

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR MEETING

Taken at the Kahului Shopping Center, Kaahumanu Avenue,
Kahului, Maui, Hawaii, commencing at 9:00 a.m. on
October 8, 2002 pursuant to Notice.

REPORTED BY: GLORIA T. BEDIAMOL, RMR/RPR/CSR #262

A P P E A R A N C E S

BOARD MEMBERS: Peter Rice, Chair
Clark Hashimoto

Mike Nobriga

Ginny Parsons

Jonathan Starr

Adolf Helm

Kent Hiranaga

Staff present: David Craddick, Director
 Herb Chang, Engineering
 Herb Kagehiro, Engineering
 Ed Kushi, Corporation Counsel
 Cathy Howard, Board Secretary

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

REGULAR MEETING

OCTOBER 8, 2002, 9:00 A.M.

CHAIRMAN RICE: Good morning, everyone. Welcome to the regular meeting of the Maui County Board of Water Supply. It's Tuesday, October 8th, 9 a.m. We're at the Kahului Shopping Center.

In attendance we have members of the Board of Water Supply, Kent Hiranaga, Clark Hashimoto, Adolf Helm, Mike Nobriga, Ginny Parsons, Jonathan Starr, and myself Peter Rice, Director David Craddick, Corp Counsel Ed Kushi, Jr., and members of the public.

First item on our agenda is the approval of the minutes from the regular meeting of August 22nd. It was distributed in your packet. Board members?

MR. NOBRIGA: Mr. Chairman, move to receive the minutes from our meeting of August 22, 2002, subject to review within 30 days and if there are no corrections, additions, or deletions, minutes should be filed.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded to receive the minutes subject to review. Any questions, comments, additions, or deletions? Hearing none, call the question. All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion carries.

At this point in the meeting we'll accept testimony from the public and in anticipation of it being a long meeting,

I might just tell you that you have an opportunity to speak on any subject that's on the agenda at this point or you can wait until that subject comes up and I'll make time available for you to speak at that time.

DIESEL: Is there time to speak about subjects not only on the agenda?

CHAIRMAN RICE: No, ma'am, there's no discussion of anything that's not on the agenda.

DIESEL: I went to the Web site and read -- it said -- there was a section in the board meeting that people could speak about something that was not on the agenda. I actually took a day off to come here.

CHAIRMAN RICE: I don't know where that would be coming from, that's never been the case. Mr. Kushi?

MR. KUSHI: Mr. Chairman, the Sunshine Law provides that the public may testify on agenda items; but if this is public testimony on the weather or whatever, it's at your discretion. I would suggest that if you and the board have no objections, you allow testimony and limit the testimony to a time frame.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I feel we should allow the

public to have complete access in their ability to testify, and if it's some item that we don't feel is connected to something on our agenda, we don't have to act on it. But I feel that in an attempt to provide absolute -- which allows the public to say their part, I think that's public service. That's our duty.

CHAIRMAN RICE: Okay. So the public knows, I don't want to set a precedent for people bringing things up. If someone writes a letter -- I always put things on the agenda. I think you will find out that if you call to request something to be on the agenda, I'm happy to put it on for discussion.

If we get into a situation where the public comes to every meeting and starts talking about things that are not on our agenda and we have a long agenda, we can get bogged down. But this time today, I'll allow that testimony, and we're going to limit testimony to three minutes at this point.

However, at this point I have -- Mr. Parker is here, you want to testify at this point?

JEFFREY PARKER: I would wait until the item comes up. I'd prefer to wait until the item comes up.

CHAIRMAN RICE: Okay. Okay, ma'am, would you come up here and state your name?

DIESEL: My name is Diesel. I live in Kula. I have

been living on Maui for ten years. And in a really experienced problem with my skin -- I'm going to try to keep this short and so I will give you the shortest version I can. I never experienced this problem before. I thought I had everything from fleas to chicken pox to who knows what allergy.

I eliminated all my skin care products. I did everything -- I put myself in a bubble and the problem did not go away. I would go to see doctors and by the time I would get there, there was nothing there; the rash was gone. I would be waking up with tortuous itching in the middle of the night; so bad it would bring tears to my eyes.

