

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 24th, 2002.

REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

COMMITTEE 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

CHAIRMAN RICE: Good morning, everyone.

Call to order the Board of Water Supply, County

of Maui, regular board meeting. It's Wednesday,

July 24th. We're at the Kahului Shopping

Center. And by my watch, it's 9 a.m.

Present from my left is Jonathan Starr,

Ginny Parsons, Howard Nakamura, Mike Victorino,

Adolph Helm, Clark Hashimoto, and Kent Hiranaga.

Present, Director David Craddick, Corp Counsel

Ed Kushi, Jr., staff, members of the public.

At this point on the agenda we have the
approval of the minutes.

MR. VICTORINO: I move that we approve
the minutes from the meeting of June 12, 2002.

CHAIRMAN RICE: Your motion includes that
they be filed for 30-day review and then

accepted?

MR. VICTORINO: As stated.

MR. STARR: Following our convention, I

second it.

CHAIRMAN RICE: Moved and seconded that

the minutes be filed for 30-day review and if no

comments are received, that they be accepted.

All in favor, say aye.

VOICES: Aye.

CHAIRMAN RICE: Opposed, say nay.

[No response.]

CHAIRMAN RICE: Motion is carried.

Testimony from the public. At this point
if there is any testimony, either oral or
written, from the public regarding any issue,
we'll accept it at this time. However, if you
would prefer to testify as a particular issue
comes up, that's okay, too, I'll recognize you
at the beginning of each agenda item.

So is there anyone who wants to make any
comments at this point, maybe has a schedule

issue.

Yes, ma'am, if you would like to come up here and sit next to this gentleman in the wonderful colorful shirt.

If you could state your name.

MS. ARBOR: My name is Kelly Arbor, speaking as an individual. I wanted to make a few comments on the discussion and possible action regarding a resolution not to approve any substandard water system.

I did see your discussion, I read the

minutes from the last meeting and I see where

this conversation came from -- I mean this

discussion. And I applaud you for taking up

this issue.

I think the issue of substandard water

systems in general is one that we really need to

look at how to take preventative measures to

avoid in the future.

A few years ago, you passed a rule that

was confirmed by the county council that exempts

the water department from having to review

private water systems and I believe that was considered a cost-saving measure at the time. I believe that the impact of that, though, has been -- it was something that was, I think -- somebody in Land Use and Codes actually warned the board that this might be a problem later on.

And what's happening now is that there are subdivision approvals going through with water systems that have yet to meet Department of Health standards, may never meet Department

of Health standards, and some of the technical review and technical comments that I believe the subdivision people really need from the water department are not available. I know in certain cases, the Department of Health is trying to take a very careful look at it.

I'm aware of one subdivision in which they're trying to design two separate water systems in order to avoid the EPA rules on safe drinking water. And I believe that's the reason why they're doing it.

In some instances, it's certainly appropriate to have non-potable systems in agriculture land if that land is truly going to be used for farming and not primarily as a residential area. So it's a real challenge, I'm sure, but I really urge you to review that rule because I think one of the problems in the last few years with these private water systems starting to proliferate and they may proliferate more if there is any quick action on approval upcountry for water meters. I think you're

going to end up having more problems down the road like where we've seen with a system that you had to bail out.

The rule itself, I question whether it's really -- and maybe you can ask your attorney this -- in the mandate of the charter for you to pass a rule that actually affects the water director's responsibilities under the Maui County Code. Because when I look through the Title 18, the subdivision code, I see a lot of references to what the water director needs to

review. And the public works department is interpreting your role to mean that the water department doesn't have to review certain sections.

One section that I call your attention to would be 18-80-080(d), which talks about how the water system preliminary plat should show the quality and quantity of water on a preliminary plat approval. And I think that was put in there for a good reason so that you -- so that

you would be able to review it -- the water
department, I mean, should be able to review it
and make comments on whether this is a safe
system, whether it's a system that would last
and hold up over time. And if that was properly
done, I don't think we'd see the problems that
we're having now. But I don't see all these
water systems described on the preliminary plat,
these private systems. In fact, I don't think
I've ever seen one or heard of one. I've been
in my spare time -- no, I do look at some of

these subdivision approvals and I urge you to think about that, putting in these preventative measures because these systems -- some of them may very well collapse, especially -- I mean, they may be brought up to safe drinking water standards, but the delivery systems may be shoddy. That's all my comments.

CHAIRMAN RICE: Thank you, Kelly. Is

there any questions from the board members?

Mr. Starr?

MR. STARR: I know -- this is an issue

that -- and frankly, it's a little bit confusing
to all of us at what level we're looking at.
And I think there is a definite decision either
we kind of keep remaking about whether this
entity is a utility which specifically makes
water and supplies a customer base, or whether
we're a part of government with regulatory
oversight over people and into people and
organizations that are not -- don't get -- that
we don't serve or that are outside our
boundaries and so on.

And it's something I haven't quite come
to grips with myself because we can't really
have oversight over all of the waters of Maui
County and all of the people using water. You
know, there is no way we could have, say,
oversight over the plantations. Or if someone
is out in Kahikinui and we don't have a pipe
within 20 miles of them, do we want to be
deciding what they can do regarding water.

On the other hand, we have cases before

us which are inside our system and people are
doing private water systems right in the middle
of our system and we know that the track record
for that is at some point that community will
come to us and say we want to turn it over to
you and be part of your system and then we have
a substandard system that has to be upgraded.

Can you share any more of your own
opinions about this? Because it's a very
complicated issue.

MS. ARBOR: Exactly. You touched on

really good points. If it's within the area that is currently served by public water, I think there is definitely a need for higher level scrutiny. That's why I think the water [inaudible], while it's not on your agenda to look at that rule, but when you're looking at whether you accept substandard systems, if they are within the area that you serve, there is a good chance that those people are going to come back later and say, well, when we bought, we thought we could manage this well and this GSE

and everything like that, but it turned out we can't, and please take over.

So you have to look futuristically and say, well, what's the likelihood that you're going to end up having to spend millions of dollars to upgrade these systems or half a million or whatever. And some of them are serving very small communities, so it's quite a big expense.

So yeah, I think just as the areas that connect to county roads we expect them to be

brought up to county standards. If they're way

out in a rural place where nobody hardly

accesses, we're much more lenient in our

thinking about gravel roads and steep grades and

things like that.

So I really think that the rule could be

perhaps revised in such a way that it would be

within areas that are currently served, you

define it geographically, that you would review

those so that every two-lot subdivision in Huelo

doesn't necessarily have to come before you.

But I'm really concerned with trying to go under the radar screen with the EPA, too, and that may be the case in some of the rural areas as well that there are larger subdivisions going on that are trying to do things that are cost savings for them, but in the long run may endanger the public.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Can I ask Mr. Craddick for

--

CHAIRMAN RICE: No, let's limit our questions to the testifier.

MS. PARSONS: It has to do with this.

CHAIRMAN RICE: We're going to talk about this later in the agenda. We're taking testimony. Any other questions for Kelly?

None. Thank you.

MS. ARBOR: Thank you very much for this opportunity.

CHAIRMAN RICE: Is there any other public testimony at this point in the meeting? We're

taking public testimony on anything on the agenda, knowing that when we take up individual items, I will also give you an opportunity to testify at that time. So possibly you have a time constraint and you want to testify on something on the agenda, feel free to do that now. Otherwise I will move on.

Okay. Hearing and seeing none, we're going to move on the agenda of board members -- at my request we changed the date to today and in doing so, Dr. Dantes has a meeting and I

messed him up and if he could please be moved up
on the agenda so he can attend his other
meeting. If there is no objection.

Doctor, we'll take up the issue on Old
Business, Number B, Communication 02-19. And
you received some additional information since
our last meeting. And I believe at our last
meeting, corp counsel was going to give us an
opinion on the proposed document. Mr. Kushi?

MR. KUSHI: Yes, Mr. Chair. I read the

meeting of the last meeting that Dr. Dantes was

here and again I was not involved in the

previous meetings that he had had with fellow

corp counsel and the director.

 However, after reviewing the proposed

indemnity language and insurance language, it

would meet my satisfaction provided that there

would be added some kind of language saying that

in the event an insurance policy is cancelled or

about to be terminated, that the board is

notified in advance, that type of language. I

don't have the exact language, but I can figure it out. I believe we discussed that at the last meeting.

So if the board chooses to adopt this policy, I think it would be satisfactory from my standpoint. However, I believe you should still have to wrestle with the issue about the whole concept and I think you should have the department's input in terms of which way you're going.

I also would advise the board to get the

Department of Fire Control's input in terms of

what you may be waiving.

But again, getting back to the specific

point, I would sign off on the indemnity

language if the board so chooses.

CHAIRMAN RICE: Thank you, Mr. Kushi.

Any questions of Mr. Kushi, board members?

Mr. Starr?

MR. STARR: Can we get an overview of

what we're dealing with? My memory is failing

and --

CHAIRMAN RICE: Doctor, would you give us
an overview quickly?

DR. DANTES: Thank you. And I appreciate
your accommodating my schedule today also.

The county requires operators of
transient vacation rental to apply for a
conditional and in some cases state special use
permits which are reviewed by -- which
applications are reviewed by some state and
county agencies, among them being the Department

of Water Supply.

Typically the Department of Water Supply will comment on these applications to the effect that the applicant should demonstrate that they can meet specified fire flow requirements.

These requirements are typically not applied for residential use because of the two dwelling exemption. And even though the residential -- even though the use which is sought by the application is still residential, the water department feels obligated to apply these fire

flow requirements which usually are around 1,500 gallons per minute and cannot be obtained in many parts of the agricultural or rural district without the owner upgrading the water system's infrastructure.

In my particular case, I had mentioned that those upgrades would require bypassing a 400-foot length of 6-inch cast iron pipe with a 8-inch ductile iron pipe and that's three-quarters of a mile from where I live, and then replacing a standpipe with a fire hydrant,

altogether costing at least \$73,000.

So to try to make the process more user friendly and reasonable, I'm asking that the board accept a proposal to modify the Department of Water Supply's policy so that an applicant for this type of permit for transient vacation rental has a choice of either demonstrating whatever fire flow they calculate is necessary and performing whatever upgrades are requisite for that, or else ensuring and indemnifying the Department of Water Supply against any claims

arising out of property damage or loss of life
from a fire because they're assuming that risk,
the owner is assuming that risk.

Right now the owners already have to have
a policy, a general liability policy
indemnifying the county for any adverse
consequences coming out of their enjoyment of
their permit. So all this would ask really is
to add the Department of Water Supply as an
additional insured under such liability policy

and with the additional specifications that the
director and the corporation counsel have
recommended in terms of assuring that the
insurance would remain in place or the
department would have notice.

CHAIRMAN RICE: Okay. Mr. Starr? You
want to ask a question, make a comment?

MR. STARR: Let me wait a minute.

CHAIRMAN RICE: Okay. Mr. Victorino?

MR. VICTORINO: I have two challenges.

Number one would be I would like the fire

department to be available for specifics because

you're talking now a situation where when we

build homes, new homes and subdivisions, we had

required these new homes to put in fire

hydrants, okay? We require that. And because

I'm in the business that you've just talked

about, I know my clients come to me and says we

got to spend X amount of dollars to put a fire

hydrant in because that's a requirement by the

county.

So if homeowners are required to do that

and people of that nature, then I have a problem

letting somebody else doing vacation rentals

where a multitude of people come in, not have

that done. Okay. I understand the cost. The

cost is a factor.

The other part about the insurance and

being in that business, there is a real

challenge in that area if it per se is not

renewed or cancelled, even though 30 days notice

is given. There are times and in different

markets at different times, insurance may become

almost unavailable for the situation that you're referring to, marketplace gets tight, and that's my business, so I understand that. And so then become a real dilemma because even if we're named as an additional insured, if for some reason it's cancelled or nonrenewed, and there is no available insurance, then you have a real challenge getting protection for both the County and the Department of Water Supply.

So there is my two challenges. Required

for one and not for the other, I'm not really
happy about that. And then the insurance issue
is a real cognizant sometimes because of the
fact that the marketplace at this time knowing
what I know is it's getting to be harder so some
of these problem areas like you're referring to
may become difficult or very expensive to find.

