tell you ten days notice, but we need to insist on 30. What this will do is this will create a necessity for an insurance tickler file so that when these policies become -- at the end we are sure we get a renewal, and that we're named as an additional insured.

MR. STARR: I agree with that. I'd like to also further request that the matter be looked at as to whether this will imply and create an automatic broadening effect in that anyone doing residential subdivision or commercial subdivision,

or any other kind of development would be able to say, "Well, based on the vacation rental ordinance, we will demand that we be exempted from fire flow requirements by posting liability and indemnification."

DR. DANTE: Mr. Chairman -- I'm sorry, were you finished, Mr. Starr?

MR. STARR: I'd like to ask Counsel to just comment.

MR. KUSHI: Mr. Chair, in answer to your question, in addition to what you said, there should also be language saying in the event the insured's carrier terminates coverage that the Board should be notified.

CHAIRMAN RICE: Right, that's the language.

MR. KUSHI: In terms of your question, Board Member Starr, I think the intent of this thing is specifically, as the Applicant said, I see his letter saying that they met with the Director and Minatoya, attorney Minatoya, and this would apply,

policy would apply to transient rentals of less than 180 days for any district. However, I tend to be cautious, and if you are making a policy I always look at policies in terms of rules. And if you are going to have this policy as a longstanding ongoing policy, maybe it's best that you propose a rule, take it out to the public to get input. How it fits into your rules, I don't know. Otherwise, it would be on a case-by-case basis.

The other concern I have, and please understand I am not privy to all these discussions, the other concern is that in this case his requirements, had he fulfilled them, would have been \$73,000, as his letter states. What if somebody comes in for a million dollars or the department requirements are a million dollars? Does he get away with the same policy? Where is the cut-off there?

So again, you have discretion to a point, but there's always the rule of precedence, the rule of fair and equal treatment or like treatment. If you are going to make an ongoing policy, maybe you should set some parameters, take it out to public hearing.

CHAIRMAN RICE: Doctor?

DR. DANTE: I lost my train of thought, I was so absorbed in what he was saying. The point here is that the Water Department's counsel already reviewed and commented on the language of the proposal, and Mr. Craddick already signed a letter stating that this was what they wanted, and I am here saying okay. There is no written rule that says you have to have fire flow if you rent out a place to a person for less than 180 days. I am not asking you to change your rule. If you ask him where is the rule or where is it in the policies or procedures, he will tell you there is no such rule. This is a matter of his discretion because it's a liability issue.

I don't want you to change your rule, I want you to accept an agreement that we have made about the comments he is going to make, that it would give people a choice of indemnifying the Department of Water Supply or doing the infrastructure. Now, if you are not going to do that today, then I will ask you to at least resolve that in my particular case I would be allowed to make that choice between insurance and the \$73,000.

CHAIRMAN RICE: All right, members of the Board,

what's your pleasure?

MR. STARR: I am not really clear on what's being asked of us.

CHAIRMAN RICE: They're asking us to approve this language.

MR. STARR: As a rule or how are we approving it as?

CHAIRMAN RICE: Policy, it appears.

DR. DANTE: May I respond to that question? This is stock language that goes into every Special and Conditional Use Permit that is issued for a transient vacation rental. It's called, it comes under a section called Standard Conditions. Then there may also be site specific conditions. But among the Standard Conditions is this paragraph that requires the applicant to take due care of third parties and to indemnify the County. And it does say against property damage as well as loss of life. And we are asking for the language of that paragraph to be changed so that it includes the Department of Water Supply and these other specific details.

MR. STARR: What do our rules state in regards to this?

MR. CRADDICK: I believe it's a little bit unclear.

This is a residential or maybe an ag area where these things are going on. They're typically not in commercial areas. It's a commercial operation. The rules would say that you have to put a 12-inch line in there. Now, I myself think that a 12-inch line is probably overkill for these things.

MR. NOBRIGA: We will recess this meeting until our Chairman gets back.

(Whereupon a brief recess was taken).

MR. STARR: Mr. Chair, I feel very sympathetic, but I think we should defer this and get a report from Counsel on the two issues so far.

CHAIRMAN RICE: I see a general nodding of approval, Doctor.

DR. DANTES: Counsel has already reviewed it.