I was at a party once, I had to leave the party because I was having a conversation and I was itching so bad that tears were falling out of my eyes. I could not even converse.

So to make a long story short, after several doctor visits, I was aware that there was something being added to the Kula water. I did not know what it was, but I knew it had something to do with corrosion control. I called to obtain a materials data sheet on this product. I got a copy of it and I sat there with my mouth open, wide open, looking at the symptoms that I had been going through for the last month.

So I'm totally frustrated talking to people about getting filters. I could not get the stuff out of my water. I found out that you can't get it out with a simple filter, it will take a system that costs over \$2,000. So I just kind of, for a week more, I suffered not knowing what I was going to do. And after a week, this thing still is not going away, which is rare for me. So I finally decided no matter what I did I had to stop using the water.

So, fortunately for me, I have a reverse osmosis system. I began an archaic bathing system and put a 2 1/2 gallon bucket in the sink, I fill it up, I put it on my stove, I heat it up, I take it into the shower and I pour it on my head. I did that once -- I did that in the evening, I did that the next morning. I got up the next morning after my second bath without using county water and I just stood there, my body tingling. Feeling unbelievable. I could not believe 80 percent of the problem was gone.

My skin, at this point it was so fried on my legs that I had a little case of eczema, but it was sort of like this was what was left and it healed so fast. Within a week all of the itching was gone. Since then -- it's been five months and I have been bathing in a bucket ever since. A few times I have gone back into the water and every time the

itching returns. If you want to know how it feels, spray hair spray on your face, let it dry and try to smile.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: This is not the first time we heard this one, can we put it on the agenda for a future meeting?

CHAIRMAN RICE: Certainly. Any questions of Diesel? Diesel, you want to give us your last name?

DIESEL: My full legal name is Diesel. That's it. I don't have a last name.

CHAIRMAN RICE: Thank you. Any other questions, board members? Diesel, was this reported to the department?

DIESEL: I spoke with David Craddick, he asked me to obtain a doctor's note. He did not say I had to have scientific proof, he just said obtain a doctor's report or letter, which I gave him. And then when I called, he said, Well, now you have to file a complaint with the county. Then he looked at my note and he said, Your note is not absolute proof, there's nothing I can do.

I then called mediation services, because I was really uncomfortable and I was intimidated. At that point I wanted to speak with the board through mediation and they called him, and I don't know if you are aware of this, but --

CHAIRMAN RICE: They called --

DIESEL: Mediation services. I called them and I requested mediation and they said they contacted David Craddick and he turned down the request.

CHAIRMAN RICE: Okay. Any other questions?

Comments?

MR. HELM: I have one. Did you ever get the water tested for any contaminants or anything?

DIESEL: You can get basic testing, but it's really expensive, especially to test for this thing that's in the water that's matching my symptoms. It's really expensive to have tested. So I don't have the money. If I had the money, I would put the system and get it out of my water. Because it's working, when I bathe in the reverse osmosis water, it works. If I could get the same system in my shower, I would in a second.

CHAIRMAN RICE: Ms. Parsons?

MS. PARSONS: Do you know what your TMK is offhand? Do you own the property where you live?

DIESEL: My TMK? My boyfriend does. We're on Lower Kula Road. We're at Rice Park. Right across the road from Rice Park.

MS. PARSONS: Can you get the address and check

what's around there? Maybe something is coming in.

DIESEL: The interesting thing is, the first week that this happened before I -- when I still thought I had fleas or something, a friend at work said, You need to talk to my friend Bonnie, who just the same week had a very similar problem. We didn't talk for months, but her problem appeared at the same time and her symptoms matched and she has not been able to get them to go away. And she can't just use any skin care products.

One of the things -- I have a five-month log of my activities. One of the things I noticed is that I used a skin cleanser one day and I had a reaction and I would use it with the county water. But I had been using that product and I had not had a reaction. All of a sudden my face was back to being really tender. I did not go in with the symptoms on my face which were really unusual.