DR. DANTE: I appreciate both your
challenges.

With respect to the second challenge,
which I think is simpler, when the permit is

issued, if it is issued, it has standard conditions and site-specific conditions. All these permits do. So this would be a standard condition that the permit requires this insurance to be in place.

Now, if the market becomes tight and the applicant or the owner can't sustain the policy or it's cancelled, their permit isn't effective.

And now as far as the first question, which I think is more difficult, in the case of homes which were already permitted without the

requirement for 1,500 gallon permitted fire
flow, when these -- when a room in such a home
is rented to a guest, it doesn't change the use,
it doesn't change the magnitude of the
occupation.

If you look at the Uniform Building Code
which is incorporated into the Maui County
Building Code, there is a category called
Dwelling that's different than Hotel. A
dwelling is defined as a congregate residence
with 10 or less persons. So under these

circumstances where there are 10 or fewer
persons, it's a dwelling. And I think
philosophically it's incorrect to assign it as a
hotel and require it to meet commercial
standards. If people want to say, well, it is
commercial, you're making money, well, so is a
long-term rental commercial and they're making
money.

I guess what I'm saying is that unless --

and I've used this probably politically

incorrect example before, unless it can be shown

that people become less flammable on the 180th

day of their tenancy, there is no reasonable

relation between the requirement to upgrade the

infrastructure and the public welfare.

CHAIRMAN RICE: Okay. Mr. Starr?

MR. STARR: What is the zoning in your

location and where is that?

DR. DANTES: Our location is zoned

agricultural, both county and state, and we're

at 4320 Une Place, which is in Haiku off of

Ulumalu Road.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I have more comments, but I'm waiting for board discussion. I don't know if I really want to debate it with Dantes.

CHAIRMAN RICE: You're right. Questions for Mr. Dantes.

MR. NAKAMURA: Dr. Dantes, is the proposal to provide the alternative of indemnification and insurance, are you looking at that being applicable just to existing

projects which are now seeking to get permits

after the fact, or are you looking for it to be

applicable to all such projects?

DR. DANTE: Well, I hadn't thought about

that question before this moment, but for

discussion purposes let's say all such projects.

In either case, you can't get an application for

a transient vacation rental in a building that

is not lawful. So if it was built at a time

that it substantially met code, fine. And if it

was built recently or in the future, it must

substantially meet code, that's also fine.

CHAIRMAN RICE: Any other questions of

Dr. Dantes? Mr. Craddick?

MR. CRADDICK: I would like to say he

mentioned something about normal insurance and I

don't view this as normal insurance in any way,

shape, or form because we're not insuring his

property, we're insuring the people that get

hurt because of the board allowing this waiver.

And I think it not only affects him because as

Board Member Starr pointed out at the last meeting, this is -- I don't know what they call it, TVR , there is also bed and breakfast, there is certain types of home occupancies such as preschools, elderly, things like that, that all kind of get caught in this situation.

And the comment was brought up about people becoming less flammable on the 180th day.

Well, I'm not quite certain how the first two houses are less flammable than the third house either, which is how they got into this

situation that they're in and the wisdom of this county and it is a rule of this board the first two houses are exempt. People buy into these exempt situations and then convert for what they were intended to some other use unbeknownst to anybody. And probably they buy into that situation. So I think this insurance thing needs to be very clear that it's all risk insurance on what happens to those properties around as a result of us waiving the fire requirements. It's not limited to liability.

It can be liability, property damage, whatever
it may be. And I would also say that there
would have to be some agreement that when the
board gets rules to do -- fix the lines up in
those areas, that they pay a pro rata share of
the fix-up in that area.

And I realize it's kind of hard for them
because it's not a subdivision, they don't have
the ability of getting the 50 percent
reimbursement if they do the improvement because
it's not a subdivision. So I do sympathize on

some of these fairness issues. If he goes in
and does it, if he was a subdivision, he would
be entitled to 50 percent reimbursement. But at
least if they agreed to pay a pro rata share
when we get rules to do something like that
along with this insurance, I think I could
recommend to the board if the language were good
enough on the insurance and we would have to
talk with some insurance people on seeing that
the language was correct to cover us.

CHAIRMAN RICE: Go ahead, Ginny.

MS. PARSONS: Would that be a transferable issue that if and when he sold the property, that it would transfer as part of the property?

MR. CRADDICK: You're talking about the pro rata share of the payment? I would leave that up to you. It would be a good recommendation, yes.

CHAIRMAN RICE: Okay. What is your pleasure, board members? Mr. Starr?

MR. STARR: Yeah, are we over the
testimony part?

CHAIRMAN RICE: Yeah.

MR. CRADDICK: Peter, we have Julie Higa
here from Planning and Dave Goode from public
works, so this was an issue that they have to
deal with also. They're ex-officio board
members.

CHAIRMAN RICE: Doctor?

DR. DANTES: I'm a little taken by
surprise at the suggestion that there be a pro

rata share of the cost of upgrading the
infrastructure because in my previous
discussions with the director and counsel, that
was not mentioned. I think if you're going to
assess all the residents who are benefiting by
the upgrade a pro rata share, that's fine. But
I don't think you can single out just the people
that have a permit.

By the way, the permits are not
transferable at this point.

And as far as the special type of

insurance, to my understanding it's not too difficult to get a \$1 million policy of the type that Mr. Craddick suggested. And I think at the last meeting he thought that it should be \$2 million. I wanted to mention that there may be unusual cases where the property value of continuous dwellings is so high that \$2 million would be appropriate, but that may not exist anywhere outside of perhaps Maui Meadows. To get a \$2 million insurance policy, you're going

to have to have go outside the state of Hawaii,
buy it on the Mainland. That means that if
something happens to that insurance company,
there isn't the protection of the whatever that
fund is in Hawaii that steps in if an insurance
company goes belly up. And to uniformly request
a \$2 million limit I think is probably taking
the solution and putting it kind of out of range
and making it terribly useful. A million is
enough for the county.

CHAIRMAN NAKAMURA: Thank you, Doctor.

At this point we're in board discussion.

Mr. Starr?

MR. STARR: I have a concern because I believe this is a much larger discussion that we're having. And although I have great sympathies for Dr. Dantes, and especially in light of the fact that he's in an agricultural area, I think that what we do with this is going to set the precedent on whether we're demanding fire flow or not for commercial type of activities. We have to be looking at it in that

light. And that is a debate that this board has been going through over the years is do we want and need to demand fire flow; and if so, where.

You know, does it need to be just in urban and rural or does it need to be in agricultural?

And I'm not sure what the answer is, but I think that's what we need to be looking toward.

Because the issue is not whether the house of the owner is going to burn, but whether if a fire were started there and the fire department is not able to put it out because

there is not the water available and then it
spreads to a whole bunch of other houses and
maybe people die downwind from it in a dry
condition, then that's really the issue. And
whether the insurance policy would cover that, I
don't know. I would look to Mr. Victorino for
that. But my guess is with deep pockets, we
would end up not only holding the financial bag
but we would have a moral responsibility for
having said no, you don't need fire flow

requirements.

MR. VICTORINO: Exactly.

MR. STARR: So unless we make a decision that we're not demanding that the water be available to fight a fire, then my feeling is we should not be approving special cases.

Especially -- I mean, I would like to approve

Dr. Dantes, I like him and I think he has a good cause, but I'm just very concerned, you know.

And I have heard the logic that we shouldn't be enforcing any fire flow

requirements in agricultural districts, just in urban and rural. However, I had this discussion some years ago with Brian Miskae where I was saying why do we want to have fire flow in agricultural districts and he said because if you don't have it in agricultural districts, looking ahead you're building a substandard community because your rural boundaries tend to expand into agricultural areas. What's agricultural today, in five years from now may become rural or even urban. And then what

happens if there is no fire flow built into the system, then you have a substandard rural or urban situation and it becomes the onus of the board to bring it up to fire flow standards at that time. Whereas if you build the fire flow into the area as it develops, then as, you know, as it later on when it becomes rural, it's already there. I don't know. I just see Mr. Goode here and I was going to ask if he had any suggestions.

CHAIRMAN RICE: Ginny, do you want to

make a comment?

MS. PARSONS: Can I get one

clarification? Are you building anything?

DR. DANTE: No.

MS. PARSONS: This is an existing

structure that's been there.

DR. DANTE: Yes.

DR. DANTE: So this would be the same

thing if ten members of your family came to

visit, that's all you can house, it's the same

thing, correct?

DR. DANTE: Yeah.

MS. PARSONS: And this is not -- I can

understand this commercialism aspect of things.

But technically, that's one of those gray areas.

CHAIRMAN RICE: Commercialism isn't

defined by how many people you can put in the

structure. And if you're putting your family in

there, it's one thing. But if you're renting,

if someone is paying for the accommodations,

that's an entirely different situation.

MS. PARSONS: But isn't it the same thing

as if you have an ohana and you're renting that

out? Is that commercial?

CHAIRMAN RICE: Yeah.

MS. PARSONS: But it's not considered

commercial by planning. You can have an ohana

in R3.

MR. HIRANAGA: I have a question for corp

counsel, planning or public works, whoever has

the answer. My recollection is that several

years ago a ordinance was passed which allowed

for certain home-based professions to operate from their residence; is that correct? If it is correct, I'm wondering if they were also required to meet fire flow requirements for commercial activities.

CHAIRMAN RICE: Mr. Kushi, do you have --

MR. KUSHI: I don't know. Ask planning.

MS. HIGA: I'm Julie Higa, I'm with the planning department. We have some home -- well, some occupations where if the person is living and there is no clients coming to the home or

there is no changes made to the single-family dwelling at all, then they're permitted. So that's an administrative policy that we had.

However, if they're in the state agricultural district, they have to have a state special use permit and we do circulate that information through the fire department. And generally the fire department has always requested that they meet fire flow requirements.

I can point out that in one case where we

had a transient vacation rental in the state

agricultural district, this is actually about

half a mile, a mile down the street from

Dr. Dantes' property, the owner who lived in the

property and in the house got a conditional use

permit and a state special use permit and they

put in a fire sprinkler in their home in order

to meet the fire department's requirements.

So in almost all cases where it's a home

occupation, other than in the Wailuku project

district, we have a definition for home

occupation and in Wailuku home occupation is

permitted and we do have a definition for that.

In any other district, no home occupation is

permitted.

MR. HIRANAGA: Thank you.

CHAIRMAN RICE: If I understand you

correctly, Ms. Higa, you're saying in similar

situations the fire flow requirements are

complied with.

MS. HIGA: Yes, as far as I know, all of

the permits that have come through us, the fire

department has requested that they meet fire
flow requirements and meet their requirements.
And they have allowed like water tanks, you
know, in addition to the public system if it's
inadequate, then they have allowed water tanks
to provide extra fire flow or they have allowed
the fire sprinkler systems.

We've had like I know one special use
permit which is the feed farm -- feed supply
place in Haiku where McGrath, I can't remember
the name of the --

MR. CRADDICK: One where they filled propane gass.

MS. HIGA: Right. They also were required to put in a water tank. So they put in a water tank which also provided the fire flow -- fire sprinkler system as well as a water tank, so they put in both things in order to meet the fire department requirements.

MR. CRADDICK: The requirements that we're asking for are just the normal

requirements for a home as though the two house
waiver was not there. We're not asking for
commercial compliance with commercial and fire
flow requirements. So it's --

CHAIRMAN RICE: Mr. Starr?

MR. STARR: The suggestion I was going to
make ties in with what Ms. Higa said, which was
there are plenty of ways to meet it using a
water tank. We even had a situation not too
long ago where we approved someone using their
swimming pool and a pump to meet the

requirement.

You know, I'm for one am very reluctant to create a precedent. I would like to ask corp counsel if we do approve this, don't we create a precedent that allows virtually anyone to come in and say -- demand that they exchange indemnification for fire flow?

MR. KUSHI: I'll put it to you this way.

You're not creating a rule, but if you grant Dr. Dantes this waiver or this special condition, if Mr. X comes in in two weeks and

has the same factual situation, he would have a good case. I hate to say you create a precedent, but he would have a good case based on the same factual situation.

