

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

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

REPORTED BY: JEANNETTE IWADO, RPR/RMR/CSR
IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

BOARD MEMBERS:

Peter Rice, Chairman

Kent Hiranaga

Jonathan Starr

Michael Victorino

Ginnie Parsons

Howard Nakamura

Adoph Helm

Clark Hashimoto

STAFF PRESENT:

David Craddick, Director

Ed Kushi, Corporation Counsel

Cathy Howard, Board Secretary

IWADO COURT REPORTERS, INC.

CHAIRMAN RICE: I'm going to call to

order the regular meeting of the Board of Water

Supply, County of Maui. It's Tuesday, July 9,

9 o'clock a.m. by my watch. We are at the

Kahului Shopping Center. The agenda was filed according to the proper procedures.

In attendance we have board members Kent Hiranaga, Clark Hashimoto, Ginnie Parsons, Jonathan Starr, Mike Victorino, myself Peter Rice, director David Craddick, Corp Counsel Ed Kushi, Jr., and staff.

There have been no minutes circulated.

Testimony from the public. At this time we will be happy to hear testimony from the public on any of the issues on the agenda for

today's meeting. Or if you choose, you can wait until a specific issue comes up, at which time I will make time for public testimony available.

If I don't acknowledge you, shoot your hand up and we'll let you testify at that time.

Is there anyone who wants to testify at this point? Seeing and hearing none, then we'll move on. There is no written testimony that I know of. Okay.

There is no director's report.

I'm sorry, Mr. Starr?

MR. STARR: Mr. Chair, I have something relating to "Director's Reports (None.)" I have been really upset that we have not received any reports from the director for the last several months regarding the department and especially pumping of wells. In fact, I'm trying to understand what he's trying to do by not sharing this information, what he may have to hide from us. But I would like to demand -- and I use that word firmly -- that members of this board

receive pumping reports of every well in our system at least once a month. I want the numbers for each of the last 24 months, and I'd like it totaled by aquifer segment. And there's other data that should go along with that. But not receiving any information like this is not acceptable.

I'd also like to receive a ditch report at least once a week and other numbers regarding water processed at our treatment plants, I'd like that to come once a week as well.

CHAIRMAN RICE: Okay, Mr. Starr, you are referring to the staff reports that we get monthly? The first one, the pumping report?

MR. STARR: Yes. We haven't had one for several months, though, Mr. Chair.

CHAIRMAN RICE: And then you are requesting a ditch report and the --

MR. STARR: The treatment plant numbers every week, plus a listing of any anomalies or problems or water quality problems. I'd like to get that weekly.

CHAIRMAN RICE: Okay. Anyone else?

Mr. Hiranaga?

MR. HIRANAGA: I believe the director should respond to that question as to why we have not received the reports.

CHAIRMAN RICE: Okay. Mr. Craddick?

MR. CRADDICK: As I said to the board there at the last meeting, I'm trying to get the board to say what it is they want since this was an issue in the evaluation. And I have e-mailed

out something from the treatment plant, I have
got responses I think from Ginnie and Mike
Nobriga, that's all. I take that back. Mike
Victorino.

MR. STARR: I was very offended by that
because I assumed that what he was trying to do
was send out a short page with almost no
information on it and get people to agree that
that was all that he had to provide. Why
weren't there any numbers as far as well pumping
in that?

MR. CRADDICK: I'm trying to get them one at a time since if I hit you with reports from every division, I would expect no answer. If I give them one operating division at a time, I would hope to get an answer, but I only got an answer from one third of you.

MR. STARR: You seemed to hint that that was all you were going to supply us and I was not going to comment on details of just one portion of one division report when there was nothing else from any of the other parts of our

operation. But the fact that the reports stopped, there's something wrong when the reports stopped like they did.

CHAIRMAN RICE: Mr. Craddick, please issue all reports that are normally issued immediately. Board members, review those reports as to their form and content and submit back to Mr. Craddick within a week's time your comments on those reports. Then Mr. Craddick, you then circulate all those comments to me and we'll get -- if there needs to be changes, we'll

make them. Okay?

MR. STARR: Thank you.

CHAIRMAN RICE: Okay. Old Business. We

have the reconsideration of the Moretti matter.

I believe that the Morettis have requested a

deferral.

MR. CRADDICK: Yes.

CHAIRMAN RICE: And no one is here on

their behalf. We are on to --

MS. PARSONS: Are we deferring it to the

next meeting?

CHAIRMAN RICE: Yes.

MS. PARSONS: Can we, for the purpose of the next meeting, propose a resolution not to approve any substandard systems? That's in the best interests of the public, health safety and welfare and put that on the agenda as well?

CHAIRMAN RICE: That would be a separate item for the agenda. You can make that request to me. If you just submit that to me, I will put it on the agenda.

MS. PARSONS: Thank you.

CHAIRMAN RICE: I don't think it would be appropriate under the issue of the Morettis.

Okay. We are going to move on to other --

MR. CRADDICK: Could I get a little clarification on that. That was a resolution not to approve?

CHAIRMAN RICE: She is going to send me to her request for the agenda and I will get it to you as to how we put it on the agenda, okay.

Any problem with that, Ginnie?

MS. PARSONS: That's fine.

CHAIRMAN RICE: Other Business.

Discussion and possible action regarding

upcountry water meter list. We have another

report from Mr. Hashimoto. This is an item that

we started on at a previous meeting and we will

continue to discuss. Before we get into

anything, is there any testimony? Yes, ma'am?

Audrey?

MS. ANTONE-BLAAK: Good morning,

everyone. My name is Audrey ANTONE-BLAAK and I have been working on my family's subdivision since my daughter was eight years old. She's 25 now, she's in graduate school, and she'll be graduating next year, so I diligently persist with family matters. I have 13 nieces and nephews to whom I have pretty much dedicated my life to plan their future. So I have been pretty persistent, as most of you know.

I'm here today because I know this is the

last chance to speak on behalf of the proposed water meter issuance rule before it goes to county council and the mayor for approval, at the time which the mayor and the county council can only vote either yes or no. There's no changes to be made, I believe, once it leaves this body today. So I think this is one of the most important meetings I have been to in the last 15 years that I have been working on this project for my family. And obviously we are on the waiting list waiting for water meters.

As I walked in today, I was hoping to find an update to the water meter issuance rule that would be discussed and sent out, and all that was available is one copy for public viewing to which I think some changes have been made. The first change I think is in Section C where it says, "This rule shall become effective 10 days after it is filed with the county clerk of the County of Maui and unless extended by a subsequent rule, promulgated in accordance," et cetera, et cetera, "shall automatically be

repealed on the earlier of the following dates.

When there are no premises remaining on the
priority list or January 1, 2005."

This January will be January 2003. By
the time this gets through the county council
and the mayor, it will probably be close to the
end of the year -- or maybe not. I suppose if
it gets passed today, it will be sooner, which
gives everybody on the waiting list
approximately two years and four or five months
to get on with their business. After that,

according to this law that you are going to rule
that you are going to send to the county council
today to vote either yeah or nay, this whole
rule which we have been working on now for I
think five years will become null and void.

How many people do you actually think
will get off this waiting list before all of
this becomes null and void and a new body and a
new water board makes up new rules in this game?
You know, we have all actually given up. I was

sitting outside talking to my dad and a bunch of
the guys in the shopping center here and they
have given up along with everybody else. Okay.

We know we are not going to get water meters.

So what I'm asking for today is that you
could include, as I had asked earlier, a means
by which the people who can go on catchment be
guaranteed that when they go to Mr. Craddick,
who has the ultimate power to say yes or no to a
subdivision based on water catchment, that they
will be guaranteed that they will get his

approval. Because as I understand it now,
people go into his office with a slip of paper
they need and he alone can approve or not
approve their subdivision upon which their
entire future lies. And I think that is way too
much power in the hands of one person. And I
know of three subdivisions that he's approved in
the last year based on water catchment and I
think if he has approved those three
subdivisions, I think it should just
automatically be a system by which people can be

guaranteed when they go and start their
subdivision that's going to cost them about
fifteen grand, that when they get to the final
leg somebody is not going to say, "For you, no,
because I have the ultimate power." And I think
today you can probably think about including
that in this new rule and regulation that will
guarantee people a little bit more fairness in
the game.

Because like I said, most of us have

already given up and we really truly don't

believe that we'll get water meters and I think we are correct in assuming that based on the two years and based on the fact that if you go through the list, which I have never seen before which I saw in the last 10 minutes, which will tell you how many sub divisions are proposed and how many water meters there are requesting, it's not going to happen in the two years.