So I'm going to test this product, maybe it's the skin care product, even though it didn't have anything to do with my body because I only used it on my face. So I tested it again with my reverse osmosis water, I scrubbed and I really tried to make this stuff -- see if it was giving me a problem and it wasn't.

So I have had -- I use the good water, I use a good product and I have no problem. I use the same product in my water and I have a problem.

CHAIRMAN RICE: Okay. I'll put this on the agenda for the next meeting. Mr. Craddick, we need information ready from staff for that meeting.

MR. CRADDICK: Okay.

CHAIRMAN RICE: Thank you, Diesel.

Tony?

MR. DURSO: Good morning. Thank you, members of the Board of Water Supply. Thank you for expanding the opportunity to give public testimony. This is an issue that came up well after the time that I would have needed to get this on the agenda for today. I, too, will try to keep it short.

I do have some written testimony which I will distribute, but basically I think you folks probably all know why I'm here. We have had huge number of emergencies on our Ulupalakua system that have basically made it so that we can't use areas of our pasture. We have three water meters currently not in operation because they are too unreliable, and it looks like we're actually going to have to expand that number. So it's the same old story.

Our water system is inadequate. We're hoping to move along. It's my understanding that after the motion that Jonathan made and Clark seconded last May and was approved by this board, that it went to planning to improve the system for that step line and it seems like it stuck there. And I really would like this to get moving on that.

And one thing I did want to stress is that it's been going back and forth at the county level with the county council talking about protecting ag and preserving open space. There's a lot of concerns expressed that if you improve the water, it will pave the way for development.

Folks, the bottom line is, if you don't improve the water symptom to Ulupalakua, it will pave the way for us to go out of business, and that's actually a sure road to development than it is if you allow us the opportunity to actually ranch and to lease land to farmers. So please, with what powers the board has, if you could see your way to expedite the planning phase for that and the appropriation for the money for that, that would be much appreciated.

CHAIRMAN RICE: Please state your name for the record.

MR. DURSO: I'm sorry. For the record, Tony

Durso, from Ulupalakua Ranch. My apologies.

CHAIRMAN RICE: Tony, am I correct that you have been out of water or you were experiencing a lot of breaks?

MR. DURSO: We're experiencing a lot of breaks. The worse thing that happened is two weeks ago the line that serves our -- one of our primary distribution reservoirs stopped flowing. And that reservoir went down about 8 feet, which meant that it was no longer basically usable for servicing our pastures. We had herd in that area at that time, had to move the animals out, lost labor time, lost production, stress on the animals, you name it.

That reservoir has been unable to catch up because the flow has been so intermittent since then, and so that pasture remains pretty much out of commission. So it's not that we have gone to zero, but we have gone down below what we normally are, which is already reduced percentage of the supposed flow.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I think the board has been in agreement that we want to expedite this. Can we put this on an agenda as soon as possible and get a full report and try to move it along?

CHAIRMAN RICE: Sure.

MR. NOBRIGA: No objection. Second.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Mr. Chair, my recollection regarding this issue is if the ranch had offered to assist the department in construction of a line, if it was not to a certain size line they were not willing to cooperate, and we were having concerns about putting in the larger line because it would provide capacity for that area beyond what we thought was necessary for ranching purposes. I don't know what happened after that point.

MR. DURSO: I can answer that, if you don't mind. What was agreed to at the May meeting was the step line which, as I recall, the board said would bring it up to adequate supply for current use and that that was acceptable to the ranch, granted the ranch would have preferred the 8 inch or 10 or 12; but it was agreed to at that time to do the step line, which was, in my recollection, not universally but sort of unanimously accepted by the main parties concerned.

CHAIRMAN RICE: Okay.

MR. HIRANAGA: Does the department wish to comment?

MR. CRADDICK: We can make a report to the board.

CHAIRMAN RICE: We'll put that on the next agenda

also.

MR. CRADDICK: I can say this, last week we had two breaks and there was major portions of Kanaio without water.

MR. DURSO: Thank you very much. Again, my apologies for doing this at the last minute.