CHAIRMAN RICE: Mike?

MR. VICTORINO: And just to elaborate a little bit in the area of indemnifying the county and us, it has been my experience through the years that indemnification doesn't in many cases hold much credence, especially in the area of fatalities. And the state and this county

has been sued on many occasions even though indemnifications have been put forward. That's number one.

And the statement about the deep pocket and stuff Mr. Starr said is absolutely correct. As everyone knows, the governmental agencies or governmental bodies are generally the deep pocket when there is not enough insurance to pay it off. What's a million, two million, it don't make no difference, you know what I'm saying?

The other thing is we make a rule for an exemption for your situation. And to counter what Ms. Parsons was saying, there is definite specific language in policy, both fire, homeowners, and as well as commercial policy, distinguishing what family, friends staying at your house, and someone who is renting from you.

There are definite definitions in the policy.

You take a moment, they are there, or you ask your insurance man, he will point it out to you.

So to say that oh, I can go rent to 10 family

members and put them in the house, there is some real definitional changes when you're referring to that.

So if we say yes to something like this, we as a board opens not only Pandora's box in the sense of anyone else wanting to come, but if something does occur we put ourselves, the board, as well as the county at risk.

So nothing against you, Dr. Dantes, I mean you seem like a nice person, but there are

some real authentic concerns I have in my mind.

And again without the fire department saying,

hey, I think we can handle this, I would say if

a code is there and it's been required and it's

required of me if I want to put something there

or you or anybody else, then the code must be

followed. That's what we have these codes for.

And I have a hard time saying yeah to an exempt

in this case. Thank you, Mr. Chair.

CHAIRMAN NAKAMURA: Ginny.

MS. PARSONS: Does Mr. Dantes have the

right or do we have the wherewithal to look at his system in one of our areas of upgrade and do the pro rata share among all the users on that line? Since he's brought it forward to us and it's an issue that's now before us, can we make it --

CHAIRMAN RICE: Wouldn't that then apply to everybody who was in a similar situation and wants the same thing?

MS. PARSONS: Well, then maybe we should start looking at things that way because we need

to move forward on the upgrades and this may be

a way to make progress.

CHAIRMAN RICE: Yeah, that's a little --

I think that issue is one that involves a

discussion of priorities of capital money. I

don't think that it's a decision that we should

make today just based on this specific request

without reviewing the other. And off the top of

my head, I would say that that would be lower

reason to put something higher on the priority

list, you know, and we would have to look at the

number of consumers in the area and everything else that Ellen reported to us at the last meeting.

Yes, Mr. Kushi. Mr. Craddick.

MR. CRADDICK: Probably both going to say the same thing. If you did that, you're going to have to pass rules if it's going to apply to anyone. This particular one, I'm just saying he unilaterally agreed he will pay a pro rata share when he will pass rules for that type of thing.

CHAIRMAN RICE: Howard.

MR. NAKAMURA: Mr. Chairman, I would

generally agree with the comments made by

Mr. Victorino. I'm sympathetic to Dr. Dantes.

He has an unusual situation that has arisen in

the county regarding this issue of transient

vacation rentals which seems to be beyond just

water. But I am concerned with the concept of

permitting for whatever reason and under

whatever circumstance a substandard system

according to the code; and then in lieu of

requiring compliance, accepting indemnification
and insurance, which I think in some cases is
difficult to monitor. So I would have some real
questions about the approval of this particular
request.

One just a side remark, the director
talked about the fact that because Dr. Dantes or
a similar party is not a subdivider, if they
made the improvements, they would not be
entitled to the reimbursement. Personally I
think that's wrong and that if there is a

proposal to change that whereby anybody who puts
in, whether it's a subdivider or a building
permit, puts in an improvement that is going to
benefit others, I think they should be entitled
to reimbursement. It shouldn't be that narrow.
But that's kind of a side issue.

On this particular issue, I do have a
problem.

CHAIRMAN RICE: Adolph.

MR. HELM: Just to add to Mr. Nakamura

and Mr. Victorino's concern about the liability

issues, I also have reservations about that.

But we need to actually look at what

alternatives in terms of options with regards to

what Ms. Higa said, what alternatives are out

there for fire flow, whether it's sprinklers or

inline booster bumps to increase the pressure.

To me that seems like a more logical approach

where the expense is not that high to meet fire

flow requirements. Whether the department --

fire department is responsible for the Board of

Water Supply to assure that they meet those kind
of standards. I would look at that as being an
alternative to some of some of these other
issues.

CHAIRMAN RICE: Thank you. Kent

Hiranaga?

MR. HIRANAGA: I [inaudible] what Adolph
just said. It seems like there are some
alternatives besides -- between offsite
improvements and a waiver from the requirements.
More specifically, I guess some kind of on-site

improvements specific for that particular
property. May not be as costly. And I think
there is a solution that is between offsite
improvements and the waiver.

MR. STARR: I have a motion to make. I
move for denial of the request.

MR. VICTORINO: Second.

CHAIRMAN RICE: Moved and seconded to
deny the request to approve the language as
presented. Is there any discussion on the
motion? All in favor of the motion to deny, say

aye. Opposed, say nay. Motion is carried.

DR. DANTES: Thank you for the
opportunity.

MR. VICTORINO: Thank you, Dr. Dantes.

CHAIRMAN RICE: Okay. We're back at the
beginning of our agenda. Director's Report
02-25, request to enter into a Memorandum of
Agreement with the State Commission on Water
Resources Management. Mr. Craddick?

MR. CRADDICK: This particular proposal
came from the Water Commission and they have

entered into a what they call an aquifer

monitoring working group over in Honolulu and

they felt it may be of some advantage over here

also, even though we're not designated as Pearl

Harbor is. But the objective of the group is to

have a comprehensive and consistently monitored

groundwater data network, assure accurate and

timely data collection, provide this data to the

public in a timely manner, and use the data to

verify groundwater models, identify and collect

data needed to calibrate and refine future models, ensure protection of the groundwater resources consistent with uncertainties surrounding sustainable yields, and optimize existing and future well infrastructure.

And because this is somewhat of a community group, there would be community members in the group with expertise in hydrology or geology and there is a sample of the agreement in here. We don't have anything specific for us. If the board would like to

move forward on this, we would prepare a

specific agreement specific to our situation.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yeah, I'm very happy to see

this. I think it's a good direction. I do have

one concern that I would like to get clarified

is how do these members of this group become

selected?

MR. CRADDICK: Off the top of my head,

Jonathan, I couldn't tell you that. I presume

that the group sits down together and sees if

anybody wants to participate and checks out
their credentials.

CHAIRMAN RICE: Mr. Craddick, why don't
you find out how it's been done in the other
situation for us? Mr. Starr?

MR. STARR: Well, I would be willing to
make a motion to proceed with it with the caveat
that the selection process be open to members of
the community representing different segments of
the community.

My concern is the way it's expressed is

that in my -- if you have to have a credential
in hydrogeology, that would exclude
representatives of the community. So I just
want to be sure that there is a broad base to
it. I leave it to the chair whether we want to
defer it or whether we want to make a motion
with some wording similar to what I mentioned.

CHAIRMAN RICE: Well, the Chair would be
happy to approve it going forward and that if
the director would report back to us on the

intended selection process so that we can have
input into that. I think we can -- I mean, we
are a member of the monitoring group, so when we
speak with the other members, we can communicate
your comments to them. Before we do that, maybe
at the next agenda Mr. Craddick can report on
how it was done in the Pearl Harbor group. But
I don't think that should hold us up from going
forward.

MR. VICTORINO: So your motion to move

forward on this?

MR. STARR: I will make a motion and a bit of discussion. I make a motion that we approve the request to enter into the Memorandum of Agreement and as part of the motion is that the board and the greater community of Maui will have input into the selection of the members.

MR. VICTORINO: Second for discussion.

CHAIRMAN RICE: Discussion. Okay.

Ginny, you're first.

MS. PARSONS: I don't think that we can tell them how to make their selection. I mean,

it's like telling a business how to make their
selection of members, until we know exactly how
the process is taking care of. And I don't
think putting the caveat in there that they have
to have some of the public that may not be as
well informed in this issue. One of the biggest
problems that we've had in managing the aquifer
has been the lack of qualified personnel to give
us the data that we need. So I don't
necessarily think that someone without that
qualification -- it may not be the way that they

operate. So I would not be voting for something that has a caveat.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: One comment I guess and one question. The question is whether there are any cost implications to this other than perhaps the time of staff and others.

MR. CRADDICK: There are maybe cost implications, but what this does is it allows the state to go to the legislature and say we're

in this partnership, we need this monitoring well, and here's how it's working, here's how all the data collection and stuff is working, so the state understands that once they put this money out, there is some buy-in participation with the whatever aquifer it is that they're monitoring. Because some aquifers, like say Pearl Harbor, for instance, have a number of people using it, so you've got a lot of people sitting at the table.

MR. NAKAMURA: Well, also my

understanding of this is that we would be -- we
as an entity, the board, would be a partner with
the USGS and with the Commission on Water
Resource Management in this particular project.
Is that not correct?

MR. CRADDICK: This is not any particular
project. This is a general concept.

MR. NAKAMURA: When I'm talking about the
project, I'm talking about the monitoring group.
You know, if there were supposed like an
executive committee, I mean, we would be an

equal partner in that executive committee, would

we not?

MR. CRADDICK: Yes.

MR. NAKAMURA: That would make decisions

on things like how the others are to be selected

and how you proceed, what the program is, what

the scope is.

MR. CRADDICK: That is what I would

think. It wouldn't be any unilateral decisions

by any one partner.

MR. NAKAMURA: But we don't know that yet

because we don't have a specific agreement to
look at.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I believe the motion is
consistent with that, just that we have input
into that.

CHAIRMAN RICE: Maybe I can clarify. The
intent of the motion would be that if there was
a decision-making about who participated, it
would be made by this board.

MR. STARR: I think it should be this

board along with the other entities.

CHAIRMAN RICE: Yeah, but not other

people. This board. Ginny, does that satisfy

your --

MS. PARSONS: Yes.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I would like to, if you'll

bear with me for a minute, buried in the package

here along under this item is a very, very

important document and I -- which is separate

and in no direct relationship related to this.

I have a real concern about the way this has

been handled by staff. And approximately a

month ago --

CHAIRMAN NAKAMURA: Okay. We have a

motion on the table.

MR. STARR: I can deal with it -- I just

want to be sure I can deal with this after.

CHAIRMAN RICE: Yeah, I was going to

bring it up anyway, actually, because I was

curious. Okay.

MR. VICTORINO: Call for the question.

CHAIRMAN RICE: We have a motion on the table to approve the request to enter into an MOA with the State Water Commission and the USGS for the purpose of aquifer monitoring. Any other discussion? All in favor, say aye.

Opposed, say nay. Motion is carried. Okay.

I believe what Mr. Starr is referring to is the proposal by the USGS that's included in here but it's not on the agenda to participate in the --

MR. CRADDICK: The only thing I can say,

Peter, is I don't think Kathy knew this wasn't

part of this. This was just a communication

that came in and I guess she thought it was part

of this. It has nothing to do with it.

CHAIRMAN RICE: So we're going to have

that on another agenda?

MR. CRADDICK: Yes.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I do have a problem with the

way this was handled. A month ago the USGS, at our request, sent us a proposal and they sent it to the director and they sent it to individual cc copies to the director in care of each of the board members with our names on it. And it finally comes to us, not the copy sent by them but buried in another item. And, you know, this is typical of the way the director works, which is to try to hide information because I know he doesn't like this program. He doesn't want some things to be done. Which I just wish that when

mail is addressed to this board, it's delivered
to the board member who it's addressed to.

I would like to ask the Chair, Peter, did
you receive a copy of this?

CHAIRMAN RICE: No.

MR. STARR: So in other words, he's been
holding it on his desk for a month even though
it was addressed to the chair and addressed to
board members. I really feel we should see the
end of this kind of thing.