So guys, I don't know, you know, just again, we are just begging, people are out there

begging, saying help us. That's what I thought
you were here for. Thank you.

CHAIRMAN RICE: Any questions, board
members, of Audrey? Okay. Is there any other
testimony?

Mr. Kushi, the rule that went to public
hearing is the same rule that's being
distributed today?

MR. KUSHI: Yes.

CHAIRMAN RICE: There have been no
changes to that rule?

MR. KUSHI: Not by this board yet.

CHAIRMAN RICE: Okay. Mr. Hashimoto?

MR. HASHIMOTO: Thank you, Chairman Rice.

I was tasked with determining the differences between the 4/20/2001 list and the website list that was discussed at the last meeting and that was the auditor's list which the board asked to add back the 36 subdivisions that had lapsed due to the LUCA action.

And what I'm going to do is read you this report for the record.

In discussions with department personnel,

I was told the differences between the lists is

as follows:

The list given out to the board members

were a result of: 1, lots that have meters were

removed; 2, lots without service were removed;

and 3, subdivisions that were lapsed by LUCA

were removed.

So I have checked the list and found this

to be correct except for the subdivisions that

the board requested to add back on the list.

And I think there was about 36 that were added
back to the list.

Also, the TMKs that were provided water
got the water via a board agreement with
Alexander & Baldwin that were taken off the list
that the board got, and I will go in to that A&B
agreement later on in the report.

Lots without service that had been added
since October 1999 were removed from the list
when the board indicated Daniels, who had an

empty lot, should be given a meter. So that was in October 1999 that Corp Counsel said that it would be okay to limit the meters to empty lots, but Corp Counsel was unable to provide a written opinion after review of the Smith case.

But in addition to the differences in the list on the web and the list that the board was giving out, I asked the board -- I asked the staff for additional information because since I did the summary, the following questions arose:

1. The A&B agreement, how and why meters

were given out since at that time there was a moratorium, I guess. There was one -- and some of the meters were given out and they were not taken off the list.

2. The Kulamanu agreement - why is the Department of Water Supply obligated to give out meters?

3. The definition of first water requests for vacant lots.

4. The Smith Decision and how and why the list was created.

5. Other issues such as giving meters to others besides Kulamanu.

So the staff response is as follows: In 1997, the A&B agreement provided the Board of Water Supply with more water than it had an agreement to take at the time. So the water was used for A&B subdivisions on the list and the additional water for the Board of Water Supply was used to serve the people on the list. However, no names were removed from the list and the staff is waiting for board action before

removing the names from the 4/20/01 website list. So even if they were given a water meter, they were not taken off the list. That's why the website list had more names than what the board got at the last meeting.

2. The Kulamanu agreement was a 1987 agreement signed by the then Mayor Tavares and the Water Director Bagoyo in exchange for easements for the Lower Kula waterline. So this subdivision agreement has another 60 to 80 lots

that needs to be given water meters that are not
on the list.

3. The definition of first water request
or vacant lot is a lot without water service
that has never been subdivided, and these first
water requests are obligated a meter.

4. The Smith decision covered three
matters and a claim for damages, and you can see
the final court order that's attached to the
agenda today.

Number 1, the board was found to have

failed to reply to Smith's petition to

reconsider the Kula Rule.

Number 2, Smith claimed the expiration of

the Kula Rule was invalid and the court found in

favor of the board.

Number 3, Smith claimed that the

director's shortage finding was a rule and

invalid because HRS Chapter 91 had not been

properly complied with, and the court found in

favor of Smith.

Number 4, Smith's claim for damages was

denied.

But as a result of this case, the department was advised to come up with a way to keep track of service requests that were denied, as this had not been done during the Kula Rule.

This is why I was told that the list was then created. I think it was back in 1994.

5. Other issues. The department past and present handles all requests in compliance with the community plans on a first come, first served basis in all areas. The staff was

directed by the director to keep the list
compiled from the earliest request to current
request for meter uprising, building permits and
subdivisions to assist in administering requests
for water service once the source was adequate.

In November 1994, a notice was put in the
newspaper for people to send in any evidence of
past denials. And since that time, the list has
been maintained.

So there are about five responses

completed the staff response.

My committee further discussed

requirements for the list with Corp Counsel.

Corp Counsel has advised that the purpose for

the rule that we have been discussing is:

1, to protect the rights of those not on

the list and provide notice before those rights

are extinguished.

2, to provide for orderly removal of

properties from the current list.

3, make adjustments to the list and those

adjustments should be restricted to new entries
on the list after the rule is approved.

Adjustments made retroactive could be subject to
legal challenge.

4, the Bureau of Conveyances registered
agreements must be complied and would be an
exception to our rules, whether included in the
rules or not.

So Corp Counsel advised that in the
interim, should the board accept that the system
is adequate, the staff could proceed through the

list subject to no names being removed from the list unless they are provided service until the meter issuance rule is approved. So in other words, Corp Counsel did say that we could issue meters and go down the list right now if you wanted to. As long as no one -- the people on the list that did not qualify were not taken off the list. So according to Corp Counsel, we do not have to pass the rule to issue meters.

So like I was saying here, should the

board accept Mr. Craddick's report that the

system is adequate, we could proceed with going through the list. So I guess I don't know if you want to act on it today or whatever it is.

But also on my report last week at the last meeting, we needed an official legal opinion to determine if the board can limit the number of meters for large subdivisions. And also Corp Counsel recommended to the board that we cannot limit the amount of meters given out. So with that, that completes my report.

If there are any questions, I will try to answer them or I will have staff help you with the questions.

CHAIRMAN RICE: Thank you, Clark. You took on an unenviable task and we appreciate your report.

Are there any questions for Clark?

Mr. Starr?

MR. STARR: First of all, I'd like to thank you for doing that. You cleared up a lot of confusion. I'm still a little bit confused

on a few points.

First of all, where it says the list given out to board members were as a result of -- and then item 2 is lots without service were removed. I don't quite understand that.

MR. HASHIMOTO: David, you said -- so they were not I guess they want service or didn't have water meters, is that the first lot?

MR. CRADDICK: What are you talking about, Jonathan?

MR. STARR: Right at the top, the second

paragraph, it says, "Number 2, lots without service were removed." What does that mean?

MR. CRADDICK: Well, if they were on the list and they were an existing lot that didn't have service, there was no need to be on the list. Those are the ones that were taken care of in the first 60 days. So if they were on the list, we took them off the list.

MR. STARR: Whether they were given meters -- whether they requested and were given meters or not?

MR. CRADDICK: Right.

MR. STARR: I don't understand why they
would be removed from the list.

MR. CRADDICK: Because they don't need to
be on the list. They can get service right now.

CHAIRMAN RICE: They are outside of the
restricted area, you mean?

MR. HASHIMOTO: The first meter request,
you mean?

MR. CRADDICK: Yeah, right. Those were

the vacant lots.

MR. STARR: There are a lot of lots
without service where people have been waiting
for water meters for.

MR. CRADDICK: Not on the auditor's list,
there aren't.

MR. STARR: The auditor's list is just
the first 50.

MR. CRADDICK: Well, the auditor was
given the full list. The board just asked him
to go through the first 50.

CHAIRMAN RICE: I think we need some clarification on the question here. The people that were on the list who could have gotten a meter anyway, so they were taken off. So they didn't have to be on the list. If they walked in tomorrow, they could get a meter. That's what you're saying.

MR. CRADDICK: Well, provided there was an adequate line adjacent to the property.

CHAIRMAN RICE: So how does that happen? Where are those people? What distinguishes them

from the other people on the list, I guess
that's what we're asking.

MR. CRADDICK: They have an empty lot
with no water service.

CHAIRMAN RICE: In Kula?

MR. CRADDICK: Yes. Other people on the
list are trying to either upsize the meter or do
a subdivision.

MS. PARSONS: David, are you saying that
these are, for instance, it's a lot inside of a
known subdivision and it could have a meter

because it's provided for them, they just

haven't walked in and asked for it?

MR. CRADDICK: That's one issue, too, if

it was an already approved subdivision prior to

1993.

MS. PARSONS: So those people were

removed. The subdivision has been approved,

they already could have a meter, they just

hadn't come in to get one. And they were on the

list, but they could have one without us having

to go through the list.

MR. STARR: There's a can of worms here because they got on the list because they requested a meter and were told that they couldn't get a meter, so they were put on the list. Then it was decided that they really could have gotten a meter, so they were taken off the list.

MR. CRADDICK: And they were told that.