CHAIRMAN RICE: I've been hearing stories about people being without water --

MR. CRADDICK: That's right. That's correct.

CHAIRMAN RICE: Well, that would seem to indicate that we need to move quickly than slowly on this. Is that his written testimony?

Any other public testimony? Anything on the agenda or otherwise? Where is Anthony?

MR. AMARAL: My name is Anthony Amaral. I have a piece of property up at Waikoa (phonetic) Road and that I have livestock there, and my grandchildren is in the 4-H.

The waterline going up there is a private system and the very last -- on the top of the hill, and I try to join the association and they said that David Craddick, couple of years back, wrote them a letter that nobody else can join that association.

Now I have the opportunity to have a meter, I would like to see something done, like issuing me a meter, then I

have something to offer the association, and I can put up a bigger tank above my property. Right now they have -- the association have a tank that the meter water go into that tank, it's about maybe 18- to 20,000 gallons. Give or take.

On top of the hill they have another 30,000 gallons. And my other two neighbors above me, because that tank is lower, they have to pump water above their property, which is another 30,000 gallons. And I'm willing to put up another tank above my property, 40, or whatever it takes, and just have this thing resolved.

I talked earlier to Dave and Mike, I thought I was on the list. Sunday morning I came home from church, I opened my mail, without even knowing, they just took me off the list. I don't know what to do. I just came here to get help or advice. At least guide me in the right way.

There's three individual people in that area, developer below us who has three meters. He got to go put in his own system, and there's only like 11 houses over there or 12 or whatever, and I got to put in my own system and the association got to put in their own system. The road is only like maybe 8 feet wide going up through there. It's ridiculous.

So like I say, I don't know if somebody could go up there, take a look and have some common sense, just have some common sense, that's only what you need, look at the thing and maybe we could all come to an agreement.

I went through with the board about a year and a half ago, this whole trip that I'm going with now. I went to the trip, I went through one private -- not private, but another Board of Directors, I did not hear anything for a year and a half, no letters, no nothing. No nothing. Nothing. Nothing. And the last -- this past Sunday, that was the last I heard, again after a year and a half, one letter saying that I'm taken off the list for my meter.

I don't know if Dave can give the reason why. I'm pretty sure he have a reason why, or maybe I can understand better. But like I say, we need somebody that have common sense. That's all what we need. Don't have to be educated, just common sense. So that's all I have to say unless Dave want to say something.

CHAIRMAN RICE: Anthony, one second. Any questions for Mr. Amaral? Mr. Starr?

MR. STARR: Have you worked out something with the association or maybe the other people, that everyone up there would be happy -- you could come back to the board -- that

everyone could kind of together come back to the board with a suggestion?

MR. AMARAL: I can answer that. When I first moved up there, I tried to draw the association in the worst way, because I'm not a rich person. I talked to Dave in a private meeting about what to do. He wanted me to run an 8-inch line from the bottom of the road to the top. I told him he was crazy. I'm not a developer. Only me going get water out that line, I no need. One-half inch line enough for me.

Then I talked to the association, which their hands was tied. The reason why their hands was tied and that I found out after, was because Dave Craddick, about two or three years ago, I guess when the water shortage and all that trips, all that politics, say nobody else can hook up to that system. I cannot understand why nobody else can hook up to the system. He telling me that it's not done right or anything. He wrote them a letter saying that nobody else could join the system. Getting back at that.

Now, only what I'm asking is, I don't have anything to offer the association. You know what I'm saying? Where I'm coming from and where they are coming from. Now, if the water department can put a meter -- and the tank is only like 20 feet

across from my property. I feeling going over there and drilling one hole and taking water. I tried so hard to do it legal. You know what I mean? And it ain't working.

So like I said, the tank is right across my property, and I'm willing to put up another tank above there. And just that -- I guess that Dave, because he sent that letter that nobody else can join, lack of water, that's the reason why the association hands is tied; they cannot let anybody else draw in the association. I'm not speaking for the association, I cannot really say that they would even let me draw in the association even after I get a meter. I cannot speak for that.