MS. PARSONS: I would like to make a

clarification. Jonathan, this is letter is not addressed to the board members. It is cc. It is the U.S. Department of Interior's -- that's their provision to send a copy to us, not necessarily for David to give us a copy. It is addressed to Mr. David R. Craddick, Director, Department of Water Supply, County of Maui, P.O. Box 1109, Wailuku, Hawaii 96793. Dear Mr. Craddick."

At the very end of the letter, it says

"Enclosure cc." Now, they didn't mail it to me.

I don't know whether they mailed it to the
department or not.

MS. HOWARD: Yes, with your name on it.

And I put it in the packet, believing it was
part of this Memorandum of Agreement.

MS. PARSONS: In a timely manner.

MS. HOWARD: I put it in the next agenda
after we received it. I did not know it was a
separate matter. I would have listed that.

MS. PARSONS: I think that's a fine

explanation, but I don't think we need any more character assassinations on the director or the department for an issue that technically if they were going to cc us, they could cc us to our home address.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, when mail is sent to the department for board members, I think that we have a right to have it given to us in a timely manner, not a month later and not buried in another agenda packet but in the envelope

that it comes to the department. And I would really feel that we've been wronged here. Thank you.

CHAIRMAN RICE: Yes, Mr. Victorino.

MR. VICTORINO: Just so that we can move on and I sometimes get a little appalled at some of the personal feelings that do come out in these meetings, but I accept Cathy's explanation. She is new. It's something that we learn from from here on in, knowing that these kinds of things are important matters, not

to be just part of. If she has a question about it, then maybe check in with the Chair and with your director. So Kathy, that's fine with me, I accept that.

And as far as the rest of the statements that were made, what is the past is the past. I am very confident that the future will be different. And I think Mr. Craddick knows that we need this kind of information to make good decisions and we need it in a timely manner. So in the future, Dave, if these things do come

like this, and Kathy, that it get to us in a
timely manner.

CHAIRMAN RICE: Board members, we're
going to talk about procedures later in the
agenda so this is something we can take up under
procedures and we will do so. Okay. Let's move
on. Okay.

Director's Report 02-26. This is a
personnel matter. And from what I know of it, I
think we need to discuss this with our counsel

in Executive Session.

MR. VICTORINO: I think --

CHAIRMAN RICE: If there is no objection,

I'll move that to the back of the agenda.

(Brief recess.)

CHAIRMAN RICE: The meeting is called

back to order. We're on Old Business, A,

reconsideration of Moretti matter.

Mr. Jorgenson and Mr. Moretti are present. We

also have present David Goode from Public Works

as some of the issues in our discussions at the

previous meeting involved David Goode. And I know that I did indicate to the public that I would take testimony on individual items and I believe there are people here to testify. So let's hear the public testimony before we get into anything. Sir?

MR. PESTANA-TORRES: My name is Riki

Pestana-Torres. I was here at the last meeting.

There is a group of us that are very concerned about this project and the potential pollution of the bay with projects like this along the

coastline, the Hamakua coastline of Maui.

For example, the Big Island had a development in Kealahou that destroyed the bay. On Kauai, development by Mr. Pfluger did destroy the bay. And his rich, powerful connection is how he only got a slap on the wrist. For us local boys and fishermen, surfers, what do we do when developers come along to our islands and destroy the fishing grounds, our lifestyle. This is the concern of some of us.

We're not totally against this project.

We just want to make sure that this guy does not

pollute our lifestyle. And that is a heavy

statement because look at Maui. It's getting

polluted every day. Look at Kihei; it's like

being in California. Look at beautiful Lahaina.

It's sad. Now we live on Hamakua, Maui. It's

the coastline from Wailuku all the way to Hana.

Please, in your positions of decision-making and

power.

I was told the last time that I was in front of the wrong board. Then why is he here with his lawyer in front of your board? I interrupted him once when he said it's just semantics. But the semantics of what's going on here is so very important because lawyers with his knowledge and his brain, they twist law for the developers. And us local boys, what we end up with, pollution of our lifestyle.

And I humbly ask you guys with the power that you guys have, please make the decisions

and think not just about four years from now,
but then 20, 50 years from now so all our keikis
can enjoy the ocean. Mahalo.

CHAIRMAN RICE: Thank you, Riki. Any
questions for Riki? Any other public testimony?

I think there is a need to clarify. Ed,
if you would help me. In this case, we don't
approve or disapprove this gentleman's request
for subdivision. We're dealing with the fact
that they have a water agreement that runs with
the land. So Mr. Goode -- or I'm going to go

ahead with you, Dave.

MR. JORGENSEN: I'll just reintroduce myself. I'm Dave Jorgenson, appearing on behalf of Francesco Moretti, who is the applicant in this particular subdivision project. As I mentioned the last time I was here and I apologized again for not being here at the first meeting when this came up, our request to this board is very simple. There was an agreement that the county entered into with A&B in I believe it was '96. That agreement does run

with the land. We don't suggest it doesn't.

Our request to you is Mr. Moretti is proposing to do a private water system for this project. The rules of the department are clear that the department does not have jurisdiction over subdivisions with private water systems.

So what we are asking for is for the parties, including Mr. Moretti, to acknowledge and agree that the deferral agreement is still binding on the land but does not apply to this project

because of the manner in which the project is designed. In other words, because it is using a private water system.

Board Members Starr and Parsons last time asked, well, if you're saying you don't have jurisdiction, why are you here? And that's a good question. But as I responded, the reason why we're here is the procedures of the county for subdivisions for building permits require that things pass through the water department. They made it to the water department.

Mr. Moretti's subdivision application made it to the water department and there it sits because

Mr. Craddick is saying Mr. Moretti, you have to make all of these improvements even though it's a private water system. And we're asking you to clarify that the department -- confirm that the department does not have jurisdiction over private water systems that are part of a subdivision and that the process move forward.

So in an elongated nutshell, and I did dress down today, that's why we're here again.

And we thank you for your time and we're
available for questions and we're interested in
what the other speakers may have to say.

CHAIRMAN RICE: Okay. Wait a second.

Because I've been studying this a little bit and
I don't want this to end up taking all day.

As Mr. Jorgenson reported, that was the
gist of our last discussion. And based on his
comment that we don't have jurisdiction over
private water systems, I think that's a fact.

Mr. Kushi? Does that exemption rule?

MR. KUSHI: Yes, that's my understanding.

CHAIRMAN RICE: Okay. Then the question is why is he here. The answer to the question is we have an agreement with the prior owner of the land that requires them to do certain improvements in order to get water. They're not asking us for water. So does that agreement in any way involve them in that they don't request water from us?

The other issue that came up was does the

director sign off on every request for

subdivision where there is private water. And

the answer to that is no, he does not and he's

not required. Mr. Goode is here to tell us what

the procedures have been. If it's a private

water system, the director has in the past sent

the letter to Public Works saying that it's a

private water system and that it's up to the

Public Works to enter into an agreement with the

developer if they so desire. And without this

agreement running with the land, I believe that

would have been the standard procedure. So

there is a legal question as to whether the

agreement that runs with the land affects this

particular request.

Mr. Starr?

MR. STARR: Just to clarify, I have a

slightly different reading on it. You said that

the agreement that runs with the land was

something that was related to them getting the

water for this location. I don't think so. I

think it was something that was in relation to

the subdivision that had occurred previously.

In other words, it was a commitment made so that

the subdivision which occurred some years ago by

A&B could occur. So in other words, it's owed

from something back then, it's not something

relating to a future action of getting water.

CHAIRMAN RICE: Okay. And I don't

disagree. Therein lies the question as to

whether that agreement applies or not. If it

was, if that agreement was intended to be a

commitment that at any point a developer when

they wanted to develop would put in these
improvements -- make these improvements as
required, then I think the issue is clear that
it is a jurisdictional issue for us.

MR. HIRANAGA: Unfortunately I was not
present at the last meeting, but I do have some
-- I guess some knowledge about this
subdivision.

My question is in the 88-acre lot and the
44-acre lot, was that not created from a lot

line adjustment subdivision? I've heard -- I forgot the actual ordinance number. It was done through the lot line adjustment ordinance which did not require any type of infrastructure improvements. So I'm a little confused as to the basis for the agreement and I guess I would like to have a better understanding as to why A&B executed this agreement.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: This is part of the Haiku agricultural subdivision, Haiku Hill, and this

-- there was one lot, made two lots, on 60.6

acres and the other one 44.1 acres. And then

also, the agreement is not only to provide

water, but it is to construct water system

improvements in accordance with standards,

provide fire protection in accordance with

standards, and provide water service to each

lot. Not just provide water and it's

[inaudible] private therefore the agreement

doesn't apply.

MR. HIRANAGA: Mr. Craddick, are you

certain that this was a two-lot subdivision and
not a lot line adjustment subdivision whereby
they initially started with two lots and
consolidated and resubdivided into two lots? I
think you need to investigate that thoroughly.

Because my understanding is that process was --
that creates confusion for me as to why this
agreement was signed, so I would like to know
why the agreement was signed because it seemed
unusual. So I don't know if there is some
underlying basis for the agreement.

CHAIRMAN RICE: Is there any answer of
staff to the question by Mr. Hiranaga?

MR. CRADDICK: If it's a lot line
adjustment?

CHAIRMAN RICE: No, why was the agreement
signed, what was the reason that A&B signed this
agreement. Mr. Goode?

MR. GOODE: Thank you, Chairman. In
reading the referral agreement, we can draw some
conclusions. And I don't know specifics

outright. But it does say in the whereas section, the applicant subdivider submitted an application to subdivide the property into two lots, lots 1 and 2, one being 44 acres which I think is the subject of discussion today, and another lot containing approximately 60 acres that I believe further subdivide into what is known as the Haiku Makai subdivision. So just look at the whereas section, it kind of tells it was a large lot, about 144 acres, and subdivided into two lots.

Mr. Hiranaga has suggested maybe it was a consolidation and resubdivision, that maybe there was a small lot on the large lot. I personally don't know. But the way this is written, it seems to indicate that it was one large lot, subdivided into two large lots.

CHAIRMAN RICE: And so would the answer to your question be the reason that they signed this agreement is so they could get subdivision approval?

MR. HIRANAGA: I am 99 percent sure that

this was a consolidation resubdivision. My

understanding via that ordinance, no

infrastructure requirements are required to do

that. It's a paper subdivision. So in order to

create two lots, I'm just curious or puzzled as

to what motivated A&B to sign this agreement.

If my understanding is -- unless I'm incorrect.

But it would assist me in making a decision I

think if, first of all, that was confirmed

whether this was a consolidation resubdivision.

And if it was, what was the underlying reason

for the agreement that was created.

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: Myself also was not

present at the last meeting, so I apologize.

However, let me ask you, Mr. Moretti, if I may,

did you or were you aware of this agreement when

you originally purchased the property?

MR. MORETTI: Yes.

MR. VICTORINO: And you understood its

ramifications when you read it through.

MR. MORETTI: [Witness nodding.]

MR. VICTORINO: And was Mr. Jorgenson

your attorney at that time or was somebody else

involved with you at that point?

MR. MORETTI: No, he wasn't my attorney

at that time. But I did get a consultant on it

and I was told that this was applying only to

request for -- I asked a consulting engineer

about this water situation and they explained to

me that this agreement was made only for the

request for counsel by the County of Maui so

they receive water meters. And the same engineer explained to me that there was no water available, water shortage and all of that. And I would not have bought the land in this condition. And he said to me that with the private water system, I could do this subdivision and I went ahead and purchased on this basis.

MR. STARR: Excuse me. Who told that to you?

MR. MORETTI: My engineer. That is civil

engineer. Arakaki.

MR. STARR: Maybe you should have legal recourse to him.

CHAIRMAN RICE: Okay. Any other -- Mr. Victorino.

MR. VICTORINO: And the last thing I'll say and to you, Dave, maybe what we need and I hate to keep deferring this, but again, if we don't have all the facts in front of us and we make a decision one way or the other, it [inaudible]. So with what Mr. Hiranaga has

said, I think we need that in my mind to clarify
this matter.

I mean, what I see in front of me kind of
says no, that you need to put that in because it
was required by the A&B which the agreement you
went and purchased the land, you saw this and I
would have assumed by reading this over,
whatever -- whoever gave you the information, it
still was readily knowledgeable to you. It
wasn't something that somebody came in and put on

you after you purchased the land. So I would
have to get the information from Mr. Hiranaga or
Mr. Hiranaga is requiring and then go from
there.