So those people who are not removed off the list if they weren't told they could get a meter.

MR. STARR: So in other words, if Harry Eagar were to write in his newspaper that anyone who has a lot with no meter all this time could have gotten a meter at any time, you don't think the people will come out and say they have been waiting for years to get a meter?

MR. CRADDICK: As long as he puts in his article that there is an adequate line adjacent to the property where they can locate the meter.

MR. STARR: I don't believe that's the case. I believe there are people who have been

waiting who have empty lots without meters that were at one point put on the list and were under the impression that they couldn't get a meter. I'd be happy to see how that pans out.

CHAIRMAN RICE: If what the director is saying is correct, then those people could walk in tomorrow and get a meter.

MR. CRADDICK: That's right. And under the rule, they have -- after the rule passes, they have still 60 days to come in and get that meter.

MR. STARR: At which point they lose that

ability.

MR. CRADDICK: That's right. But then

you have gone through the public notice portion

and complied with the law.

CHAIRMAN RICE: One at a time, we'll get

to everybody. Ginnie?

MS. PARSONS: They have been notified.

Number two, lots without service were removed.

They received a letter, correct?

MR. CRADDICK: I believe so, yes.

MS. PARSONS: So they weren't notified.

CHAIRMAN RICE: I think that's a key part of it, if they have been notified. But as Mr. Starr says, if once these people are notified again and they walk in here and say geez, I have been waiting for five years and I didn't know I could actually get a meter, that's a problem.

But what you are saying is, in these cases, Clark, it was your understanding that

these people who were taken off the list were
taken off because they don't need a list, right?

MR. HASHIMOTO: That's why I asked for
the definition of first water request or vacant
lot. And the definition was a first water
request or vacant lot is a lot without water
service that has never been subdivided. So if
you had subdivided your land, then you wouldn't
be able to get a water meter, right?

MR. CRADDICK: I guess I should have also
had in there if you had a subdivision approved

before 1993, it should have been added in there.

You know, just take an example, Pukalani.

There's vacant lots within that subdivision.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I have been confused by this empty lot thing for the last several years even though I have probably heard more explanation of it than anyone and it's so confusing. I can't imagine how much more confusing it must be to the general public. So I hope that we can create some benefit to explain it, though it

seems to keep changing to me.

Now, one of the things that was disturbing in the report, and I'm glad that it came out, was that although this empty lot rule is something that I've heard from different representatives of Corporation Counsel over the years, you know, it says that Corp Counsel is not willing to put it in writing. And I'd like to ask Honorable Ed Kushi here why we can't get this in writing from Corp Counsel, if that's the

case.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: I'm not sure why it wasn't in writing. I'm not sure if it was ever requested to be in writing. But if you make a request, I'm sure we'll consider it and put it in writing.

MR. STARR: I make a request that it be put in writing and I make a request that it be published in the newspaper as well.

MR. KUSHI: We don't publish our opinions

in the Maui News.

MR. STARR: Well, I'd like it to be in the public domain and in the public and find a way to do it.

CHAIRMAN RICE: What are we asking for?

I want to know what we're asking Corp Counsel for. I'm a little bit confused on this lot without service thing and this Daniels empty lot thing myself. Mr. Craddick?

MR. CRADDICK: In October 1999, Howard

Fukushima said to the board that we could limit

meters to all lots, which is what we tried do
when we started the shortage situation in 1993.
Attached to the shortage was a bunch of things
to basically extinguish the rights of those
empty lots. The court found we couldn't do that
without passing a rule.

Now, I don't know if Howard was familiar
with the Jim Smith case when he told the board
that they could limit meters to empty lots, I
don't know, but after reading it, he wouldn't
provide any written opinion. That's all I know.

CHAIRMAN RICE: Okay. The reason we're here is what we know is that in order to deal with this situation upcountry needing a rule, which I think they knew in 1994, I can't believe it didn't get done, but it didn't. So in the meantime, some people have been getting meters albeit illegally, but the perception from the public is this guy gets a meter and I don't get a meter. So what we're trying to do here is even the playing field, all right?

So the rule needs to address all these situations so that we don't have -- there isn't a situation that lives through this rule. When we're done with this rule, everybody is treated the same way. Mr. Kushi.

MR. KUSHI: Mr. Chair, to clarify for my purposes so as not to get further confused, I think the discussion is focusing on Section 16-106-104-04 of the proposed rules, subparagraph B, has an exemption there which says that premises that are not on the priority

list and have expended funds in reliance of
official assurances before 1994, this may apply
to the rule of whatever subdivision. Or any
pre-existing rights associated with the premises
entitling the premises to water service. Now,
that goes to your question as to if you have an
empty lot fully recognized of record previously
subdivided before 1993, but just the owner
didn't request a meter. Now, does that owner
have any pre-existing rights?

CHAIRMAN RICE: All right. If that's

the case, if that's the question, and thank you,

Mr. Kushi, for making it that clear. That is

the question. In my opinion, my layman's

opinion, the fact that somebody had a lot does

not mean that they had some assurance that they

were getting a meter. It's your opinion?

MR. CRADDICK: No, it's not. The Kula

rule said you could get a 5/8th inch meter under

the Kula rule. So when people bought the lot

under the Kula rule, there was a presumption you

could get a meter.

CHAIRMAN RICE: Then that's the
presumption that they have, but they have --

MR. CRADDICK: And they expended funds on
reliance of that in buying the lot.

CHAIRMAN RICE: If those people can
provide us with that proof, then I don't think
we have an argument with that. But if someone
bought the lot subsequent to that, between 1994
and now.

MR. CRADDICK: But how do we know that?

We don't know that.

CHAIRMAN RICE: Well, if someone comes in and they are requesting a meter and they are requesting it under the reliance clause, then they have to show us that they had reliance.

And then in your example, that would be fine.

MR. KUSHI: Mr. Chair, my understanding is if someone walked up that bought that lot subsequent to 1994, they could have applied for a meter but because of the source shortage, no meters were issued. So now we're saying that

there's no source shortage, give me my lot
before those on the priority list.

MR. CRADDICK: That's not right. The
person was not denied if they had an empty lot.
Up until October 1999, they were not denied. If
there was an adequate line, they were given a
meter. As a matter of fact, if there wasn't
even an adequate line, they were given a meter.
If they put a meter out in Timbuktu and got
service, whether the meter was located next to
an adjacent line rather than the line being

adjacent to the property being served. That was

a private road issue that came in here a few

months ago and still is not resolved. But be

that as it may, those people could have come in

and gotten a meter prior to October. Since

October, there was a period of about I don't

know how far into 2000 we went before the board

heard the Daniels case and then they were

wanting to give Daniels a meter off of somebody

else's property that wasn't going to tear the

house down. After their parents moved out,

somebody else was going to move in to that house that was served by the meter that the board was contemplating giving to them. Well, they found out they had an empty lot and Corp Counsel said let them have the meter, they have got the empty lot. So that's what we did, we let them have the meter. So all those that had been piling up on the list of the empty lots from October 1999, we then said well geez, you don't have to be on the list. They can in fact get a meter just the

way we have been doing it all along.

CHAIRMAN RICE: Okay.

MS. PARSONS: He's answered what I was going to say. I understand, I don't have that big of a confusion on this. What you have were some subdivisions that have been made. It's our job to supply the water to the subdivisions, that's our job. Once the planning has gone through and the planning has okayed the subdivision, it is our job to supply the water. That's what we have done.

Those meters are available on empty lots with an adequate line adjacent to the property.

What he's done is where those empty lots can obtain the water and it's not an issue, it's not the same issue that we have on this list, it's absolutely not the same issue that's on this list. But where there is an empty lot, an issue where they could already get it, we have been removed so that we can concentrate on the folks that need the water now. And that's our job.

That's where we are today. We are not with the

subdivision that's already been approved by
planning and we have already given our water to
that subdivision, we already have a lot of the
water to that subdivision. It's done, right?

MR. CRADDICK: We haven't necessarily
allotted any water for it.

MS. PARSONS: You know for the
subdivision how much you are going to using,
approximately.

MR. CRADDICK: Prior to 1993, there was
no provision for making reservations for water

and people didn't reserve it, mainly because they thought they could always get a meter for an empty lot. That's a perception in the community, if you will.

MS. PARSONS: So they still need -- if they want the meter, they still have to come in and request it. But chances are, they are going to be issued a meter if they come and request it, correct?

MR. CRADDICK: Right now.

MS. PARSONS: Right now.