CHAIRMAN RICE: Well, I think -- let me make something clear here, and I wanted to say it earlier. Mr. Craddick and Counsel Minatoya, acting on behalf of the department, talked with you. But any indication that their approval was the final approval was misleading.

DR. DANTE: No, they didn't indicate that.

CHAIRMAN RICE: This is the first time we have seen it. So I think some legitimate questions have been raised that we need to discuss, and I will speak with Corp Counsel about those, but next meeting.

Motion? Motion to defer it to the next meeting?

MR. STARR: Move.

MR. HIRANAGA: Second.

CHAIRMAN RICE: Moved and seconded. Discussion?

All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

DR. DANTE: Thank you very much. I appreciate your attention.

CHAIRMAN RICE: Fiscal year 2002 operating and CIP budgets. Holly Perdido is acting fiscal officer. We will put the doctor first next time.

MR. NOBRIGA: Mr. Chairman.

CHAIRMAN RICE: Yes, Mr. Nobriga.

MR. NOBRIGA: Holly, do you really want to spend time and explain this, or would you prefer we just accept it and move on?

MS. PERDIDO: I think my cover letter pretty much explains the differences, and if there's any concerns.

MR. NOBRIGA: Mr. Chairman, I move that we approve

the 2003 budget as presented.

MR. HIRANAGA: Second.

CHAIRMAN RICE: Discussion? Mr. Starr.

MR. STARR: I have a very serious problem with this budget, and I think that if we were to approve it this way it would come back to haunt us majorly. We have an item transferred to the capital replacement fund, and this amount is set at \$3 million. We know from the Brown and Caldwell model and all its ramifications that we must be putting aside between \$8 million and \$9 million a year, otherwise our system is deteriorating. We also know that we are not doing enough pipeline replacement, and that our system is already substandard in probably about a third of its entire length. So I don't see any way that we can once again, for the second year in a row, not fund our reserves and then add a footnote saying, "Based on a Consultant's System Replacement Study, the current funding level is inadequate for future replacement needs." I know that if we were a condominium we would be breaking state law if we were doing that. I find that

it would be irresponsible to try to follow that course of action. So I think that we need to increase this \$3 million to at least \$8 million, otherwise we're going to not be funding our future needs.

So I'd like to hear what other Board Members have to say about this, but I for one will not vote for this budget unless we are properly funding our replacement needs.

CHAIRMAN RICE: So where are we going to get the money? It's not about recognizing the \$8 million.

MR. STARR: Well, I think that we need to go on to a program and find a way to get the money we need to do it. But I think the only way we are going to be able to convince the community that we need this money and that rates should be adjusted accordingly is if we admit, if we have the courage to admit that we are in a crisis situation. That basically we're broke, we are not funding our reserves. And that the best way to do that, since we don't have the money, is to pass a deficit budget and take it out to the public and say, "We need your kokua. We need to raise rates to whatever it takes to bring us the money we need."

CHAIRMAN RICE: Ginny?

MS. PARSONS: You know, you have got a very political issue here right now that you are presenting. I mean basically Council can at this point, you know, we could discuss raising rates and the Council could say, "No way." It's a political issue because this is an election year. Is that what you want to bring forth?

MR. STARR: I just want us to report it properly. I feel that we have a fiduciary responsibility. I feel that, you know, I wanted to do this last year. Not funding it and putting in this footnote, we basically say we are not doing our job two years in a row. I feel that we as a Board and as individuals become liable for not doing what we need to do.

And I wish we didn't have to raise rates, but I think we need to. I frankly think that most of the Council members realize that we need to do this. And if we can prove to them and we have the tools to prove to them that this is a necessary act, I would be very surprised if they didn't agree.

I think the problems in the past were not that they weren't willing to raise rates, but that it wasn't presented in a coherent form.

CHAIRMAN RICE: I agree with Mr. Starr in terms of recognizing the need to fund the reserve at the proper level every year. My issue is not about recognizing or wanting to do something. We can say we don't like it, we need to do something, but we have to come up with a solution on how to do it.

If your proposal is that we need to go start the process to raise rates, then I would support that the budget be approved subject to us preparing whatever approvals we need to do for the Council to raise rates until we raise them to the level that we need to get the amount of money in the fund. Because saying that we don't have it is certainly one thing. We all can say that. But until we come up with a way to fund it. Then if the way to fund it is to go out and say, "Hey, we need to raise the rates," let's start the process and do it.