MR. MORETTI: Excuse me. I just realized

I also asked the same information to
subdivisions, Land Use & Code, and then going
through the difference and the ordinance at the
office of subdivision and they were telling me
that private water system would not have gone
through that.

MR. JORGENSEN: And from our side, I mean the underlying question is that as Mr. Craddick said, that the agreement talks about and it's not limited to providing water, but the gist of it is that it's to provide water to this subdivision. If they are going to get water from the county system, you have to make improvements to the county system, to the infrastructure of the project. If you're not using county water, yes, this agreement was executed by A&B; yes, it does run with the land;

yes, Mr. Moretti was aware of it. He did get

information, he did consult with the people who

told him that the agreement would not apply if

there was a private system.

If Mr. Moretti had come to me, I would

have told him the same thing. This agreement

applies if you're going to do -- if you're going

to connect into the county system. To require a

developer who's not going to use the county

water to improve the county system is not

contained within the rules of the liquor

department. So you certainly want the board to have all information necessary to make a decision. I'm not disagreeing with that, but what I'm saying is that should not be dispositive in your decision-making.

We believe that the rules of the department say the department does not have jurisdiction to impose subdivision requirements on a private water system. So in that sense, the underlying premise of the agreement is

wrong, could not be enforced.

The agreement says make subdivision improvements if you do this, but if it's a private system, the department's own rules say they can't do that.

So we're saying that again that the agreement is to bind on the land. If anybody later in this project in this subdivision comes to the county and says, hey, we want to be in the county system, they are going to have to make the improvements. Improvements will have

to be made when somebody is going to connect into the county system. But unless and until that happens, it just doesn't apply.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: There are some other issues involved here and I would like to reiterate them. I know some of our members missed the last meeting. And for one thing, I believe the state has said they will not approve the private water system. And, you know, that's stated in our packet.

MR. JORGENSON: That was clarified at the last meeting that the Department of Health has rescinded that recommendation.

MR. STARR: But in any case, there is an issue with a family that had been in Maliko Gulch for many generations and for these many generations they have been utilizing the water from a spring, a natural spring that comes out the side of Maliko Gulch and has also flowed there for -- since time immemorial.

Now, an issue had come before this board

about a year and a half ago when we were getting ready to use the well at Hamakua Poko and there was concern that the use of those wells would endanger the spring. And what the Board of Water Supply did at that time was it indemnified this family by saying that if their spring dried up, then for time immaterial we would provide them with fresh water for free. And I think that's a right thing to do.

However, the proposed wells in this

subdivision are right above where that spring comes out into Maliko Gulch and in my mind there is a probability that pumping of these wells will cause that spring to dry up. So if that occurs and there is a commitment that goes back from the previous subdivision where they promised to expend certain funds to do certain things and in exchange for that they got certain value or were allowed to do their subdivision or something. No one seems to really be clear because it goes back a while what, you know,

what the exact situation was. But when they

signed this agreement, A&B, they got benefit.

And now we're being told that the new person

here who -- and I respect the person and respect

his plans, but he's trying to say that he

doesn't want to follow the commitment that he

made. And if we say well, you don't have to

follow the commitment and then ultimately in the

larger picture of things it causes these people

who have been living off a spring in Maliko

Gulch for generations to lose their water, I

think that we'll be culpable for that. Whether we're legally culpable or not, I know if we'll have to provide them water, but I for one would have trouble sleeping at night knowing that we have directly or indirectly been responsible for that kind of injustice to occur. So I feel that when I make a business deal, when I buy something and it has an agreement with it, I go along with the agreement that I signed. I don't try to sneak out of it, you know. And I think that's what's happening here. So I for one feel

that we should deny the request.

CHAIRMAN RICE: Ginny?

MS. PARSONS: I need a clarification

whether or not we are talking -- still talking

two wells. We are still talking two wells? One

of the reasons that the health department would

not make an opinion on the two-well situation is

because it doesn't -- it's not applicable in a

two-well situation.

I have a little trouble in my mind

understanding why -- why there is two wells.

Why not just have one good well? Other than to

slide under some of the rules, is what it

appears to be. And I can't -- I can't quite --

and I've said this before, I can't quite

understand why you wouldn't want to have a well

that is accepted by the Department of Water to

our standards and eliminate your liability and

our future liability. It just doesn't make

sense to me. Other than to try to slide under

and do something less quality.

CHAIRMAN RICE: Howard?

MR. NAKAMURA: I think, Mr. Chairman, the discussion about the spring and the private wells and the lifestyle, although I certainly appreciate that, again, you know, we're not a planning agency.

The lifestyle issue -- my mother was raised in Maliko, for those of you who are interested. But I think the issue is pretty simple. Either we buy Mr. Jorgenson's argument that we have no jurisdiction because it's a

private water system, or we uphold the provisions of the deferral agreement, the subdivision agreement.

And to be honest, two meetings ago I was persuaded by Mr. Jorgenson that his position was appropriate. But in reading this agreement further, you know, there was a benefit to the ultimate or to the subdivider at that time which was to create two lots. In return for the ability to create the two lots, they entered into an agreement to defer improvements. And

those improvements I assume were specified at

that time, were they not, David?

MR. CRADDICK: Other than to say that

they must build to standard, I don't believe any

list of requirements were made.

MR. NAKAMURA: But in any event, there

were lots created, the agreement was executed.

The agreement says that the requirements for

each lot of the subdivision are deferred until

such time as each of the lots are developed.

And it doesn't say that it's developed using a

private water system or a public water system.

And I think it's pretty clear.

So I think that we're looking at a

situation that as we have in the past where we

have this creeping approvals where people come

in on one thing and the next thing you know

they're in with something else and then they're

in with something else. Two meetings ago I

would have supported your position,

Mr. Jorgenson, but frankly right now I cannot

support that position because I think the

agreement is pretty clear and it says that the

requirements are deferred until such time that

each of the lots are developed and the proposal

is to develop these lots.

MR. JORGENSEN: Can I respond to that

real briefly?

Mr. Craddick made a comment in response

to Mr. Nakamura that the water system be built

to county standards. I mean, if you're doing a

private system, is that -- we need to know what exactly is the department saying are these requirements. We understood it was actually extend the line through the property to each of the lots. That's the requirements they were talking about.

If he's saying that the department insists that the wells be built to county standards, that's a totally different issue.

CHAIRMAN NAKAMURA: I don't know if that's a question, that's not quite the issue

we're talking about. I'll make a note of that.

Mr. Craddick and then Mr. Hiranaga.

MR. CRADDICK: I don't think I can

improve on what Board Member Nakamura said, but

I don't read anywhere in here where it says if

you want to connect to the system, then you

comply. It just says you must comply.

And as far as the issue of our standards,

the standards are an interesting thing. There

is a separate standards review board of which

I'm a member of that board and that's what sets

the standards for not only Public Works but the
water department, not this board.

There are provisions in the Maui County
Code that require my approval. Now, once the
board passed that rule to take the public or the
private systems out of the board's review, that
was mainly done because the board was routinely
waiving the standards, not to stop our review of
subdivisions that may be required. Because
that's required by county code, not this board.

Now, between Dave Goode and myself, I

just have an understanding with him if the
people are just flat out saying we're not going
to build to standard, we're not going to connect
to you, not going to use the water, then I've
told them, you know, don't send me those. If
we've got an agreement where they have to comply
with standards or they're building to standard,
you know, whether there is agreement or not, if
they're building to standard, we'll review it if
they want to us review it. Like for instance

Hawaiian Homes does that over in Molokai. They routinely send us their stuff for approval even though it's not part of our system, but they want to know that they're building to standard I guess so in the future if they want to hookup, it's easy to do.

Anyways, I think that's kind of the issue here. David sent me this because of this agreement and doesn't say if you want water from us, it just says you must comply with standards.

MR. HIRANAGA: I just wanted to say

personally whatever the rules are, the ordinance
or regulations, that should be followed. If
there is someone who has so-called discovered a
loop hole, then they need to change the
regulation or the rule or the ordinance. But
you can't be massaging things based upon
personal opinions or agendas because then the
field is constantly evolving. You can't
function in business in that fashion. People
need to know what the rules are. If you're
unhappy with what the rules are, you need to

change them.

Second of all, I guess again

unfortunately I missed the last meeting. I
wanted to get a clearer understanding as far as
corporation counsel's interpretation. I looked
at the staff report on page 2 and it says under
item 5, very short response as saying that the
subdivider must get the Board of Water Supply's
approval. I was trying to get a better
understanding of corporation counsel's position
because the applicant's position was private

system is not under the jurisdiction and this
was not -- so I just want to see understanding
more fully what corporation counsel has to say
about that argument.

CHAIRMAN RICE: Mr. Kushi, please.

MR. KUSHI: Chairman Rice and board
members, this was -- Rich Minatoya responded to
the department's request and said go get board
approval. Subsequently, we discussed this
matter internally along with the applicant,

along with the director. And it's my office's
opinion and position that when you change the
rule in 1996, you abdicated your
responsibilities to private water system. And I
don't care what he says, the director says about
the code, the code says various things about
subdivisions.

Director Goode has the ultimate authority
to approve or disapprove subdivisions. As a
routine, they route it through this department.
Now, Director Craddick is saying that

notwithstanding the board's nonauthority over
private subdivisions, he's doing it by himself,
then he's split this board again. Do you
understand? And I'm concerned about him
reviewing private subdivisions. And a
subdivision is okay and then later on it falls
apart for whatever reason, then it's exposure to
the department and the board. So I think this
is a fundamental issue here.

In terms of the agreement, this agreement
in my understanding is a large lot subdivision

and it's routinely granted. And there is always that type of language in there. So it's nothing new. To force an applicant to connect to our system, there is nothing in Title 18 that says you can do it.

The agreement itself is still valid and the applicant says it would still be valid on the land in case anybody in that subdivision subsequently wants to connect to our system, public system, they would then comply. But if they wanted to -- the Ulumalu/Peahi situation,

that might happen again. Okay. But that's the situation you're into. I say if you're going to review and control private subdivisions, private water systems, do it by rule. Reinstate that rule. If you don't, I think you get into areas where there is potential liability because you're not going to maintain the system that you're on.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I see this as a simple case

of basically contract law where there is an agreement in place and we're being asked to take this agreement and unilaterally give up whatever rights are in it. I see it as a much simpler matter. You know, we're not being asked here to provide the improvements or anything like that. We're being asked to throw out an agreement that was made for consideration. So --

CHAIRMAN RICE: I don't think that's the case. I don't think we're being asked to throw out the agreement. We're down to what we

started with here after all this talk. The agreement runs with the land, it does not change, it does not get removed. The staff report that says that the waiver of the agreement provision is not what they're requesting. They're requesting -- what they're talking about is the first part that Mr. Kushi talked about and that is whether the director has the right to approve or disapprove private water systems. And our own rule says that they don't. And counsel's recommendations if we want

to change that, we should go back and change the rule so that we do. But while we have input into those, we are creating liability for the department.

This agreement continues to run with the land and becomes the responsibility of -- continues to be a responsibility of Mr. Moretti and any subsequent assignee or purchaser of a lot in his subdivision, which he was not necessarily approved yet. Is that correct, Mr. Goode?

MR. GOODE: Not approved.

CHAIRMAN: It's not even approved yet.

So it's not a fait accompli. It's been held up because of the issue of whether the director approves a private water system or not. And in other cases, we have not. We have sent letters to Public Works under the director's signature that say it's a private water system, it's up to you to make the agreement with the developer and approve the subdivision. That's on record and

it's recent.

MR. STARR: But was there an agreement in effect on those other situations? There weren't. And that's what makes this different is because there is a commitment to do certain things.

CHAIRMAN RICE: So then the question isn't whether the director should be approving or disapproving the subdivision; the question is then a legal one as to whether this agreement applies to a developer that does anything. Then

that's a different question. Then it goes right
over there for a decision.

MS. PARSONS: It should really go before
a judiciary.