MR. CRADDICK: If there is an adequate
line adjacent to the property, yes.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Well, I would still like to
go back to my request to get a clarification
from Corporation Counsel over who had a right to
get a meter and who has not been able to receive
a meter because of shortages. I'd like to have
a clear opinion by Corp Counsel on this. And I
will tell you, I really feel that an injustice

has been done to a lot of people and I really
feel that there's been a certain kind of mumbo
jumbo, you know, this is like some kind of fake
voodoo deal about who gets and who can't get and
when they get and all of a sudden we have
decided that these people should have gotten, so
all of a sudden we just gave to this whole group
of people that had been waiting on the list, but
not these other people.

So I want to clarify it and I want to see

it in writing from Corp Counsel. And I feel our

most important act is to move forward with this
rule so we can break the log jam once and for
all.

CHAIRMAN RICE: I was going to say,

Mr. Kushi, can we get something from Corp
Counsel's office?

MR. KUSHI: Mr. Chair, ask for it in
writing and you will get it back.

MR. STARR: Can the Chair take care of
that?

CHAIRMAN RICE: I will take care of that.

I think there's an important concept here that the public needs to understand, at least I think I got from what Ginnie said, is that once this rule is passed we create the rule and it's passed, we are affording everyone upcountry on the list a chance to get a meter subject to the availability of adequate distribution and source. Is that correct? So you can be on the list and in fact you can be number one on the list -- in theory now, because I don't know who

is number one -- and be somewhere where you

don't have adequate distribution and you will

not get a meter. Is that correct? Am I saying

the correct thing?

MR. CRADDICK: Well, you have the option

to reserve of water and fix the line up.

CHAIRMAN RICE: Right. So just so the

public doesn't think because I'm on the list,

I'm going to come in -- let's say the rule gets

passed as it is and whatever everybody wants in

it, they walk in and they get a meter, it's

still subject to adequacy, so to speak, as defined, right? Is that correct?

MR. CRADDICK: Yes, but I think on Clark's first memo there was one or two items that the board haven't taken care of, and one was the ag park. The ag park is really managed by MEO and not us, per se. They decide who gets the meter and on the increase in size of the meter and I think there's one or two on the list that have asked for an increase in meter size from the ag park.

I guess the issue is if you give it to one or two, are you going to be able to give it to all going from a an inch and a half to a 2-inch meter. And the answer to that is no, not without increasing the pump sizes and changing the agreement with A&B for what you can get for the ag park, how much water. MEO manages that system, not us.

CHAIRMAN RICE: Mr. Hashimoto?

MR. HASHIMOTO: That's the Office of

Economic Development, not MEO.

MR. CRADDICK: Right, sorry.

MR. HASHIMOTO: I talked to [inaudible]

because she is in charge of the ag park, and she

stated that they make a request to the Office of

Economic Development and still the Department of

Water Supply still has the responsibility for

the meter. And I guess she was going to meet

with David Craddick in the near future. But I

think the responsibility still lies with the

water department, from what I gather. And I

think one of the ag park tenants high on the
list is asking for an upsize.

CHAIRMAN RICE: All right. So we have
got your report, Clark. Do we have any other
issues pending? Go ahead.

MR. HASHIMOTO: I think, David, I think
you mentioned to me that they have two years to
comply to put in an adequate water system before
there are taken off the list?

MR. CRADDICK: If they make the
reservation, that's under the current rule. But

the proposed rules, the board allowed three years. And those rules did pass the council committee yesterday and will be going on to full council on the 19th.

CHAIRMAN RICE: Okay.

MR. HASHIMOTO: One more matter. On my last item, I guess what Corp Counsel told me when I met with them and Mr. Craddick that since the system is adequate, I guess the board could agree to give out water meters because the rule does not really apply to -- as long as you don't

take anybody off the list, you can proceed

through the list right now. Is that what your

interpretation of it was, David?

MR. CRADDICK: Yes, yes. That's what

they said. And for board members' edification,

it was Jimmy Takayesu and Richard Minatoya and

not Ed Kushi who were at the meeting.

MR. STARR: Mr. Chair, I'd also like to

request that in writing from Corp Counsel

because this conflicts with the opinion I heard

earlier from that office. I'd like to request

that we get that in writing as well.

MR. HASHIMOTO: That's a good idea, but they did state that we could go through the list as long as no one was taken off. If they didn't qualify at that time. But it would be a good idea to get it in writing.

CHAIRMAN RICE: I think we should get that statement clarified, Mr. Kushi, please, in writing. I will give it to you in writing, Mr. Starr, I will take care of that. But I

think, board members, what we want to do here is focus on getting the rule in the form that we want it and pass it if that's what you want to do.

I don't want to get off on a discussion of whether we should be giving out meters. We are here to deal with the issue that's on the agenda is the rule.

So Mr. Hashimoto, from your previous meeting, we got bogged down at the point of whether we were going to limit meters by

applicant. And Mr. Kushi, so we can get off of that point, your office advised that we cannot limit meters.

MR. HASHIMOTO: Maybe we should get that in writing.

MR. STARR: Yes, sir. Mr. Chair, this is my one big problem with this rule, and this is something that was brought to us at both public hearings that we had and it's something I feel have strongly about is that when we go through the list, since we have a limited amount of

water, that we are going to be issuing meters
against before we come back to a point of
inadequacy, it's my feeling that we should limit
the number of meters that each applicant should
get. My feeling is it should be limited to
three 5/8ths inch meters per applicant, which
will allow for all family subdivisions to be
taken care of but will still give those further
down on the list a hope that they might actually
see some water.

Remember, we are taking away people's

rights when the list passes and we go through
that 60-day period. And then when we bump up
against inadequacy, we are going to stop. And
if we only have 800 or so numbers on that list,
we get through 300 of them and then there's 500
left and we have given out quite a few meters to
subdivisions, those people who have been waiting
for years and years for a single meter will be
waiting still. And I think that they will have
reason to lynch us if we have given it out to a

few people with large requests. My feeling is
we should limit it to say three per applicant.
And if there is a legal reason why not, I
definitely want to see that in writing and
understand it very clearly because that was
brought to us by the public at the public
hearings and that's why we have those hearings.

CHAIRMAN RICE: Thank you, Mr. Starr.

Ginnie?

MS. PARSONS: Mr. Kushi, if we are not
limiting the number of meters that someone is

requesting, maybe go ahead and issue meters with an amount limited on the first pass, and continue to issue them as it circles back around again as we have adequate supply.

So for instance, if you have -- let's just take a look at this one where you have a subdivision and you need 37 meters. We're only going to be giving out hypothetically one or three this first pass. But he doesn't go off the list, we just cycle back around to him with more meters the next time.

MR. CRADDICK: If he doesn't go off the list, what do you do with him? He won't be back on the bottom to cycle around.

MS. PARSONS: No, he'll be cycled around so the people --

MR. CRADDICK: So he wouldn't go off to the bottom of the list then.

MS. PARSONS: He'll go the bottom, but as people move out, he moves up. But he may be on the top of the list if everybody before him has a sufficient supply.

If you go back to the one right before,
let's go -- and I'm just asking if this is legal
to do. Let's go to Kealahou, number 24 on the
list, they are asking for six meters. For
instance, if we take Mr. Starr's analogy --

MR. CRADDICK: What list are you looking
at?

CHAIRMAN RICE: She is looking at the
auditor's 50.

MS. PARSONS: He's asking for six meters.

MR. CRADDICK: What page number?

MS. PARSONS: I don't know, it's

Attachment A.

MR. CRADDICK: It's on the bottom

right-hand corner.

MS. PARSONS: 129.

MR. CRADDICK: That's not the auditor's

list.

MS. PARSONS: It's the Department of

Water Supply Upcountry Wait List dated October

31, 2001, First 50 Requestors.

Number 24 on the list is asking for six
5/8th inch meters. If we take Commissioner
Starr's example of issuing a maximum of three
meters and he's getting three of the six that he
needs, everybody above him -- excuse me, number
11 is asking for nine. Everybody above him that
was -- the request was fulfilled would move him
up to the top of the list for the next cycle.
We would just keep going down the list. The
people that get their meters are taken off, he's
moving up, we cycle around again, he may get his

other three on the next pass.

Is that legal? We are not limiting his request amount; we are just limiting the amount that we are going to issue at the moment.

CHAIRMAN RICE: Mr. Hashimoto?

MR. HASHIMOTO: Can the subdivision be approved if they request seven and they only get three?

MR. CRADDICK: No.