MR. STARR: I think that we should also put the money in the budget this year for properly funding our

reserves.

CHAIRMAN RICE: We can't pass a deficit budget,  
that's the problem.

MR. STARR: I don't understand why not. Then we  
should cut everything. Let's cut another \$6 million and cut  
the heart out of it and then go on.

CHAIRMAN RICE: That's not being fiscally responsible.

MR. STARR: It's more fiscally responsible than not  
funding the sinking fund. To me, that's the worst case. I  
can't go along with it.

MS. PARSONS: Jonathan, it's an election year. You  
know as well as I do, if you put this before the administration  
and the Council at this point it's going to be nixed, and in  
the future years we are not going to see the benefits. I think  
timing is everything, and this is not the time to do that.

CHAIRMAN RICE: I don't agree with that, Ginny,

because I think our charge is to do what's right. I am not arguing about that. I don't care whether the Council wants to get elected, or the Mayor, or anybody. If it's the right thing to do, we should do it. All I'm saying is making the numbers look funny is not the answer.

The answer is to say, "Are we going to do it? Are we going to go out and borrow money? Are we going to go out and raise the rates?" Then let's just do it. Let's say we are going to do it and start on it right away, next month, next week.

MS. PARSONS: I agree that we have got to go forward.

CHAIRMAN RICE: We have got the document that proves that we are underfunded, it's already been done.

MR. STARR: I would be willing to agree if we raise this amount and then borrow the money. Until we can catch it up, that's fine. But I feel that this number here has to be put at a real number this year. We can't do this a second year in a row. I believe that that in itself causes problems. I'd like to ask Holly, aren't we required to fund a

sinking fund, a replacement fund properly? Is there anything under GASB or any other ordinance?

MS. PERDIDO: I wish Corp Counsel was still here also.

CHAIRMAN RICE: But the question is, does GASB have a time frame, that's the question.

MS. PERDIDO: To my knowledge, I am not quite sure, I would have to look that up. GASB does have a time frame, but it is not telling us to fund something like this year or current. The time frame on GASB is regarding our assets and our depreciation of the assets and those items, reporting issues. But GASB doesn't tell us that we have to fund a sinking fund. And I can look into that for you more on that.

CHAIRMAN RICE: That's what Mr. Starr is saying. I don't think, in my mind it's not a matter of GASB telling us, it's the right thing to do it, and we have to figure out a way to do it. That's the thing. Mr. Nobriga?

MR. NOBRIGA: I don't feel we can fund a phantom

project, and that is what Mr. Starr is suggesting, that we place in the budget a phantom project. It's not, I don't think that's fiduciarily responsible. I don't believe our discussions on our budget happen early enough in the calendar year for us to do an adequate job in identifying exactly what we need to do, how we need to do it, and how much it's going to cost.

We have asked the Director to get from the Planning Department a priority list of the CIP projects from now to five years forward. We have not been able to even discuss or review that material. So for us to ascertain as a board exactly where we need to move forward, once we identify projects that we need to happen, and if the Board makes the decision to accelerate those projects to bring our system in compliance, then you have actual projects, actual costs, and you can float your bonds to take care of those projects.

CHAIRMAN RICE: Well, actually it's slightly different, Mike. The Brown and Caldwell report tells us that we need basically \$8 million a year to fund the replacement of all those assets. And if it was done in a way that I am familiar with you would be able to look at a list that would

add up to all this money, that would say this is what needs to be replaced each year. We don't have -- it's not in that form, but I think we believe that the number is correct and we need to provide those funds. Because you don't want to get five years down the road and have a need for \$20 million and have only \$8 million.

MR. STARR: This is not a last minute thing, this has been our discussion on the budget for the last two or three years. This is the third year we are having this discussion. Last year we had the footnote, and it was agreed when we put the footnote that we would not do it again, that we would actually find a way to fund it. I really feel we are doing wrong.

I'd like to take this up a notch. This is basically why I have had a minority opinion and believed that the structure of this department and board should be changed and it should be put under the administration. This is a perfect example where we do not have the will to do what needs to be done. And as far as I'm concerned, we have gone from \$50 million in the bank to \$60 million in debt over the last ten years. We're broke and we don't have the will to go and admit

it to the public. We want to try to keep it under wraps. I won't keep it under wraps, and I will do everything in my power to inform the public of this, if I am the minority vote on this issue and we don't have the will to find a way to fund our reserves.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Jonathan, I know that the administration and the Council, all of them, are aware of the position. I'd almost stake my reputation on the fact that they're all aware of where this is. I have no problem with us going into them and, like Peter said, let's go forward and say, "We need to make this work. We need to fund this with \$8 million, and this is how we need to do it." I have no problem with that. And you will see then what positions people will take.