CHAIRMAN RICE: You don't think the
judiciary gets brought in because someone files
a suit. You don't send it to the judge and say
hey, decide on this.

MS. PARSONS: You could take his
decision, but they're still -- even if he
advises yes and we go with that direction,

somebody else in the public can file a lawsuit
on it, so it's not -- it's one of those gray
areas, those gray matters again.

But my question is you said, David, that
the charter says that you still approve the
systems, private systems.

MR. CRADDICK: The charter --

MR. KUSHI: The code. Not the charter.

MR. CRADDICK: She's talking about the
charter. The charter does have reference to it
also and I think that's a little bit unclear,

reading the charter.

MS. PARSONS: And does the charter
supersede -- do our rules supersede the charter?

MR. KUSHI: No.

MS. PARSONS: So that's a question I
have, you know?

CHAIRMAN RICE: That's not the question
on the table right now. If we need to change
the rule, if anything, that's something the
board can decide to do and put on it the agenda

for another meeting. Kent.

MR. HIRANAGA: Just a clarification.

What corporation counsel says is that the agreement is a legal and binding agreement, but the question is since the applicant is proposing a private system, does the department have jurisdiction over that application? Is that what basically you said? It is a legal and binding agreement, but does it apply in this particular situation because he is requesting a private water system.

MR. KUSHI: Let me try to explain it this way. The agreement speaks for itself. It says that they had one lot, they divided it in two. And this happens all the time. When you subsequently subdivide the other lots, then you have to put in the requirements or improvements. That is [inaudible] on connecting to the public water system. Now, the applicant is going to go on private water system and the department has no jurisdiction over that.

In response to the historic question

about an agreement is an agreement. Jonathan,

if I agreed to buy a car from you five years

from now for \$20,000 and then I changed my mind,

do I still owe you \$20,000?

MR. STARR: If I provided you the car in

advance.

MR. KUSHI: No, if I waive my rights to

the car.

MR. STARR: No, you already got the car.

MR. KUSHI: No. I'm going to buy it from

you --

MR. STARR: A&B got the subdivision. So they got the car. And now you promised to pay for it and of course you have to pay because you've been enjoying the use of the car -- A&B sold the land, they got their profit.

MR. KUSHI: I'm not going to argue with you. But if this thing goes to court, the agreement is premised and all agreements are premised on connecting to departmental requirements and code sections. In this case,

it's a private water system.

MR. CRADDICK: It doesn't say that in here. It doesn't say that -- it doesn't say it's premised on connecting.

CHAIRMAN RICE: Mr. Craddick, we don't need legal advice unless you're licensed to the bar.

MR. CRADDICK: But it doesn't say that in here.

CHAIRMAN RICE: I understand your opinion. And I think that is -- in itself, if

there is a question in my mind, the question is not whether the director approved private water system. The question is whether this agreement continues to apply to the owner of the land whether he puts in a private water systems or attaches to ours. That's the question. And that's a legal question, not a board question. The board can make a decision and say regardless of corp counsel's opinion, we think it applies. They can do it and be challenged, or vice versa.

Mr. Starr?

MR. STARR: Mr. Chair, I would like to
make a motion to deny the request.

MR. VICTORINO: Second.

CHAIRMAN RICE: It's been moved and
seconded to deny the request. Discussion?

Mr. Hiranaga?

MR. HIRANAGA: At this point I would like
to have an answer to my initial question
regarding the subdivision, was it on a lot line
readjustment, and also what was the basis for
the agreement. And if we're going to be voting

on this matter at this time, I will be voting
against the motion because I'm not prepared to
deny the request until I have a full
understanding of what I'm [inaudible].

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I have a question for
Mr. Hiranaga. Were you an employee of A&B at
the time of the subdivision and involved in the
subdivision?

MR. HIRANAGA: I was not.

MR. STARR: Thank you.

CHAIRMAN RICE: Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman,

notwithstanding the fact that I personally feel

that the agreement speaks for itself, my feeling

is that if we have a legal interpretation or

legal opinion that the agreement does not apply

to the property because private water system is

being proposed -- and I may personally disagree

with that -- but having had that legal opinion,

I feel that that is not a matter in which we can

-- this board can approve or disapprove. I think it's -- if corp counsel makes a legal opinion that it's not applicable, then it doesn't even come to us, it goes straight to the departments to resolve. So notwithstanding my personal feeling that the agreement speak for itself, and at this point anyway I'll be voting against the motion based on corp counsel's opinion.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Could we make a motion to

have --

CHAIRMAN RICE: You have a motion right now. You can propose an amendment. Go ahead.

MS. PARSONS: An amendment that we provide outside -- we get outside legal opinion on this issue before we move forward.

MR. VICTORINO: Second to that amendment.

CHAIRMAN RICE: Okay. Procedurally --

MR. STARR: I would be willing to withdraw my motion. I think that might be a --

MR. VICTORINO: You withdraw your

amendment? I withdraw my second.

MS. PARSONS: I would like to propose a motion to obtain outside legal counsel to review this issue as it is so very complicated.

MR. VICTORINO: Second.

CHAIRMAN RICE: You want to set a dollar figure?

MS. PARSONS: Not to exceed \$20,000.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: Just to remind the board, you

need to go to council for this. Only county

council.

CHAIRMAN RICE: Do you understand what

Mr. Kushi is telling you, Mr. Hiranaga?

MR. HIRANAGA: My preference, rather than

going for outside counsel, would be to have corp

counsel provide us a written opinion that

[inaudible].

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I don't -- I would not be

satisfied with that.

MS. PARSONS: I don't think I would

either, I'm sorry.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: It would be good for the

other person to look at. So, you know, I mean

once you get it in writing from them, it would

-- that's -- I mean, because the other person is

coming in cold turkey.

MS. PARSONS: Not as an alternative.

MR. STARR: I think they should provide

what they're saying in writing, but I would like

to call for the question on --

CHAIRMAN RICE: The Chair wants to make one comment. I think \$20,000 is crazy. Let's say not to exceed \$5,000.

MS. PARSONS: Well, let's make it \$10,000, it's a land issue. And I know -- well, it's a land issue and it's expensive.

CHAIRMAN NAKAMURA: That's a lot of legal for review of a contract.

MS. PARSONS: Well, get an opinion. I said not to exceed that. But I think you're --

CHAIRMAN RICE: I don't want somebody
looking at the minutes and think they can bill
us for \$10,000.

MS. PARSONS: Well, no, they are going to
have to go out and look at the property
physically and --

CHAIRMAN RICE: And the council has to
think this is reasonable.

MR. VICTORINO: I think the motion the
way it was stated -- you then tried to amend it

or tried to add something to it, so at this point -- so at this point the motion is whether we're going to seek outside assistance. I think that's what we need to decide on. The amount can be decided on afterwards. But let's stick with the motion, please.

CHAIRMAN RICE: Okay. All in favor, say aye. Opposed, say nay. Let the record show Mr. Hiranaga voted nay. Okay.

Mr. Starr?

MR. STARR: Do we need a motion to defer

as well?

CHAIRMAN RICE: Yeah, I guess we do,

subject to our --

MR. STARR: Move to defer until we have

presentation from counsel.

MR. VICTORINO: Second.

CHAIRMAN RICE: All in favor, say aye.

Opposed, say nay. Motion has been deferred.

MR. JORGENSEN: When can we ask that it

be placed on --

CHAIRMAN RICE: Expeditiously.

MR. NAKAMURA: Mr. Chairman, is it

understood that we're also asking for a written
opinion from corp counsel?

CHAIRMAN RICE: I didn't hear that. That
wasn't said and it wasn't --

MS. PARSONS: Do we need to make a
motion?

CHAIRMAN RICE: You can make a request.

MR. VICTORINO: Make a request.

CHAIRMAN RICE: Do you want that opinion
from corp counsel in writing?

MS. PARSONS: Yes, I think we should.

CHAIRMAN RICE: Please, Mr. Kushi.

MR. KUSHI: Make the question in writing,

please.

CHAIRMAN RICE: All right. VII, Other

Business. "Discussion and possible action

regarding a resolution not to approve an

substandard water systems." A draft was

circulated and I don't know who prepared it.

Mr. Kushi did not prepare this.

MR. KUSHI: No, I haven't prepared it and

I wouldn't advise signing off on it.

MS. PARSONS: Could I have a reason why?

CHAIRMAN RICE: I know you brought it up

in the last meeting, but who drafted this? Who

drafted it, Mr. Craddick?

The substance of what you want to do is

one thing; the draft of something is another.

Mr. Craddick is not an attorney, as I've said

repeatedly, and I don't want documents drafted

for approval that haven't been reviewed by corp

counsel. And I believe that the substance of
this is already in our rules or our charter.

There is nothing that's not already required to
do, I believe. Is that correct?

MS. PARSONS: The reason that I wanted to
have this front is because I'm not clear when
the board in 1998 or '96 -- it was '98 when they
-- '96? When they determined that they weren't
going to review private water systems. And then
the charter says that the director still has --
takes --

MR. CRADDICK: No, that's the code, the county code. The Charter just gives a nebulous thing about water rights, water department.

MS. PARSONS: But there is some issues in there with regard to the water and with the code, that that doesn't make that 1996 rule basically void. Because I just asked Mr. Kushi do our rules supersede the charters and the codes. And if they don't, then that rule may not be valid to begin with, which is something we probably need to look at.

CHAIRMAN RICE: Well then, let's look at it. Let's not make -- sit here and make judgments based on generalities. Look at actually what the charter says and compare it to what the rule says and what you would like to accomplish and let's see -- make sure that they are necessarily in conflict or they're not in conflict. Okay. And what we're trying to -- let's start from what we're trying to accomplish. And if the suggestion is to review

the rule that was changed, then let's do it. If

that's what the board wants to do.

But let's not jump to some conclusion

about what we're required to do or not, without

having all of the documents in front of us and

having looked at them. Okay.

MS. PARSONS: Can we request that for the

next meeting, to have a review?

CHAIRMAN RICE: What would we like to do?

Do you want to review the rule that's --

MS. PARSONS: That was changed? The

charter and the code, as it relates to the rule.

CHAIRMAN RICE: Or as it relates to --

MS. PARSONS: To water.

CHAIRMAN RICE: Private water systems.

MR. VICTORINO: That's what we're talking

about.

MS. PARSONS: Private water systems,

right.

CHAIRMAN RICE: So we want to review all

the documentation that exists with regard to the

department's responsibility for private water

systems. Am I saying that correctly?

MS. PARSONS: Yes.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I just want to say

that I like the intent of what we're trying to

do here and, you know, I think we do need to

make sure that we're doing it in the right way.

I think that one recurring theme that's

been coming up over and over again is that there

is no regulatory entity regarding water on the

County of Maui. And this creates a lot of our

problems and a lot of the confusion and, you know, I don't really think that that's the proper duty for this board in many cases.

However, you know, if not us, then who?

If private water systems become a way of circumventing any regulation or circumventing a protection of the public health, then that's not a good use for them.

I myself live on a private water system in Kaupo, very far away from our system. And

that makes sense because there is no -- you know, there is no alternative. But when inside of our system private water systems become a way of getting away from our rules and the EPA and everything else, there is no control over that, there is no control over wells, there is no record of how much water gets bumped, then there is a real problem.

So I think we need to look ahead probably outside this board, but to create some kind of entity that would have oversight over these

issues, you know, regarding the public trust and
the public health and safety and then we could
step aside from it with a clear heart and mind,
knowing that there is someone watching the store
and we're not just providing an avenue to
circumvent rules which are there to protect the
public good and health and safety.

CHAIRMAN RICE: The Chair's opinion is
that I agree with the intent of this also. What
I'm trying to say is that there are a lot of
permutations to this, as you just brought up,

that you've got to look at totally. We had a rule that said one thing. Maybe we don't go back to the same thing. Maybe we go back to something that relates to private water systems within our service areas or something like that. But I think we have to look at all that before we go rushing into something. There is a lot of things that need to be reviewed. And I'm not -- I don't necessarily agree with you that we aren't the body to do that. But I think we can't be the body to do it if we do the review

of all these different things that need review.

Mr. Victorino?