MR. HASHIMOTO: So they wouldn't have their subdivision approval. That's why I think

the Corp Counsel ruled the way they ruled, if

I'm not mistaken.

MR. CRADDICK: You have to provide water service for all the lots to get the subdivision approved.

MS. PARSONS: Well, then he wouldn't be able to get his subdivision approval at that point. That doesn't mean that he wouldn't be able to get it at a later date. He filed an extension, right? He's gotten his first three;

he's just waiting for his next three.

MR. CRADDICK: You can't sell the first
three lots.

CHAIRMAN RICE: Mr. Nobriga.

MR. NOBRIGA: Clark already finished?

CHAIRMAN RICE: Yes.

MR. NOBRIGA: Mr. Chairman, we are in the
process of rule making. The intent of this rule
is to set up a written established procedure to
be followed by everyone within the affected
area. Part of the rule making is that it does

take into consideration the public's concerns
and comments. This rule does not in any way
identify how much or how many meters or how much
gallons of water we have at our disposal. That
is a separate issue. The matter before us today
is to move this rule off along its way to the
mayor and the county council so that we can
finally get relief for the hundreds and hundreds
of people that have been waiting, agonizing over
decades, waiting for no water today to become
water today, and go forward.

The rule does take in to consideration --

should the new fees get passed, the rule allows

everyone on the priority list some financial

what you call, you know, relief. And that's

why we need to move forward on the rule.

How many meters we can issue, how much

water we have to issue is separate matter. If

you accumulate all the resources we have in

place today at this meeting, we have enough

water to issue meters against everybody on the

list. It's just we would never need a committee

to do the necessary pumping to get the water

that we have to the place where we have not.

Thank you very much.

CHAIRMAN RICE: Thank you, Mr. Nobriga.

Mr. Starr?

MR. STARR: Well, I really feel that we

should send a rule down to the mayor and the

council that is likely to have public support

and is likely to get passed. And my belief is

that if we are sending a rule down which will

allow 37 or 50 or 100 or 200 meters to be issued
to a single applicant, I really think that the
community will come out very strongly against
it. I know we have heard that when we went
upcountry and had the public hearing. And I
think that all of a sudden you will have a
council chamber filled with people against the
rule because they know that the numbers lower
down on the list are not going to get. And I
hate to see that kind of divisiveness where I'd
much rather find a way to bring everyone

together in this, which will happen if we can
keep the number of meters per applicant down to
a reasonable size. Then I think we have a
chance of getting through the list.

But I think if we do issue large numbers
to single applicants then we won't get through
it and I also think we are going to create a
situation for the councillors that is going to
make it difficult for them to pass it as well
and we'll be looking at it again later this
summer where I'd love to get this thing through.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Yes. The nature of our discussions and our work here on this issue is that if we decide to limit the large, then we will have to limit the small as well. And the rule has to be applied for every instance. A rule cannot be applied only to some and not others. That's not how society is set up.

Once the rule can go forward, I don't think we are going to have a problem with the larger areas. Those larger areas were set out

by inclusion in the community plans, in the
general plans. Not once while we were making
this rule have we have ever gone back and asked
if our issuing meters to the people on the list
even satisfied the community plans for this
area.

I don't know. I really don't know if we
issue everyone on the list, if we are still
within the community plan for these areas or
not. And if a large development already went

through and it's okayed except for the water,
that was part of the community plan. And we are
mandated by charter to follow that community
plan and the general plan.

Ours is not to guess how much water we
are going to need. By the nature of the
charter, we are supposed to know how much water
we need down the road so we are not left in a
similar situation in the future. Our
forefathers forgot about that part of the
charter where it relates everything to the

entire picture of this island and the County of

Maui.

And all that happened when this board was

not in place in its current semiautonomous form.

This all happened when this form and the

Department was under the county.

CHAIRMAN RICE: Mr. Craddick, did you

want to offer a suggestion?

MR. CRADDICK: Well, one thing is under

the purpose of the rule, if you wanted to add

the language there after the last word from the

priority list and add the words "subject to compliance with the county general plan and community plan for the area where service is being requested," it would be a good change.

But I have a real problem with this seat of the pants throwing out 100, 200 meter subdivisions. There's nothing on the list like that. The largest subdivision is the one Clark has pointed out, Kulamanu, 80 meters. Not even on the list. That is the largest subdivision that can get meters and it's not even on the

list. All the rest, the maximum lot is 38. And that's Maunaolu subdivision that already is providing their own water, supposedly. So I don't know where this 100 and 200 lots comes from, I mean, that's just baloney out of the sky as far as I can see.

CHAIRMAN RICE: Mr. Kushi, there was a question raised as to the distribution of meters. I think Board Member Parsons' suggestion was that -- her question was the

legality of apportioning out meters to a large requestor so that in the first go round they might get three and then if everybody got three, then they could get three more or something like that. Do you want to address that question?

MR. KUSHI: Mr. Chair, my end result is that I don't know, I would have to look. But I have two concerns. One is that you are trying to create a rule that has some equity in it, from your discussion, whether it's one, three, ten, or 15, that's up to you. But it needs to

have some equity. Whether you create a rule that says okay, I will give you only five and if you have anything left, we'll come back to you after everybody down below is satisfied, that may work.

However, the problem I see is that when you created this list and all of us except for him probably went around, when you created this list you did not tell the people you can only reserve one, two, or five. So when people signed up, they were just a name on a blank and

they apparently signed up with their

subdivision, be it three lots or five lots or

ten lots.

CHAIRMAN RICE: Except, Mr. Kushi,

originally when the list was started, there was

a segmentation and then it was dropped. But

there was a segmentation initially.

For the purposes of discussion, the

Chair's opinion is that I think forgetting the

legal concept initially, the fairness concept, I

would be in favor of limiting the number of

meters so that more people were able to get
water if that was going to help the situation.
And I heard that in public testimony also.

However, the same concern that Mr. Starr
has, I also have, but it's the opposite. That
is, if we were to propose it as such and then go
to the council and there would be a legal
challenge, we would be back to square one
anyway. So the other might be that a public
outcry on one side, there might be a legal

challenge on the other. So I think we have got
to make some decision as regards our best
feeling.

MR. KUSHI: My other concern is what

Mr. Hashimoto -- apparently other corporation
counsel said if there is a 10-lot subdivision
and you only grant five, they would have to
amend their subdivision application. What that
entails, I'm not sure.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Looking at this list, I'm

not sure what list this is because there are so many lists. I find only five applicants that are requesting more than nine meters on this list. The greatest number is 40. And the first one with a request over nine I believe is Maunaolu plantation, which has already gone to a private water system. So then the next applicant is 15 and he's on page five. Their request was in February of 1995.

I don't know if there is a real need for a concern regarding limiting the number of

meters because again, if there is a legal challenge, it will delay the entire process and no one will have meters. There is no 200-lot subdivision on this list that I can see.

CHAIRMAN RICE: Ms. Parsons?

MS. PARSONS: I agree with Kent. I think you're right. I don't think there is that much concern. The list is what it is. I think we should accept it. I think we should go ahead and issue the water meters as it stands. And Mr. Kushi has also clarified the fact that we

didn't make -- I shouldn't say we; the previous board did not pass a minimum number that was going to be -- or a maximum number that was going to be issued, so therefore the list is what it is. I think we should issue it as it is and eliminate any further list. No more applicants to this list. This list is -- once we get through this list, it's pau.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I'd like to make a motion

which doesn't sound like it's going to be very popular, but in any case, you know, if it's defeated, I will be able to issue a minority report to the mayor and the council. And that is that I move after the wording which is small "e" on page 135, "Requests for water service shall be limited to one meter size upgrade to the next larger meter size or single 5/8-inch meter per request or planned subdivided lot but shall not exceed the number of lots created by the subdivision," and then I'd move to add the

wording "meters issued shall be limited to three per applicant until all applicants on the list have been served." And this wording can be subject to Corp Counsel's adjustment.

MR. VICTORINO: I second the motion.

CHAIRMAN RICE: It has been moved and seconded that the proposed rule be amended to Section 16-106-4, paragraph "e" at the end to add the language "meter issued shall be limited to three meters per applicant until all applicants have been served, subject to review

by Corp Counsel." Discussion? Clark?

MR. HASHIMOTO: With the addition of this amendment, will this delay the procedure in getting the rule passed?

MR. STARR: Mr. Chair, can I speak to that?

CHAIRMAN RICE: Sure.

MR. STARR: My belief is that this is consistent with what was requested by the public at both of the public hearings. People asked for this; in fact, it seemed that most people in

Kula were asking for this. So I believe it's consistent and as such it will actually speed up the process.