I agree with you, I think the process should start now. We do need the money. Let's put the budget forward and not have it in small type, let's make it in big type and make it a statement. We are passing the budget, however we need this much money and this is how we intend on getting it over

the next four or five years.

CHAIRMAN RICE: All I want is a solution. Putting a number on the line doesn't mean anything. I said that when we started this, come up with a solution. How are we going to get the money? That's the issue. The issue is not whether that line has \$8 million on it. If you wanted to make the line you can actually add a line underneath the bottom line.

MR. STARR: I don't see what increasing the type will do. I think we need to fund it, otherwise we are physically irresponsible. It's very simple how we fund it, we go and get our rates increased to where they need to be.

MS. PARSONS: That's a Council decision.

MR. STARR: It is not up to the Council. The Council doesn't sit around worrying about the Water Board. We need go to them and be proactive. We can't blame it on the Council.

MS. PARSONS: Let's do that, let's take it. I don't think we need to have a deficit budget passed. I think we need to go before them and give them the presentation that this is what we need to do and see where they come from.

MR. STARR: I am not willing to put my name on a budget that does not fund reserves. I believe that is verging on the criminal, and I won't stick my neck out that far, especially when I don't agree with it.

CHAIRMAN RICE: But what's the solution?

MR. STARR: The solution is let's put what needs to be there and then let's go out and find the financing that we need. Meanwhile our system is deteriorating.

CHAIRMAN RICE: So all you want to do is put \$8 million in that line item that says capital improvements?

MR. STARR: Yes.

CHAIRMAN RICE: That's it. That makes you happy?

MR. STARR: Yes. Transfer to capital replacement fund. It wouldn't make me happy, because we need to find ways to spend it down and we need to find ways to get the money. But at least it's a step. At least we are admitting that we need to go there, that we need to do this.

CHAIRMAN RICE: We are all admitting. I don't have a problem with that.

MR. STARR: If we do that then we can speak with one voice and go get the money.

CHAIRMAN RICE: Well, we need a plan. We don't want to put -- the purpose is not to put \$8 million in capital improvements and go with our hat in our hand. We are expected to provide a plan for funding of that. One of the options for funding is to raise rates, right?

MR. STARR: Raise rates, and I think that we may find some ways to be more efficient too. But basically we know

we need to raise rates, we have known that for years.

CHAIRMAN RICE: Well, I mean we are in the middle of a five year rate increase and we really can't go back to that point.

MR. NOBRIGA: I don't want to say anything more.

This is too long of a meeting already. Do what we have got to do and try to find some solution. We kept asking Mr. Starr five times for what the solution is, and he couldn't come up with a solution. As far as I'm concerned, he's spinning freaking wheels and freaking letting go hot air. If he's so concerned, why he never try to do something for three years? Whenever we come up to this point he's still blah, blah, blah.

MR. STARR: Thank you, Mike.

MS. PERDIDO: I know we cannot have a deficit budget, so I can't put \$5 million more.

MR. STARR: Can we defer this?

MS. PERDIDO: We have to have the budget approved by June 30th. We cannot operate without a budget for the next fiscal year. I could put 8 in there, so that's 5 we have to find from somewhere else. We would have no capital or emergency fund. We have 2.9 down there, which is basically our operating fund. You can cut all your professional services. I don't know how else you are going to show \$5 million. I need \$5 million up on top somewhere to offset this or decrease.

CHAIRMAN RICE: Well, no, the reason that Mr. Starr, you know, you're talking about a concept and principal here which is a correct one, and I agree with you. This is a cash budget, this is strictly operating revenues. So there is no way to make it balance, because your operating revenues are fixed. So if the concept here is to take the funding for the reserve out of operating revenues, then you have to increase operating revenues. So there's no other way to create any funds for it.

So no matter what we do, we are not going to get a rate increase immediately, so we are going to have a deficit in theory in that reserve fund. And if you want to say that we should have started it last year at \$ million, then the

deficit is even larger, which means the number that has to be added to your operating budget is even larger.