MR. VICTORINO: Just to tack on to that,

also I would like to see the logistical set-up,

who is the ultimate responsible parties involved

in private systems? Like Jonathan had mentioned

EPA, Department of Health, they got all these --

but who is -- like is this the entity that

ultimately going to say yes or no to whoever.

This is the governing body. I think we all

know, but I think we need a real clear line of authority. If EPA says no, then everything from that point down says no. If State Department of Health says no, then everything from that point is no. So that we get this clear thing.

Because sometimes we have other entities or other governmental agencies that are involved in these things and whether don't we set up another task force or board or commission or whatever, it will be null and void if these groups have the ultimate power. So let's get the clear

defined definition line of who's responsible for
what and who's the ultimately power and then we
can move into these areas. And all these other
factors, charter, codes, state, whatever, I need
to get that because sometimes very confused, I'm
thrown this, I'm thrown that, and then I kind of
get lost in the shuffle. And I apologize.

CHAIRMAN RICE: Adolph?

MR. HELM: Just to clarify the issue on
responsible parties involved with water systems.

My understanding, being part of a private water

system manager before, is that you have to
comply with the safe water drinking standards
based on 15 service connections. That might
have increased to 5 more, I don't know. But
that's where your compliance has to fall in
place. And bottom line, I think a lot of
private systems circumvent the issue with
turning the system over based on cost factors
and not so much health issues. And that's the
issue, substandard systems are put in because of
cost factors and not so much trying to deviate

from safe water drinking standards.

CHAIRMAN RICE: I agree. But what

happens is that they're looking for a way around

the right way and they put it in substandard and

what happens is we get them and we're stuck with

them and then we're stuck with now spending

sometimes a substantial amount of money to

upgrade a system for a few users when it should

have been done correctly the first time.

So if we want to get into that and we

accept the liability for that, then that's fine.

But we ought to look at all the facts before we

make that decision. Because a prior board made

the other decision for whatever reason. Okay.

So that's on our agenda for the next meeting.

Mr. Craddick?

MR. CRADDICK: You haven't quite disposed

of this one here yet. On this item here, I

guess I did write it up and to characterize in

talking with Ed Kushi about this, it's a

resolution to follow our rules. So do you --

I'm not sure what the push is to get this, but

as Adolph was saying under EPA when you hit 15

services or 25 people, you come under EPA

requirements. We have systems, Kaupo,

[inaudible] on Molokai, Honokohau Valley actual

that don't -- I shouldn't say Honokohau valley.

Even though we don't serve 25 people, the health

department went down and found there were a

number of illegals being served by our system so

they're saying more than 25 people get served

and they are going to regulate it no matter

what.

But this is one where, you know, the issue that brought this up, the previous issue, was a specific effort to split up two wells to evade health department requirement. And I think -- I'm guessing that that's what's driving this here.

CHAIRMAN NAKAMURA: We just discussed that we were going to get more information and review it at the next meeting, end of story.

MS. PARSONS: I just want to say that it

was at my request that we draft this for the

very reason and I agree with what Adolph said.

You know, we're responsible if there is back

wash or if there is a problem with the systems

when they're this close to our other systems.

And if it takes a resolution that that's what

we're going to follow for the public's viewing

to know that we're not going to let it go out

there and just automatically okay substandard

systems.

CHAIRMAN RICE: Nobody says we're okaying

substandard systems. Let's not put words in

anybody's mouth here. We're not okaying

substandard systems. We have a rule that says

we're not okaying private systems and we are

doing some and we are not doing some. So let's

get all the facts and then make a decision.

We're not going to go jumping through some hoop

until we know what all the facts are and what

our obligations are. Okay.

Mr. Nakamura.

MR. NAKAMURA: I don't know if we need a motion on this, Mr. Chairman, but for the record I move that we defer action on this resolution.

MR. VICTORINO: Second.

MR. SEITZ: If I could propose a suggestion here. I was a general manager of Kapalua water company for years before I came here. And one of the issues that the PUC put out in front of us is that we have a defined service area. And we have one here also. No one else was allowed to supply service within

our defined service area. That may be something that the board may want to consider also. And then that would solve the problem of private water systems within our defined service area. If it's in Kahikinui and we don't serve that, then that's fine. But that's just a suggestion.

CHAIRMAN RICE: I think that kind of discussion is appropriate, look at all the facts and talk about this issue so we get all the suggestions and all the facts on the table. And it's a good suggestion, actually. Okay. All in

favor of the notion to defer, say aye. Opposed,
say nay. Thank you.

MR. CRADDICK: There is one more thing,
too. The rule was submitted to this board to
basically review private wells and it got
referred to Mike's committee, which no longer
exists, and nothing is happening with it.

CHAIRMAN RICE: But I thought that what
we were going to do at the next meeting was
review all the relevant information with regard

-- the agenda item ought to say discuss/possible
action regarding regulation, approval, review of
private water systems. And we have, and that's

-- and not to give the wrong impression. We

have people with private water systems:

Kapalua, Kaanapali. And plus the personal ones.

So let's not -- let's review all the facts and

decide whether we want to do a rule or not do a

rule and where we want to go. Okay. Agree?

CHAIRMAN RICE: Last item under Other

Business: Discussion/possible action regarding

board and department procedures and policies.

I put this on the agenda. There is a lot of different things I think we can look at -- the board, director, staff -- in regards to different things. And I brought it up because I serve on another commission. It's a state commission. And in a recent meeting, they handed out this thing you saw in the back of your pamphlet about political activity. And I thought oh, that's pretty good, that's appropriate kind of information for boards and

commissions at this time of year. And so I
thought do we have anything like that. And I
called the gal in charge of Ethics Commission,
corp counsel, and they said no, we don't have
anything, refer to Section 10.4 of the charter.

So I just thought I would include it for you
because I think it's good information, I think
we are appointed representing the public and we
have to act appropriately in regards these
things. So I pass that on.

I point out Section 10.4 to everybody.

Mike had brought up the issue of making motions at meetings. The procedural issues with regard to what we talked about earlier here, Mr. Starr brought up when information is sent to the department office. I mean, these are the things we need to make a decision on and pass them on, put them in writing so future boards and commissions know what the policies and procedures are.

So my question is, is there any policy or

procedure manual that exists?

MR. CRADDICK: For the county in general,

for the employees, yes.

CHAIRMAN RICE: So you mean an employee

handbook.

MR. CRADDICK: Yeah.

CHAIRMAN NAKAMURA: But there is nothing

for the department specifically.

MR. CRADDICK: No.

CHAIRMAN NAKAMURA: Because I think it's

an important thing for us to do and I think it

would be an important document for future board members to have. Mike?

MR. VICTORINO: I would like to propose that in something of this magnitude, you know, if we're all to sit here and try to discuss it, it would be a long and drawn out discussion because I think everyone has different opinions.

But I think what we need to do is incorporate both what the state ethics and their bylaws or their -- what the constitution says, along with what the county charter says as far as whatever

governs us, and incorporate whatever we think is applicable to us, and then put that together and have a presentation for the entire board to review and then put their input. And then, like you say, have something that's in place so that future boards know this is the governance that we run under, whatever the rules may be or whatever policy may be.

I think sometimes, for example, and I make these examples and I mean no harm to anyone. If anybody is personally hurt, sorry, I

don't mean to hurt anybody personally. But almost everything I've ever served on as far as state or county or any kind, the Chair is generally the spokesperson for the entire group. And for other people to be saying or putting statements not only publicly but in the newspapers and other stuff, sometimes can be very counter productive. One person's opinion is not the entire board's opinion.

Now, when we make decisions and the Chair

is responsible for making that communication for the board, then I think that's the way it should be.

As far as Roberts Rule of Orders, that's pretty clear-cut, I have no problem with that. We just got to get a book and put the book in front of us and so if we have a problem, it's right there.

As far as opinions, requests, whatever, there is a whole bunch of things we can do. I think it's about time we sit down and really

have some guidelines drawn up, policies,
guidelines, whatever you guys want to call it, I
have no qualms in the terminology. But
something that this board and future boards will
have something to work with and not come in and
really have nothing.

When I asked Mr. Craddick when we first
came, is there anything as far as procedures and
all that as far as the board is concerned, he
said no, we have the employee handbook. But
that's not applicable; I'm not an employee. And

so I think we need to do that. Thank you,

Mr. Chair.

CHAIRMAN RICE: Okay. Who's going to do

this? This is a pretty big task, you know.

MR. VICTORINO: I volunteer.

MR. STARR: There is a lot of other

issues involved here, too. One is a flow of

information. And I think it's -- first of all,

it's essential that if we err, we err on the

side of openness. There should be no intent to

stifle any opinion or any comment. That's our

first amendment rights in this country to have the right of free speech, whether in a majority or a minority situation.

But going beyond that, I've had a lot of problems with information flow since I've been on this board. I don't feel that it's getting any better. Just an example today where a month ago there was correspondence sent to the department and it was addressed to me. There was correspondence addressed to the Chair. It

never reached us. A month later we got it buried inside another item on the agenda. You know, I'll take that that that was an innocent mistake, but it's not something that should be happening and it's something for which staff should realize that's a very serious matter when the federal government, U.S. Department of Interior sends correspondence to board members and we never receive it, then I consider that almost criminal. So, you know, this is the kind of thing.

I've requested at meeting after meeting
after meeting after meeting going back the last
three and a half years that when there is public
meetings being held by the department, site
inspections and whatever, that board members be
informed, that that's a basic, simple courtesy
that the director and his staff should follow.
And I find out that as we sit here, there is a
site inspection for press, for reporters who
have come from the Mainland to find out about
the workings of this department and this board

and a site inspection is set up for them by the
department to take them around. And it's set up
specifically at a time when we're having a board
meeting, without informing the board members,
and I believe they didn't inform the Chair.

And, you know, that is wrong. That is wrong.

You know, when you have the L.A. Times and I
don't know what other reporters come to Maui to
learn about water, that it be done in such a way
that they cannot attend the water board meeting.

Water board members are not informed and they be

taken on a site inspection and staff during a
water board meeting scheduled many weeks in
advance. It's just wrong. This is wrong. And
these are just examples.

We've also not received for at least
three months a report on pumping data. We
received a sample with handwriting all over it,
but it's not in our board packet. I want to
have official information on this at least at
every board meeting and it's not in our package.

I received something in our fax machine with
handwriting all over it and, you know, that's
not right. We should be kept up to date. And
one of the most important pieces of data is
water usage, water pumping, how much the
treatment plants are processing. You know, I
see no package here, I see nothing. I haven't
seen anything from the USGS, although I know
they did submit another quarterly report and
it's not in our board package. It's on the
website.

So there is a real problem here, folks,
and it runs deep and I think we're being --
there is a concerted effort to keep us in the
dark even though this is something we went over
and we went over very specifically at the time
of the director's evaluation, this is something
that is still continuing.

CHAIRMAN RICE: Mr. Victorino.

MR. VICTORINO: I'll make a motion
actually then that I am willing to head up a
committee. I open it to anybody that wants to

be a part of it. I open my e-mail for anybody
who wants to put their comments, to report back
to this board within 45 days of today at our
first meeting after that 45th day, on
procedures, policies that are to be adopted --
well, I'd say not to be adopted, to be looked at
and at a subsequent meeting adopted.

MS. PARSONS: I second.

CHAIRMAN RICE: Okay. A motion --

Mr. Victorino is volunteering to head a

committee to prepare for the board's review a

document of policy and procedures.

MR. VICTORINO: And incorporate, I left out, if I can add, also going to corporation counsel to make sure that they are in the loop and that they are part of it.

CHAIRMAN RICE: Yes, Mr. Kushi.

MR. KUSHI: I just caution the board that you're getting into rules again. You're getting into policies and procedures, things that might affect the public, and your conduct through

public hearings, it's a rule.

CHAIRMAN RICE: Okay. But Mr. Victorino
can provide a draft of something to the board
for review. And at the time of your review and
the need to make it a rule is a need to make it
a rule. Nothing is being -- I think we're just
talking about some board procedures.

MR. VICTORINO: Exactly right.

CHAIRMAN RICE: There isn't anything.

I'm sorry, Ginny?

MS. PARSONS: You go ahead with your

thought.