MR. HASHIMOTO: Actually, I was asking would that, you know, would that slow down the process, though, because if we slow down the process, it's going to take that much longer for them to get any meters.

CHAIRMAN RICE: Are you asking Corp Counsel?

MR. HASHIMOTO: Yes.

MS. PARSONS: Mr. Kushi, I did

misunderstand you? But didn't you say it was

illegal to limit the number of meters to be

issued? Did I misunderstand that?

MR. KUSHI: Wait, one at a time. In

response to his question, I believe no, I would

tend to agree with Board Member Starr in that

the rule as set forth in the two public

hearings, I recall there was testimony about

limiting the number. So I don't think you need

to go back to public hearing.

Your question. Unfortunately, I was not at that meeting that they had, and my understanding is that the way it's worded -- David, correct me if I'm wrong -- is that we do, if the rule does limit the meters, it may be challenged. It's not legal per se right now. Is that what my colleague said?

MR. CRADDICK: Well, it is not illegal.

If the board wants to do it, they can do it just knowing that it may be subject to legal

challenge and push the whole thing back to square one.

CHAIRMAN RICE: Okay, go ahead, Ginnie.

MS. PARSONS: If we are looking at something that's going to be legally challenged and we have a limited number of big properties to worry about, and we have enough water to cover what we have to cover or we will be putting in sufficient service in the near future to cover the list, I don't think it's fair to the public to go back and allow it to be

challenged and hold this up in court for several more years. I think we need to go forward and stop putting in grand standing for whatever purpose. Let's just get the meters issued upcountry.

There is no reason for it. There is water and we have water coming on line and if we need to develop more water, that's our job.

But to go back to court again and for another four or five years is not fair to the public and

it's not what the public wants. And yes, they would like to have had it limited so they could have more meters issued at once, they did say that, but I think if they were to be asked the same question put on the same level, do you want us to limit meters and go to court and wait five more years, I don't think there's anyone out there in the audience that's going to stand up and say limit it to meters. If I'm wrong, please come up here and talk to us because I think we need to go forward.

Look, we have got hands out here, let's
talk to the public.

CHAIRMAN RICE: Just a second.

Mr. Craddick, I'm asking you to speak. I'm
speaking to you. Okay. The opinion of Corp
Counsel was in fact that it was not illegal,
that it was subject to challenge. So let's not
misinterpret the opinion, okay. That doesn't
mean that it's challenged. And we are making a
rule, okay. Mr. Starr?

MR. STARR: Mr. Chair, anything is

subject to challenge. I think we should be very careful of becoming gun shy because something is subject to challenge. Anyone who wants to spend the \$32 that it takes to hire a litigating animal can challenge anything.

I think that the challenge is likely to come on the other side and by being fair I think we're much less likely to be challenged here. I think that right now we are very, very open to challenge because I don't think that there's a leg to stand on with what we have been doing for

the last several years. So I have offered and amended and I'd love to see it passed and then we can altogether go with one voice to the mayor and the council and get it moved through ASAP and I believe the community will back us.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: The one issue is how do you get over the subdivision that has partial approval? That's one issue. You are not even addressing it in the rule. You are saying they

can get three meters, but the guy can't sell any
lots because he can't get final subdivision
approval, so that's no bonus at all to them, so
why are they going to do any improvements.

The other issue and I think this is
probably the bigger one, I'm currently saying we
have 300,000 gallons to give out. We are not
going to give that out probably by September or
so. By that time, the well that we are going to
do the groundbreaking on today will be nearing
completion and I think you simply need to ask

yourself that once that well is drilled and you have got the test results from it, you know what the well can produce, are you willing to give out that water even though you don't have a permanent pump in the well, but you know what the well can produce.

And if you can answer that question in the affirmative, then again we could sit here knowing what the well will proceed, but the likelihood of it producing a million gallons a day is very likely and that would take care of

the entire list.

MR. STARR: Mr. Chair, no one would be

happier than I if we do end up with a million

gallons of water to give out upcountry.

However, this is a place where I have had a

disagreement with the director in the past. You

don't count your chickens before the eggs are

even laid. You don't start to give out meters

or promise people meters against a well that

haven't even been drilled. We know that

hopefully it will provide lots of good water,

but it could also be a dry hole or there could
be other problems. So let's wait until the
water is there I'll be the first to make a
motion to give it out. And I hope we can get
through the list. But I think right now with
the 300,000 gallons, we're looking at getting
maybe a third of the way through this list and
we should be clear about that and until we get
the water in hand, we should not start to spend
it.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: I want to listen to some more testimony, but I really got to go so we need to recess.

CHAIRMAN RICE: All right, we'll recess.

(Brief recess.)

CHAIRMAN RICE: We are back in session.

The motion and second on the floor. We are in the discussion phase. Yes, Kent?

MR. HIRANAGA: I just wanted to again bring up the point that these applicants that

are asking for multiple meters for large subdivisions, they will probably be required to bring in infrastructure, which could benefit other small applicants because it could bring the line into the area up to adequacy. And if these large subdivisions [inaudible] their line is inadequate, they would have to bear the cost to upgrade the system. So it's not all a negative scenario [inaudible].

CHAIRMAN RICE: Yes, Mr. Victorino?

MR. VICTORINO: I think in closing in

this whole discussion, the bottom line is the people of Maui, especially the upcountry area, has waited a tremendous amount of time and we are the threshold of approval to allow these people to get meters which they so richly deserve.

I for one intend to vote against the motion as far as limiting the number of meters because I don't think we have that right or that -- I shouldn't say right. That shouldn't be up to us. I think the people upcountry deserve

their meters. They have waited five, ten, 15 years. Now is not the time to get into a legal haggle over how many meters they can get.

Looking at the number of meters that are being requested, I don't see an extremely inordinate amount of meters that are being asked for. If there was a subdivision with 200, 300 meters, then I would be very, very much concerned. But the numbers are very limited, so I think that my feeling is let's get moving,

let's get this rule passed so we can take it to the mayor, to the council, and get the meter issuance on the agenda and get those people the water they so richly deserve.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, you know what's happening here is something that happens quite often on this board, and we're given very confusing information, we are given three different lists, and we have no idea how many subdivisions are requiring how many meters on

this list. I have not seen a copy that shows how many meters are being requested by anyone beyond the first 50. And it could be thousands, it could be ten thousand for all I know, I don't know. And yet to be told, well, you know, it's not going to impact or there's not a lot, as far as I can tell that may be true or it may be a lie. And I have been lied to before by director and staff and I'm sure I will be lied to again in the future. So I don't trust that information. And if we are not going to limit

it, I'm certainly going to vote against it and I really believe that I will also go and make the council members aware of these facts. And I believe the public will come out and I believe that this will delay it and I believe it will end up being bounced back to us.

So I just really request board members that we act in unity here so we can get the thing done. And if we don't limit it, I think that we are going to first of all go against the wishes of the community, who at the public

hearings came to us and said they wanted it limited, and I think we'll find ours in another venue arguing the thing out, whereas we have the ability to reach a compromise here today that will move it forward in harmony. And I really request that we do that.

CHAIRMAN RICE: Ma'am, you raised your hand?

MS. GANNON: I just had a question for Mr. Craddick.

CHAIRMAN RICE: State your name, ma'am.

MS. GANNON: My name is Dionne Gannon and

I'm on a list, I don't know which list, but I

had a question for Mr. Craddick. Do you know

how many gallons of water is available right now

to give meters out? I mean, is there a specific

number? I mean, how many gallons of water is

available right now?

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I have told the board

300,000 gallons.

MS. GANNON: So 300,000 gallons of water.

So if the board did not limit meters and you

started from number one on the list, how far

down could you go?

MR. CRADDICK: Our estimate is if nobody

off the list gets meters, we would make it down

to about 100 because we added the subdivisions

back in.

MS. GANNON: A hundred meters or a

hundred people?

MR. CRADDICK: A hundred TMKs.

MS. GANNON: A hundred TMKs.

MR. CRADDICK: Right.

MS. GANNON: So whoever is like 101 on the list, whatever TMK is like 101 on the list, I mean, God only knows when we would get our meters then. I mean, and does this list include all these big like whatever 80 meters or whatever is the biggest subdivision on the list? Does it include that? The answer that you just gave me, does it include --

MR. CRADDICK: There's none on the list

with 80.

MS. GANNON: What is the biggest?

MR. STARR: We don't know, we have never

gotten those numbers.

MR. CRADDICK: 38 is the biggest.