But what I need, I need something where I can offer them and have better fire protection. Because I have that stem pipes up there, up on that road, I know for a fact that if you open that pipes, if you have a little burst of water, then it's done. How I know that, and not because I'm stealing water, is because my cousin and my brother works at the fire station at Kula and they tell me that.

So like we have right up that area right now, I think we would have maybe 90,000 gallons, give or take a hundred, of water storage in that area. And I'm willing to put up another tank, which I would have to because I would not have

any pressure, 40,000 gallon tank or what, you know. So the problem is that, like I said, because the letter that couple of years back at that time, I guess the letter was -- he had to do what he had to do, Dave. So that's only what I have to say.

CHAIRMAN RICE: Thank you, Mr. Amaral. I'm not aware of a letter being sent to people telling them they are off the list. I'm looking at a letter that Mike has here. We're sending letters to people who are -- their names are being taken off the list?

MR. CRADDICK: Yeah. Ones that can get a meter, no.

MR. HIRANAGA: I could not hear the answer.

MR. CRADDICK: People that can get a meter now are off the list, and we didn't want them to say that nobody told them so we sent a letter out to them.

CHAIRMAN RICE: Mr. Amaral, I think you need to talk with Mr. Craddick after the meeting. And if we don't get it resolved, we'll put it on the agenda also.

MR. AMARAL: Thank you.

CHAIRMAN RICE: Sir, you wanted to make some testimony?

MR. SPENCER: Mark Spencer of Spencer Homes. I

believe one of the agenda items is the evaluation of the department and the director. I come here cautiously as a developer and a contractor, we deal with the water department on a daily basis, and I'm thinking, I hope I don't become the sacrificial lamb.

Our concern is basically with the engineering department of the water department. The other segments of the department seem to work fine. In 27 years we never had a problem building or with a meter installation. But the engineering division is tough. We deal with every department at the county regarding building and the engineering division is the worst one.

I bulleted three points, one is, can the ordinance require for a 45-day review policy? And what it states is construction plans should be reviewed within 45 days. I believe not only was that their ordinance, that's what they wanted -- that was good for the county. Well, this never happens with the water department.

Our last phase, it was about a week shy of seven months before we got a response. And that was after phone calls, faxes, letters to David Craddick, to Larry Winters, who had this project on his desk. I personally met with Larry in his office one day and used the term, "I'm coming with kneepads

and begging you, when will you looking at this?"

This was three months after it was submitted and his comment was, "I don't know. I really can't tell you."

I said, "Can you at least give me a ballpark time?"

And he said, "No, because if I tell you that, then you'll hold me to that later." I walked out of that office completely confused on where to turn.

My father, Jessie, who is the president and owner, was really pushing for us to hit him up on this 45-day approval. The comments we get back from our engineers, who, again, are in a tough situation because they had to deal with the water department on numerous projects, they say, Well, it's not exactly that easy, because even though they may sign off and say it's approved, it's really not approved.

Because you still have to get inspections, then you start putting the project in and they come in and make revisions and you have to change it. So it's actually -- that interpretation of it is not correct to me. That's not an approval.

The second one was enforcing standards that are not yet adopted. There's another subdivision that my brother Doug owns. That's not us. We're the contractor on the job.

There's a situation where Craddick's office, with Larry Winters, started requiring some new codes. A new type of office -- having in the county right away, having concrete around them. When I -- this was not a code issue, but still this is what you need to do.

The project developer, my brother Doug and Martin Luna sent a letter to the board, and I don't know if this is procedure, but apparently that went through Craddick's office, Craddick contacted my brother and offered a compromise. And in that compromise he stated, "The reason why you don't want to go through appeals is because it's costly, it will cost you time, it will be better on your behalf if you accept this." Again, I'm coming here a little bit nervous that I'm bringing these things up.

The last issue is more of an overall issue. And I'm the one who, for our company, deals with the water department a lot. And I guess I want to speak candidly to you guys.

There's a problem in that engineering division; you feel it when you go in there.