MR. STARR: I am not suggesting we go back, I'm suggesting we start now. What I see here is an actual decrease from \$4 million to \$3 million.

CHAIRMAN RICE: You are just using that as the --

MR. STARR: This is the wrong thing to be used to balance everything else out.

MS. PERDIDO: Basically, that's what is available to leave us with a \$2.9 million working capital fund, about \$3 million. Which I am not sure where exactly that came from, but it came from one of the studies. I think it was a Peat Marwick study or one of those that suggested that as an operating fund.

CHAIRMAN RICE: I don't know why we can't pass the budget, recognizing that there is a deficit in the reserve, in

the capital improvement fund. Why can't we do that?

MS. PERDIDO: You mean putting the \$8 million and coming out as a negative? To my knowledge, you can't. Like I said, I wish we had Corp Counsel here.

MR. STARR: I asked him to stay.

MS. PERDIDO: The eight years I have been doing it we have never been able to.

CHAIRMAN RICE: I know that, because it's a cash budget. What we are trying to do here is recognize the fact that there is a funding deficit. Ginny?

MS. PARSONS: Can we pass the budget and agree to begin the process to get the rates increased and then we can add to the budget, we can add to that?

MR. STARR: That's what we did last year.

CHAIRMAN RICE: No, we didn't do that last year. We

passed the budget with a no, we didn't take any action.

MS. PARSONS: Let's take some action. Let's do it and begin the process, actually begin the process. What we raise goes back there to that line. The difference in the rate increase goes back into that line.

MR. STARR: Well, then I will be voting against it and filing a minority report with the public, I am just letting you know.

MS. PARSONS: If you can't legally pass a deficit budget, what are you going to do?

MR. STARR: The fact that we are sitting here on the 27th and we need to have this in three days and we don't have Corp Counsel, this is not the way you make decisions for your future. That's why I think this Board should be abolished and the thing should be turned over to a county government. I'm sorry to say it, guys, but you know this is where it's at.

MS. PARSONS: You are not grandstanding because of that position, are you?

MR. STARR: I am not grandstanding. There's no cameras here.

MS. PARSONS: I am just asking you. You are not making a grandstand because that's your position over what the Board's decision is?

MR. STARR: I'm doing what I said I would do last year when I agreed to not fund it.

MS. PARSONS: You know, Jonathan, we've all had drafts of this for I don't know how long. I see absolutely no correspondence from you as to your opinion, nothing is in my pile.

MR. STARR: Excuse me. At every meeting where we have discussed this I have brought it up, I have brought it up in depth. Peter, is that true?

CHAIRMAN RICE: That's true.

MR. STARR: I have had numerous discussions with the Chair in private and emails, and it's always come down to one thing, which is that we have to fund our replacement fund, otherwise our system will deteriorate. And it is deteriorating, and has been.

CHAIRMAN RICE: I don't disagree with you.

MS. PARSONS: I don't disagree with you.

CHAIRMAN RICE: But the issue isn't that we agree or disagree, the issue is getting together a program that addresses the problem. That's all that I'm saying. What you want to do is put a number in the budget so it appears as a deficit budget. I don't even care. That, to me, doesn't solve the problem. The problem that has to be solved is to create a funding mechanism for that particular line item, because it can't be funded -- historically it can't be funded out of operating revenues, as we have shown. You can look back and see that. So that's the whole issue right there.

If you want to take action today on how to start funding that, I'm all for it. That's what I'm suggesting. And I think that -- I don't know what the rest of the Board Members feel. Are you willing to start to take action to fund this deficit?

MR. HELM: I think basically Jonathan has a good point. Obviously, there is a problem with that, and we all kind of saw that. But I guess the bottom line is we don't have a solution today. I mean that's straightforward. I think we could have assessed the situation and had somebody birddog this whole issue from day one, meaning somebody from the Board. Maybe Jonathan would have been the appropriate person to birddog this, and that's why we are running into the problem now. We didn't have anybody watching, playing that role.

So I am in agreement, we can move forward with this budget, but taking into consideration we need to take action on how we are going to raise the money. Whether we do it through a rate increase or do it through some alternative method, I don't know. I am not the expert on this. I am looking for answers. I'm sitting here looking for answers just like everybody else. Apparently, we have got a deadline on this

budget. We can't function without approving it, but we need to find a way to say let's move forward on taking action on trying to increase this line item. That's my position.