MS. GANNON: But do you see how

frustrating this is for people who are waiting

on the list? I mean, I have only been waiting

since '98 and I am like so frustrated because

it's like nobody can tell me what number I am.

First I'm number 600 and something, but then I hear there's a list there's only 500. So it's like where am I on this list? Nobody can tell me that, nobody can tell me if I will get my water any time soon. It's like nobody can give us any answer answers.

And another question I have is what Audrey mentioned is even if you pass this and people start getting meters, how long will this take? I mean, is there something that says we still have to wait like two years or whatever to

get it? Or if you pass something saying you are going to issue meters, I mean, we are going to get our meters like this?

CHAIRMAN RICE: Subject to what I said earlier, if you have adequacy, if you are in a spot where the line is adequate, yes, the answer is yes.

MS. GANNON: So we wouldn't have to wait -- I mean, like in our case, we have adequate --

CHAIRMAN RICE: Say you were number one --

MR. CRADDICK: No, in your case you would not. You have to put the line into the lot you are creating so you do not have adequacy on your lot.

MS. GANNON: Oh, no, we have to run the -- right. But I mean we could get our meter like if you went down the list and I'm number two and you get to me and you say okay, you can have your meter, I mean, I can get it now.

Okay.

MR. CRADDICK: You have to have the line

in before you can get the meter.

CHAIRMAN RICE: This is an example, not
you personally.

MS. ANTONE-BLAAK: But you have two years
to comply to put your line. If you pay for your
meter and then you have two years to do your
improvements and that hopefully is in writing.

MS. GANNON: So the two years is just to
give people time I mean if it costs a lot of
money and you need time to whatever put in your

line or whatever. Okay, thank you.

CHAIRMAN RICE: Just so you understand,

no matter whatever the board decides, initially

there is a limited amount of water. So the

number is -- there is a stop point at 300,000

gallons whether you limit it to one meter a

person or three or whatever. But we have the

well, Pookela well, being drilled which we hope

is going to be a good well and will provide a

lot of water to be used.

MS. GANNON: But what Mr. Craddick is

saying if we don't limit, meaning if you guys
just say we are going to go down the list and
not limit it, so if number 15 is asking for 50
meters or whatever, I mean, we can only get down
to a hundred --

CHAIRMAN RICE: That's his estimate, yes.

Mr. Craddick?

MR. CRADDICK: I know I'm answering her
question very, very specifically, but I don't
think anybody is paying attention to what Clark
brought out in his report, the Kulamanu

subdivision, which is 80 meters. Anything you do in this rule will not affect that because it's an existing agreement predating all of this.

CHAIRMAN RICE: I understand that.

MR. CRADDICK: So there's a subdivision not on the list.

CHAIRMAN RICE: Let's limit our comments to the motion that's being proposed. Yes, Clark?

MR. HASHIMOTO: Herb Chang gave me a list

that has the number of water meters needed, so I thought this was the document that was going to be presented. Is there any reason why, Herb, that they took out the number of meters? I know Herb Chang is on vacation -- I mean Herb Kogasaka is on vacation, but any reason why?

MR. CRADDICK: Clark, it's just a working copy and it may or may not be a hundred percent accurate. These lists that you have before you have been checked and rechecked and double

checked. And as far as going back and putting
in each request, the number of meters, that can
be done on these lists here but that one there,
because it was a working copy, I would be a
little bit concerned about the accuracy of it.

MR. HASHIMOTO: I don't know, did the
other board members get this list? There are
more names on it.

[Inaudible conversation.]

MR. CRADDICK: Those are an estimate by
Herb Chang and it's not -- I guess if you want a

best guess estimate, as long as the list is stamped with a best guess estimate of what the water use will be, then that's what it will be. But short of that, I mean just passing the list out like that since it's a working draft, is not something that -- without indicating that it is a working copy that would be given out.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yes, there's a motion on the floor. Can we call for the question?

CHAIRMAN RICE: Ready for the question?

All in favor of the motion, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed say nay.

VOICES: Nay.

CHAIRMAN RICE: The motion does not

carry.

MR. NOBRIGA: Mr. Chairman, I move that

we pass out the rule -- sorry, I wasn't prepared

-- on to the mayor and the county council

concerning meter issuance to the upcountry area.

MR. VICTORINO: Second.

CHAIRMAN RICE: Moved that the proposed rule of the Board of Water Supply pertaining to water meters issuance of upcountry water system, Chapter 16-106-06 be passed and sent to the mayor and the council and it has been seconded.

Discussion?

MR. STARR: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Starr?

MR. STARR: I feel we are making a serious mistake here. We are acting without

having seen how many meters are being issued to
the applicants, and I think that it will come
back to haunt us. I will be voting against this
and I will be making a minority report to the
council and the mayor and probably publish a
Viewpoint as well.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: That was one good movie,
the Minority Report.

CHAIRMAN RICE: Mr. Hashimoto?

MR. HASHIMOTO: Do we need written

comments by Corp Counsel -- I mean written

statements of legal opinions before we send this

rule down to the council?

CHAIRMAN RICE: That's not what you are

doing. You are acting on the rule right now.

That's up you too.

MR. HASHIMOTO: Should we is what I'm

asking.

CHAIRMAN RICE: Yes, Ginnie?

MS. PARSONS: I believe Mr. Kushi has

read the rule and advised us of its legality,

correct,

Mr. Kushi?

MR. KUSHI: Well, yes, I was involved in the drafting of the rule and I'm ready to sign off on it, if that's your question.

In terms of the separate written opinions that you are going to be requesting, they may be applicable, but I still feel comfortable with signing off on this.

MR. HASHIMOTO: That's what I was asking.

Thank you.

CHAIRMAN RICE: Any other discussion?

Okay, call for the question. All in favor, say

aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

VOICE: Nay.

CHAIRMAN RICE: Motion carries. Okay, we

are moving on. Office Purchase/Options.

Mr. Kushi, this matter has come up before

the board and the issue was that after the board

issued an RFP, we received a proposal whereby
the proposer limited their proposal to review by
the board subject to confidentiality; is that
correct, Mr. Kushi?

MR. KUSHI: Yes, it is, Mr. Chair. It
has been some time since we last discussed this.
But as I recall, the Department, pursuant to the
board's request, issued a request for sealed
competitive -- because of a proposal on the
competitive sealed proposal process which is
outlined in the Hawaii Revised Statutes Chapter

1 through dash D.

In the request itself, the bid request says that they announced that after the bids -- after the bidders submit their proposals, the bids will be closed until the award of the contract, after which the proposals and all aspects of the decision and process will be open for public inspection.

They went on and further said that the discussion and negotiation phases that accompany the bid proposal shall not be disclosed so as to

be available to competing [inaudible]. In

essence, the request for proposal itself

entitles anybody making a bid -- entitled the

bidders to have a [inaudible] of

confidentiality, which in my opinion and my

review of Chapter 103-D, Hawaii Revised

Statutes, is not really not the way to do it.

However, I believe the intent is, okay, would

pass muster.

If you had to follow the strict

guidelines of 103-D, Chapter 103-D, Hawaii

Revised Statutes, you could -- the usual process on competitive sealed proposal basis is that the department or the receiving agency would afford any bidders to specify which areas of the bid they would like to see confidential and withheld until an award is made.

In this case, the whole bid was assumed to be confidential. I only say that in terms of the end result in that any award should be made public. In essence, if you had a situation

where you had three bonafide bids going on with

this process, you would have to hold an

evaluation committee, you wrote negotiate

separately with each bidder, you are entitled to

do that. Then if you chose one, you chose

Mr. A, you get in to a contract, up to that

point all things are confidential.

Once you make an award with proposal A,

then at that time the rest of the proposals are

open for public inspection. Unless the offerer

says I don't want this involved, I don't want

this involved. A member of the public can still
request and dispute that confidentiality.

However, that is another process.

So what the department did and what the
rules call for however does not jibe. I believe
it's in the same spirit. That being the case,
and the Department, Mr. Craddick being the
purchasing agent, I believe you can review this
proposal. I have never seen it to date, I don't
think any of you have seen it.

My understanding further is that the

proposer, the offerer, wanted each and every one
of you to sign a waiver of some sort. I still
feel that that's not necessary nor is it
warranted and I would never advise any of you to
sign that. However, I believe if you want to
discuss this, it will be proper to, one, either
have the whole board in Executive Session
consider this proposal, or evaluate it or
appoint a committee which in the bid appoint you
said you would do, and then bring it up before
the full board.