I know they have been looking for engineers, I know they have a young engineer that was hired, that quit shortly thereafter. I'm sure he decided this is not a good place to work. The engineer that I had the most success with, that I

could get return phone calls from, she left that department, Diane Ariyoshi.

We understand it's the water department's obligation to enforce the rules. All we're asking is that we have that same right to be able to follow those rules and to rely upon them in what we do. And that doesn't seem to be the case right now. And I'll leave the conclusion to you guys, whether it's ineptness, whether it's coming from the top down, or whether it's the fact that David doesn't know what's going on in there, but something is happening there that is not right.

Again, I would ask that you poll even people that have left that department that are no longer working there, poll other developers on the side. Everyone is afraid to bring this to you guys because we still have to go in there for another subdivision. We're out there trying to create affordable housing, our prices had to go up lately for some other reason, but we're working on another project that we hope to be extremely affordable.

And we talked to the mayor's office and he asked, "What keeps you from doing it?" This is one of the issues. When you look at the amount of money that's put up, that we have to hold on to, it goes into hundreds of thousands of

dollars when it gets held up by this. I thank you guys.

CHAIRMAN RICE: Questions? Mr. Starr?

MR. STARR: I would thank you for coming to us. We appreciate it. I would like to ask you to compare the service that you get from the Maui Department of Water Supply with the similar service that you would get in other places. Simply doing business in a number of different municipalities.

MR. SPENCER: We only operate here. I do know that the quote I told many people is -- you know LUCA, the Department of Public Works -- you know, there's always issues you have with certain people, and as a developer we're not asking to rubber stamp everything, but at least there's a feeling it's cooperative, there's not a certain power feeling that comes down. Wastewater is real good to work with. Planning, it's tough at times, but there still is not this.

Again, I want to reemphasize something. I don't believe this is throughout the entire department. I've had dealings with George Tengan -- in fact, when I commented to him once outside of work that our plans have been there for so long, that's when we -- actually, I got a call back within a couple of weeks. And I don't think they actually realize how long some of their guys have been sitting on these projects.

CHAIRMAN RICE: Questions for Jessie?

MR. SPENCER: I'm Mark.

CHAIRMAN RICE: Mark. I was reading the letter.

Sorry, Mark. Thank you, Mark.

MR. SPENCER: Thank you.

CHAIRMAN RICE: You want to say anything,
Mr. Craddick?

MR. CRADDICK: No, he is somewhat right.

CHAIRMAN RICE: Any other public testimony? Seeing
and hearing none, we're going to close the section of the
meeting for public testimony and move on to Director's Report
02-42. Kaunakakai.

MR. CRADDICK: This is a project that's ongoing
right now at public works and we have gotten a very good price
to upgrade the line to something that would be better for the
area. Upgrading it to a 12 inch for \$22,000. So we're asking
for funding to do that.

MR. HELM: Mr. Chair, I move to accept Director's
Report 02-42 for funding for the increase in the water main for
Kaunakakai.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded to approve
director's request for funding. Any discussion? Comments?

Questions? Call the question, all in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried.

We're going to move into Old Business.

Communications 02-26. Mr. Wagner, front and center. I read the minutes from the last meeting, I thought we were going to get a report on some issues that were raised by Mr. Hiranaga; is that right? Go ahead, Mr. Wagner.

NICK WAGNER: I think there was supposed to be a report, a written decision by corporate counsel. As you remember, my whole issues -- we have a private roadway lot, the rules and regulations say that the meter would be put on the county road, and that's all I'm asking for.

Mr. Craddick wants me to run a 6-inch line to my property and it's contrary to the rules and regulations, but he feels that it is a public road. Therefore, the board asked corporate counsel for their definition.

CHAIRMAN RICE: The motion at the meeting on the 22nd of August -- members of the board, motion was to defer until the next meeting, providing all the necessary information, such as any prior agreements, any documentation

that had been done for this subdivision be provided to the board prior to the meeting so that we may understand and be able to take some definite action. Seconded. And it was approved.

And you, Kent, weren't you raising questions about the subdivision? No? You don't remember?

MR. CRADDICK: I think just how did it get approved.