If we can find a way that we can agree to move forward on that and not make a big issue about that particular line item, let's do something positive and concrete, then I would suggest that Jonathan be the lead person to kind of birddog this action. That's just my opinion.

MR. HIRANAGA: I think without a doubt we need a rate increase, but it's going to take time for sure. But can we pass the budget and then have, like Adolph said, we have Jonathan spearhead this and see how we are going to raise the money, which is the rate increase. As Holly said, we can't operate without passing the budget.

MR. STARR: I will vote against it unless we find a way to increase it. I will be happy to spearhead and put my heart and soul into raising rates, but I want to see our reserves funded this year. You know I made that -- I felt guilty all last year for not doing it. You know, I have spoken about it at meeting after meeting after meeting. I talked to

Peter and he said he really was going to try his best to find a way to do it, and I understand there's no easy way of dealing with it.

CHAIRMAN RICE: Well, there's different accounting methods of showing it, but the only way you can get the money is either to raise the rates or borrow the money. That's pretty simple. The amount of money we would add to the reserve by saving on expenses is something, but it's not going to create \$8 million.

MR. STARR: I think we know we have to raise the rates. I think the public knows, I think the Mayor knows, and I think they have been kind of surprised that we haven't come and done it. The question is, do we go another \$6 million in the hole? Because that means that next year it's not going to have to be \$8 million or \$9 million, it's going to have to be \$10 million or \$11 million next year, and we are just putting ourselves in the hole, or we're saying we don't care if our system deteriorates.

One question that is relevant to this is that we can't tell what items are being funded out of basically the

reserve fund and what projects aren't. Am I correct in that, Holly?

MS. PERDIDO: There's a schedule.

CHAIRMAN RICE: There's a schedule that shows where all the funds come from, capital improvements.

MR. STARR: How much are we spending this year on basically reserve items as opposed to items which improve our system? Because there's two categories.

MS. PERDIDO: I don't have the figure off the top of my head. I would have to look it up.

CHAIRMAN RICE: She gave it to us in the slide presentation.

MR. STARR: No, that's CIP.

CHAIRMAN RICE: She broke out the CIP in terms of replacement, system replacement. Why don't you make a motion, Mr. Starr?

MR. STARR: I move that we increase the transfer to capital --

MR. HIRANAGA: Peter, there's a motion on the floor.

MR. NOBRIGA: He can amend the motion.

MR. HIRANAGA: He made a motion to approve the budget.

MR. STARR: I move to amend the budget to increase the transfer of the capital replacement fund from \$3 million to \$5 million.

MR. HELM: Second.

CHAIRMAN RICE: Discussion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

MR. STARR: Can we call the motion on the main motion?

CHAIRMAN RICE: All in favor of the motion?

MR. NOBRIGA: I have an amendment. Amend the 2003 budget to reflect \$3 million in income.

MR. STARR: 5.

MR. NOBRIGA: \$5 million dollars.

MS. PERDIDO: Can I make a point? So we are going to change the \$3 million to \$5 million? So that's an increase of \$2 million. That's what you just said.

MR. STARR: No, the \$3 million is going to be \$8 million.

MS. PARSONS: You just said 5. We passed that. We just passed that.

CHAIRMAN RICE: You might have meant -- I didn't

know what you were doing, either.

MS. PARSONS: That's a good start, Jonathan.

MR. STARR: My intent was to increase it by 5.

CHAIRMAN RICE: Okay, wait a minute.

MR. NOBRIGA: For purposes of clarification, I will withdraw my amendment, and I would move that we reconsider the previous motion.

CHAIRMAN RICE: Okay, move to reconsider the previous motion.

MR. NOBRIGA: If the seconder would reconsider his second.

MR. HELM: Yes.

CHAIRMAN RICE: All in favor?

(A chorus of ayes).

MR. NOBRIGA: Clarification on the discussion of the previous motion, Mr. Chairman. Amending the budget to reflect an additional \$5 million in transfer to capital replacement fund. I believe it was incorrectly stated as from \$3 to \$5 million, but we would like to see that figure go from \$3 million to \$8 million, and I would amend the amendment thereby adding the additional \$3 million shortfall.

MR. STARR: I thank Mr. Nobriga for that and I apologize for having misspoken. I was getting a little emotional over this.