Now, in the event you choose to go forward with this proposal, and you award a contract, then like any public document the whole proposal is open. In the event you choose to do something else or not award it, then again, the issue is moot.

So in a roundabout way, I'm saying although the Department did not per se follow the strict guidelines of HRS 103-D, I believe the spirit and the intent is correct. I believe

the public is not being robbed of any independent public inspection because you could have done it anyway, and I believe the offerer or bidder is protected by what he's being requested.

CHAIRMAN RICE: Okay, I understand what you're saying. My problem is I understand the offerer to say that let's say we didn't select their proposal; would that become public? And they're not -- they don't want it to become public at all, whether we accept it -- if we

accept it, it is public. But if we don't, I

believe that was their position. So that's the

problem we have got because then it becomes

public.

MR. KUSHI: Mr. Chair, it will only

happen if you select another proposal, an

alternate proposal. My understanding is there's

only one that applied.

CHAIRMAN RICE: All right. Let's just

hypothetically, what if we say there is one that

applied and we don't like it.

MR. KUSHI: At that point in time the procurement code provides that the appointing authority can reject any and all bids or at any time can call off the whole process.

CHAIRMAN RICE: I'm just talking about their assertion that it become --

MR. KUSHI: It becomes moot because nothing is on the table, it's not a public record, just hand the thing back.

CHAIRMAN RICE: Okay. Does everyone understand that? Mr. Victorino?

MR. VICTORINO: Let me get this clear.

You're saying that until it becomes a proposed contract, to that point confidentiality can be kept?

MR. KUSHI: Correct, until the --

specific language, until the award is made -- after the award is made.

MR. VICTORINO: Until that point, it can be kept confidential.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I think what I'm hearing is

that we could move to go into Executive Session

and then open this and see what it has to say

and that we're able to do that at this point; is

that correct?

MR. CRADDICK: No. The offer says -- I'm

telling you what the offer said, Jonathan. It

has nothing to do with Corp Counsel. This is

the offer made to you.

MR. VICTORINO: This is the specific

offer.

MR. CRADDICK: It has nothing to do with Corp Counsel. It says anyone receiving this package must sign the confidentiality agreement. In the event of a breach of this request, said proposal will be null and void and all materials will be returned to commercial properties. So you cannot even open this without resolving the confidentiality agreement.

CHAIRMAN RICE: Mr. Kushi?

MR. CRADDICK: And he's recommending you not sign this thing, for some obvious reasons.

MR. KUSHI: Yes. I guess if you construe it, that's one of the terms of their offer. At this point in time, because I don't want to get into any kind of shooting match before we even see what the proposal is, I would recommend that you allow me through my office to respond to the agent and say that we are not going to advise the board members to sign this a agreement.

However, we'll abide by the appropriate section and say that we'll do this in Executive Session and that's it.

CHAIRMAN RICE: Okay. The Chair would entertain a motion to that effect.

MR. VICTORINO: So moved.

MR. STARR: Second.

CHAIRMAN RICE: Moved and seconded to have Corp Counsel write a letter to the offerer, stating our position with regard to the confidentiality and the use of the Executive Session. Any discussion?

MR. STARR: Yes, Mr. Chair, bear with me

for one second and this is kind of related to us
searching for new dates. But I'd like to ask
those people here in this room, who can hear
adequately what's going on?

MR. CRADDICK: If you speak into the
mike, they can hear.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: We do have another
proposal and, you know, the only issue with this
was it was submitted 15 minutes late. For me as
the procurement officer, this is a minor defect

in the thing since these were submitted in April, it is now May, June, July, three months later, so the fact that they submitted it 15 minutes late is immaterial and as far as I'm concerned subject to Corp Counsel saying we can accept it, it's an acceptable proposal.

CHAIRMAN RICE: And I think we should look at it at the same time we get a response on the other one. I don't think it would be fair to look at it now.

MR. STARR: And my feeling is we should

also open up, I don't know, the process, but
open up another window for other people to apply
because it's been four months possibly, if there
is something else available, too. I don't have
any knowledge of any, but I think we should try
to look for more.

CHAIRMAN RICE: Let's wait and see what

happens with their response first. Mr. Nobriga?

MR. NOBRIGA: Being that we are

negotiating for property, negotiation would come

into play, so no matter what's in here, it may

not be the final thing. So is the Chairman
leaning toward still appointing some kind of
exploratory committee on the subject or are we
just going to look at the thing and all decide
yeah, no?

CHAIRMAN RICE: I believe there was a
committee -- wasn't there a committee on office?
Not since you have been here.

MR. VICTORINO: Not since I have been
here, okay, I appreciate that.

MR. CRADDICK: I believe it just was in discussion with the board and they said to go out and get the proposals and we did.

CHAIRMAN RICE: I think you're right, the board instructed him to do that. Why don't we wait and see what their response is and we can discuss if we want to go out with another RFB or how we want to proceed; or if you want to have a committee, I'm fine with that. Try to do things within the board. Yes, Mr. Craddick?

MR. CRADDICK: One thing about this is

that in the proposal we said we would make a selection in 150 days. More than 90 days have gone by and I would be in agreement with Board Member Starr that perhaps at this point going out for proposals, it would be appropriate to restart the time line. And I also know that I believe at least two others would submit proposals.

CHAIRMAN RICE: All right. Let's deal with the motion that's on the table first and then we can deal with something else. Yes,

Kent?

MR. HIRANAGA: I just wanted to state that I agree with Jonathan that since this amount of time has elapsed that we should be open and there may be more opportunities available at this point in time.

CHAIRMAN RICE: Do you want to deal with the motion on the table? All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: The motion was for Mr. Kushi to write a letter explaining to the

offerer that we [inaudible] going to sign. All

in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: The motion is carried.

MR. VICTORINO: Mr. Chair, I make a

motion that we open up again for RFP --

CHAIRMAN RICE: Send out another RFP.

MR. STARR: Second.

CHAIRMAN RICE: Moved and seconded to go

ahead and send out another RFP. I think the motion is -- I was going to suggest that the fact that we are sending it out to RFP be included in the letter that Mr. Kushi is sending to the offerer.

Yes, discussion, Mr. Nobriga.

MR. NOBRIGA: How come this matter hasn't come on the agenda?

CHAIRMAN RICE: It wasn't because they sent us the letter that said we had to sign. We

sent it to Corp Counsel to try to figure out if
we could look at it or not. It was here, this
issue.

MR. NOBRIGA: This thing was here before?

CHAIRMAN RICE: You may not have been
here.

MR. CRADDICK: Back in April.

MR. VICTORINO: Back when I first came
on. One of the few times I know what's going
on.

MR. NOBRIGA: The thing went lapse so

long already.

MR. STARR: We got two responses: One we
couldn't open and the other one was late.

MR. NOBRIGA: Okay.

CHAIRMAN RICE: Okay. All in favor of
the motion to send out a new RFP, say aye.

VOICES: Aye.

MS. PARSONS: I have one thing. Without
the confidentiality clause. This time the RFP
to go out without the confidentiality. Because
we are stalling ourselves when we put that in

there.

CHAIRMAN RICE: But it's based on 103-D.

I mean, the board can decide -- I guess they

could say that there is no -- the proposals

won't be confidential, but maybe that will

affect whether you get them or not.

MS. PARSONS: It might. But you know

what? We can't keep going through this.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: If you want me to, I will

work with the director's staff to revise the RFP

to cite the statutory sections and you can say

whatever you think -- if they want it to be

confidential, they will have to itemize --

MS. PARSONS: Mahalo.

CHAIRMAN RICE: Clarification of the

motion. All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. Okay.

I know we are running up against 11 o'clock.

The last item on the agenda was mine.

There's a lot of things. Given that we have to

go to Pookela, if you want to discuss them now

or defer it to the next board meeting.

MS. PARSONS: I make a motion that it's

number one on the list at the next board

meeting.

CHAIRMAN RICE: Okay.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Move to defer. Okay.

It's moved and seconded. Discussion?

Mr. Craddick?

MR. CRADDICK: You can vote. She is just

saying number one, but --

CHAIRMAN RICE: I know what she's saying.

MS. PARSONS: In Other Business.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: While we are discussing our

future agendas, I'd like to have an agenda item

at the coming meeting regarding Central Maui

source availability.

CHAIRMAN RICE: Okay. Done. Okay.

Motion on the table to defer the last item to
the next meeting. All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried. Any
other business to come before this board? No?

Thank you, we are adjourned.

(Whereupon, the meeting was adjourned at

11:00 a.m.)

IWADO COURT REPORTERS, INC.

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