CHAIRMAN RICE: There were multiple users on one meter; is that right?

MR. HIRANAGA: Yeah, I guess how the subdivision was created and how various lots were being allowed to be serviced by sharing of the meters. That's my recollection.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chairman, I recall, I believe this was an issue where there was a roadway lot that was -- we were concerned with the definition of whether it's a private or public road.

CHAIRMAN RICE: Right.

MR. STARR: My own feeling on this is we should find a way to allow the applicant to proceed. I think to run a thousand feet of line to basically allow compliance with something that's more a technicality than anything else, I

think that's why the board is here, to enable people to utilize the system. I would request from the chair what would be the proper action to allow Mr. Wagner to move forward with his request? What would the motion be? What should we do?

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: Let me offer a suggestion. What I would say is if he agrees that if he further condominiumized or subdivides later on and this line gets put in, that's just -- service, individual service for his empty lot. And if you don't mind, you are now going to be based with all the others in similar situations, of which there are quite a few.

Making the problem for the staff of not being able to associate the meter with the lot when they go out and read them. If you feel that's all right to make that problem for the staff, then go ahead.

MR. STARR: Mr. Chair, I don't think convenience for staff should be a compelling issue when we talk about forcing numerous members of the public to spend hundreds of thousands of dollars.

CHAIRMAN RICE: Let me make sure everybody understands the issue. Mr. Wagner, help me if I'm wrong. The issue is that you want the meter to be located on the -- at the adjacent -- at the point where the property line is closest to

the public walk. You are willing to put in a line from your property down to that meter; is that correct?

What I think -- the initial suggestion by Mr. Craddick was that if we were to allow that subject to that property not being subdivided, that meter may not be used for you to subdivide that property. That may be one suggestion. The issue came up because Mr. Craddick wanted you to put the line into your property and place the water meter on your property; right? Is that correct?

MR. WAGNER: He wanted me to put the line on my property, yes.

CHAIRMAN RICE: But in this case, you are still going to have to bring a line down to the meter; right? You are just not going to put in the size of line that Mr. Craddick would have required of you?

MR. WAGNER: If I'm required -- in order to put my second farm dwelling to have that meter, I'm willing to do that. You know what I'm saying? We kind of opened up a can of worms here the last time, I don't know if I want to go there.

CHAIRMAN RICE: Yes, Kent. You are reading the minutes; aren't you? I wish the board members would read the minutes from the last meeting --

MR. HIRANAGA: I think the issue was definition of a private road versus a public road. I think the department took the position that because many people use the road, it's considered public. And I did not particularly agree with that position.

I think there needs to be proof that that's a public road, not assume it's a public road just because there's uncontrolled use of it. I think that was the basis of the initial issue of it. If it is a private road, then he can put his meter on the closest public road. Don't assume that because many people use the road, that it's public.

But then we entered into another issue, being sharing of meters in that subdivision. I think there were two issues we were looking at, if my recollection is correct. So we were hoping to get a definition of what is a private road and what is a public road.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I think it's really a third issue; I know this is getting more complex. But if this is the recurring theme, that in the past we had allowed people to locate a meter on their property in a place most convenient to them, which is generally where the system was adequate, and there was a change in policy by the department, I'm not exactly

sure when that was, but that change in policy was that the meter had to be located at the place --

MR. CRADDICK: On their property.

MR. STARR: Yeah. It had to be on their property and -- it had to be on that property. It couldn't be on another property they had access to. Is that the statement?

MR. CRADDICK: That's right.

MR. STARR: I think that's what is coming into play here. I, for one, feel people should be able to locate the meter where it's the least expensive and convenient to them as long as they have a legal right to place it there. It may not be as convenient to the department, but it can save the applicants a lot of humbug.

I'm not sure how that ties into what we're doing right now. It seems to be getting a step more complicated if what I just heard is what I think it is.

CHAIRMAN RICE: Mr. Kushi, as I'm reading the minutes from the last meeting, I need you to reaffirm this, that under our current rules, a meter could be located off-site.