CHAIRMAN RICE: I was going to -- I'm going to go on to Mr. Craddick, I think there is also a need for the board to understand policies and procedures that the department uses.

Decision-making. Because -- and probably more Mr. Starr's comment, things happened and we've talked about this before and somebody says the department requires this or that or this or that and then board members are not aware of that policy, then, you know, we look stupid. We

can't defend it if it's a good one, certainly,
and if we disagree, it looks bad. So -- and
there are a lot of examples, I don't need to go
into them, but it would include collection
policies, Holly. We agreed to review those and
make sure that those policies are supported by
the board. Makes that prior incident a little
bit easier. We have a policy, we know what the
facts are surrounding it and it applies, et
cetera, et cetera.

I had a different experience with a

simple ADA bathroom that in the end I found out that -- and I'm not saying I disagreed with the policy, but I didn't know that when someone goes in for a building permit, we rate all the fixtures and compare it to the water usage of the meter. And if the rating of all those fixtures uses more water than the water meter, then the applicant is required to do something, certain things.

Well, maybe that makes sense and maybe

that's a good thing, but I think we need to know
all those things the board has to have endorsed.

So that from the department's side I think is
also part of this process. That's not Mike's
job; that's David's job to prepare that for us.

MR. CRADDICK: Peter, what you're talking
about is in the rules --

CHAIRMAN RICE: If it's in the rule,
fine.

MR. CRADDICK: So --

CHAIRMAN RICE: I don't need to go into

every instant of things that have come up, but
you know what I'm talking about. Holly's is a
good example. Is that in the rules? Some of
that is in the rules about collection, but not
all of the procedures are in the rules. Where
we have a policy and procedure that supplements
those things, we need to know what they are. We
can't say we did it because of this rule but
then steps 1 through 5 are really policies that
we adopted. That's not related to a rule.

Comments? Ginny?

MS. PARSONS: Jonathan --

CHAIRMAN RICE: Wait, I'm sorry, we have
a motion on the table. Are you commenting on
the motion before we vote on it?

MS. PARSONS: The motion?

CHAIRMAN RICE: The motion to --

MS. PARSONS: I thought we voted on it.
Okay. I seconded it. We need to vote on it.

CHAIRMAN RICE: Okay. All right. Any
more discussion of the motion? All in favor,
say aye. Opposed, say nay. Motion is carried.

I'm sorry. Go ahead.

MS. PARSONS: Jonathan, for the record,
the information that we requested was faxed to
me and I'm certain that it was probably faxed or
e-mailed to most of the department. But it
saddens me to have to address the issues of
misrepresentation. Because I believe -- I
really do believe in the first amendment right
of free speech. However, I don't believe that
the framers of the constitution have included

the right to bare false and misleading

propaganda in journalism.

There were a number of misleading points in the Maui News article dated July 18th, 2002, called Viewpoint with, the headlines that read "Proposed water meter rule puts developers ahead of individuals."

The purpose of the upcountry meter rule is to comply with the Jim Smith case which is Civil No. 93-0241(1) and past rules to provide service to those who can currently obtain water

meters. Misrepresented was the number of people on the list in this article. The number of applicants is not 700. As of July 1st, 2002, including subdivisions, it contains 572 properties. Anyone can check the board's website at Mauiwater.org and find a list under the engineering section.

Another misrepresentation was the remark that by not limiting the meters, it will cause most of the new meters issued to go to subdivisions rather than families who have been

waiting for years for those meters. This remark

coupled with the headlines insinuating that

subdivisions are being built by big developers.

There are no big developers on the list that

would be serviced by the first 300,000 gallon

allotment.

Approximately 28 properties, a relatively

small number, could initially be affected and

issued during the next phase of distribution

expected shortly when Pookela well comes on line

to service the rest of that list.

I don't know whether the author read the same documentation I had or not. It's important to note that most of the subdivisions on the master list are family subdivisions.

Subdivisions are developed by individuals as well as corporations, but they are subdivisions just the same. The insinuation that all subdivisions are to be built by large developers appears to have been an intentional misrepresentation.

The author also stated and quoted that
the, in quotes, "Board members have never
received any copy of the list that shows how
many meters are being requested by any applicant
beyond the first 50 on the list."

I would like to state for the record, no
one has ever received any permission to speak
for me and as far as I know no one has ever been
assigned the position of spokesperson for the
board.

Any information regarding the number of

meters to be issued can be ascertained by reviewing the master list available to the public and any questions I have had have been readily answered to my satisfaction by the director.

Also misstated was the time for the rest of the properties, the wait time for the rest of the properties. The completion date for the new exploratory well currently being drilled is November 2002. That is certainly not "more long years," in quotations, as insinuated in the

article.

The board has been made aware that approximately the first hundred applicants can be immediately processed. The board has been made aware that the remainder of the list in all probability can be processed once Pookela well is completed.

The board has been made aware that revising the rule to include the number of meters per applicant is an issue that could possibly result in legal challenges that could

hold up any issuance of meters since there was never a limitation disclosure made at any time during the existence of the list. Individual grandstanding can only result in unnecessary delays for families that have waited far too long for water.

Going through the priority list subject to properties performance with the community plan is the simplest way to untangle the chaos set forth by our forefathers. It is not

necessary to wage another war over the list
distribution when additional water is so close
to production, production estimated by certified
engineers and knowledgeable consultants to
exceed amounts needed to completely fulfill the
remainder of the list.

Water wars can last for years and tie up
distribution. We're only looking at a few more
months until the Pookela well is on line for
production. This information and falsehoods
have continued to spread in an apparent campaign

against the water board and its director.

In an article dated June 27th, Maui Weekly stated the water department, in quotes, "Department is \$65 million in the red." The independent audit completed by the county does not show the water department being \$65 million in the red.

Furthermore, by county charter, the board cannot operate with a deficit. The comment is not only wrong, it is irresponsible.

That same Maui Weekly article insinuates

that the board mistrusts the director. Let me

state for the record that I, as a current board

member, do not mistrust Mr. Craddick and I do

not appreciate people using my name by

insinuation for a statement or position I do not

support. And by the way, I consider those

comments slanderous and libelous. One only can

speculate for the reasons for the disingenuous

comments.

I don't want to go into the fact of what

the personal agendas might be, but I think this

type of action needs to stop immediately. I
have discussed this -- I would like to have this
discussed in a form where because of personnel
issues we can get into an execution session if
deemed necessary in order to stop the
potentially libelous and destructive statements
being made by one uninformed person that
purposely gives the appearance of talking for
all.

With that said, I would like to propose

to the board that at this time we appoint the

Chairman, Peter Rice, as our official

spokesperson so from this point forward the

public can read comments and review articles

concerning their water that they can trust be

fair, objective, and truthful. Mahalo.

MR. STARR: Mr. Chairman?

CHAIRMAN RICE: Mr. Starr.

MR. STARR: First of all, I stand by my

comments in the Viewpoint and I will not lower

myself to defend them.

Second of all, I will testify on this matter to the county council and suggest that they hold a hearing on this matter at their appropriate committee upcountry where the public can have comment and say in the matter and they can hear what the public has to say and what the public told us at the public hearings.

I do not feel that this attempt to stifle free speech has any place in our community, our society, and our system of government. I will not be stifled in my comments and I will not

have a hearing in secret in Executive Session to determine a culpability. This is the kind of thing that is happening in other areas of government and it's wrong.

Sometime ago I received two e-mails from another board member who said that if there were any comments that were dissenting, then there would be an attempt to have police attend all of our water meetings to stifle dissent. This is not the society that I like to live in where people on a public board request to have police

at public meetings to stifle dissent. I'll be
happy to show those e-mails to anyone who
desires.

I think that what's being requested today
is a very bad precedent and even if the board
decides that only one person can speak for the
board, I will continue to speak for myself and
I'll speak louder and stronger the more there is
an attempt to stifle dissent. Thank you.

CHAIRMAN RICE: Mr. Victorino.

MR. VICTORINO: Again, I don't want to get into this long dissertation. I think that's what the proposed motion was for myself and hopefully others to get in and get some procedures done and we can move ahead on that.

I will say two things. Number one, no one in this room has asked any board member to not having their constitutional right to speak for themselves. Speaking for yourself, that is a constitutional right, I have no problem with that. However, I have always made it very clear

no matter where I was, in whatever committee or board, whatever I served on, that if my comment was my comment, it was not my comment. Not board member's comment, not the chair's comment; it was my comment. And I made sure that that person -- now, does the media always follow through on that? That's another conversation, I won't get there.

So I would propose that Ms. Parsons may have a good intent and I think the intent is something that we need to look at and that's

what this whole thing was about, but I would
like to adjourn the meeting and move on so that
we can -- you know, there is other people and
other things that we need to do and leave in
here with a feeling that we are one board and
that even though we disagree on matters and
we're not always on the same page on certain
matters, that we are here for the public's
interests and that's the only reason we're here.
And with that in mind, I ask the meeting to be
adjourned.

MR. CRADDICK: You're not over with the
agenda.

MR. VICTORINO: I apologize,
Mr. Craddick.

CHAIRMAN RICE: Mr. Starr, you know the
Chair has always allowed you the liberty of
saying your mind. And our agreement was you did
it as an individual, right? That's --

MR. STARR: And I think I respect the
Chair for that and I believe my Viewpoint made

it clear that the board had voted and the
majority of the board had voted in a way that I
as a minority was -- I disagreed with. And I
made it clear at the meeting that I was going to
do it. But I have no problem with Chair, I
think he's done an excellent job in every way
possible.

CHAIRMAN RICE: I don't know that we need
to have this discussion [inaudible] in a meeting
at this point.

Division Reports is the last item on the

agenda. Oh, that's right, we have a personnel matter, I'm sorry.

MR. VICTORINO: Move that we go into Executive Session, Mr. Chair.

CHAIRMAN NAKAMURA: There's a motion to go into Executive Session.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Second that we go into Executive Session to discuss a personnel matter.

All in favor, say aye. Opposed, say nay. The motion is carried. Members of the public, can

we clear the room while we talk on a personnel
issue.

[Executive Session held.]

CHAIRMAN RICE: Okay. We're back in
regular session.

CHAIRMAN RICE: We're on the item
Director's Report 02-26.

MR. VICTORINO: Move that --

CHAIRMAN RICE: Move that we approve the
director's request for funding.

MR. VICTORINO: I move that we grant the

director's request for funding for this

personnel matter.

MR. NAKAMURA: Second.

CHAIRMAN RICE: Moved and seconded to

grant the director's request for funding on this

personnel matter. Any comments? All in favor,

say aye. Opposed, say nay. Motion is carried.

Okay.

Last item, is there any questions on the

division reports?

MR. NAKAMURA: Mr. Chairman, one comment.

David, I notice from the report that the storage at Kahakapao seems to be going down considerably. Is that prudent, given the fact that we're entering into a dry season or are in a dry season? Is there any way of dealing with that?

MR. CRADDICK: Paul, what are the reservoir levels now?

MR. SEITZ: Kahakapao fell below 50 percent. Right now I don't have the morning

report because I came down here.

MR. NAKAMURA: In the past have we not made an attempt to keep the storage levels higher?

MR. CRADDICK: At this particular reservoir, you can't do that. There is no way to pump to the reservoir. We can stop using water out of the reservoir, we can do that, just stop it altogether. But it's extremely expensive to do that when you've got storage and you can pump it any time you want.

MR. NAKAMURA: Well, I know in the past there is issues as to how we manage storage. I think that was a big concern of the previous chair and there was some differences of opinion I know in that regard. And I'm just concerned that, you know, that perhaps not enough attention has been paid to this now that -- or if we're in a dry season.

I'm not an expert, I don't know what the answer is. But I just like to have you watch it, which I'm sure you are.

MR. CRADDICK: We're watching very
closely. Very closely.

CHAIRMAN RICE: Okay. Any other
questions? I'll accept a motion to adjourn
then.

MR. VICTORINO: So moved.

MR. HELM: Second.

CHAIRMAN RICE: Moved and seconded. All
in favor, say aye. Opposed, say nay. We're
adjourned.

(Whereupon, the meeting was adjourned at

11:55 a.m.)

IWADO COURT REPORTERS, INC.

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