CHAIRMAN RICE: So you made a motion to amend his previous motion?

MR. NOBRIGA: Yes.

MR. STARR: I second that.

CHAIRMAN RICE: All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

MR. NOBRIGA: Now, Mr. Chairman, to clarify, we have additional expenditures of \$5 million which will be shown in the line entitled "transfer to capital replacement fund." I would like to now amend the budget to reflect a \$5 million income item. I am not sure where it would be appropriate, but for discussion purposes, I move to amend the budget to have a \$5 million bond issued.

MS. PARSONS: Very good.

MR. STARR: I second.

CHAIRMAN RICE: Why don't you put it in as "other income." Have you got that Holly? Add a line item on the income as other income \$5 million. The motion was to amend the budget to add another line item under the revenue section called "other revenue," that number to be \$5 million. Previously the budget was amended so that the line item

transfer to capital replacement fund would now say \$8 million, when it previously said \$3. Mr. Starr?

MR. STARR: I have one more amendment, which is to change the footnote.

MR. NOBRIGA: Excuse me. If I may, could we handle the current amendment before moving on to the next amendment?

MR. STARR: I'm sorry, I'm out of order. Go ahead.

CHAIRMAN RICE: So we are voting on the amendment to the budget to add the other income line item. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Go ahead, Jonathan.

MR. STARR: That we keep a footnote on the \$8 million figure and it simply says, "based on a consultant

system replacement study November 2000 period." And the last wording that says, "the current funding level is now adequate for future replacement needs" is now deleted.

CHAIRMAN RICE: Is there a second?

MR. NOBRIGA: I will second it, but I want to make a comment.

CHAIRMAN RICE: Okay, discussion.

MR. NOBRIGA: Mr. Starr, you realize because we didn't fully fund last year's recommendation, aren't we still inadequate by funding just this year's one?

MR. STARR: It's my belief that because interest rates are a little bit lower and playing with the model it would be okay.

MR. NOBRIGA: We will catch up.

MR. STARR: Yes.

MR. NOBRIGA: Very good, sir. I support the amendment.

CHAIRMAN RICE: Now can I have a motion to approve the budget as amended? I'm sorry, the amendment to change the footnote, deleting the last section. All in favor say "aye."  
(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried.

Now we are back to the main motion as amended, that the budget be approved with the amendments to the capital improvement income and the footnote lines.

MR. NOBRIGA: Mr. Chairman, I'd like to amend the motion to include subject to legal and whatever stuff, yeah, because we may -- because Corp Counsel may require us to go back to public hearing. I don't think it's substantive, but because Corporation Counsel is not here I wish to add that footnote.

MR. STARR: I think it's always subject to that, but I am in favor of that.

MR. NOBRIGA: I will withdraw my amendment, but I guess that way it's noted in the minutes. I'm sorry, go ahead. I yield the floor.

CHAIRMAN RICE: Motion to approve the budget as amended.

MR. HELM: Just one question.

CHAIRMAN RICE: We don't have a motion yet. Yes, we have.

MR. HIRANAGA: I second.

MR. HELM: Discussion. Holly, based on the proposal that you have in front of you, have you met your fiduciary duties and guidelines as fiscal officer of the department and do you feel comfortable?

MS. PERDIDO: Under "other income" am I going to put like proposed bond issue for that.

MR. STARR: How about proposed rate increase or bond issue.

CHAIRMAN RICE: That's why I called it other income. You can put just what Mr. Starr said.

MS. PERDIDO: Proposed bond issue.

CHAIRMAN RICE: Is that all right?

MR. NOBRIGA: Even if we identify it as rate increase, yeah, it would not add to the current fiscal 2003 budget, because the rate increase wouldn't take effect until fiscal 2004. So the only way we could actually identify additional sources of income is to go borrow the money.

CHAIRMAN RICE: Why don't we leave it a proposed bond issue, because we may end up in deliberations, we may adjust some other items in the budget and maybe have a different number in the end.

Okay, any other discussion? All in favor of the motion as amended say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Nice work.

MR. STARR: Thanks, guys.

MR. NOBRIGA: I still would like to see if Mr. Starr can birddog this, a concerted plan that we can feel and touch and whatnot.

CHAIRMAN RICE: You know why I'm happy is because we had a solution. Very good solution, Mr. Starr.

(The proceedings were concluded at 12:00 p.m.)

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