MR. KUSHI: Mr. Chairman, your current rules, and I believe it's Rule 3-5G as in George, entitled "Location of

Service Lateral or Main." My reading of that rule, and the board has struggled with this for quite a while, is that -- the general scenario is that the meters to be located on -- a public meter is to be located on property fronting the subject parcel.

And in the past, I believe the board has granted meters to the point of adequacy, and then the private owner that lives a mile down -- and distributes his line down.

However, I believe the board's policy has been now, that the board and the department is to have the meter located fronting the property -- you cannot put a meter on a private line. You understand? So the line that comes down fronting the property should be our line, the department's line.

However, the rule does provide that -- it just says the meter shall be installed along the property boundary or where reasonably feasible. I believe we struggled with that interpretation.

CHAIRMAN RICE: Yes, Ginny. Thank you, Mr. Kushi.

MR. KUSHI: In addition, I owe you an opinion on the private road. There was a recent Hawaii Supreme Court case revisiting the issue of a private road. It's entitled Winbow versus Dowman (phonetic), which arises from the City and County of Honolulu. It was just issued in June of this year. So I'm

looking at that, but my initial reading is that it doesn't change the law, in essence, of a private or public road.

That being the case, I owe you a written opinion. But I would say right now, in this case, this is a private road opened to the public. The council -- the county has never accepted ownership of this road. In fact, the whole subdivision didn't go through the subdivision process. It was a result of a court partition case back in the '70s or early '80s.

CHAIRMAN RICE: Okay.

MR. KUSHI: That complicates the situation further.

CHAIRMAN RICE: That being said, the issue would revert to your interpretation of a location of a meter where it was convenient -- or what was the language you used there?

MR. KUSHI: The meter shall be installed along the property boundary or where reasonably feasible unless the department, because of operating necessity, installs the meter elsewhere. So I believe it's the board's jurisdiction to install the meter -- to allow installation of a meter anyplace else but the property boundary. The general rule is along the property boundary.

CHAIRMAN RICE: Ginny?

MS. PARSONS: He was answering the question.

Generally along the property boundary, in such cases as where we might have to put it otherwise. Are we in agreement that's where we would like to have them, on the property boundary?

MR. HIRANAGA: I can't hear you.

MS. PARSONS: Are we in agreement that that's where we would like to have them?

MR. STARR: My belief is that's what is preferable, but I hate to make someone expend an unusual amount of money for our convenience. What I would like to request -- I'm confused now what Mr. Wagner wants at this point. Could he clarify as of right now what he is asking us to do? Because it sounded to me like that changed. Could he get the mic?

MR. WAGNER: I want the Department of Water to sign off on my building permit application for my second farm dwelling. How we do that -- and with the least expense to me as far as running a 6-inch line on my property, and knowing that there is in the rules and regulations this point where I can have it on the public roadway. That's it in a nutshell. From there, it's digressed quite a bit. I can go into that.

CHAIRMAN RICE: I don't think what Mr. Kushi read says that the meter can be on the public roadway. I think it's an opportunity for the board to authorize that. But it's not

that clear.

MR. WAGNER: Right. It would be on the private roadway lot next to Kauhikoa Road. So it's not on the public roadway. It's on the private roadway lot, at Kauhikoa.

CHAIRMAN RICE: Do you understand?

MR. STARR: To clarify my understanding, the applicant is requesting that a meter be installed on the private roadway lot adjacent to Kauhikoa Road?

MR. WAGNER: No, I'm not requesting that. The department is requesting that I have my own meter now. That's the request, for my own meter. They are saying I need to install that.

MR. STARR: Right now you share a meter; is that correct?

MR. WAGNER: Here we go, yes. That was brought up at the last meeting, remember? And then -- so this meeting I don't want to say much.

MR. HIRANAGA: Peter?

CHAIRMAN RICE: Yes, Kent.

MR. HIRANAGA: If you were granted a separate water meter, you would no longer be connected to the meter that you are sharing water with, and would that allow him to get his

second dwelling, David, if he has his own meter and giving up sharing of the other meter?

MR. CRADDICK: Assuming he was within the fixed meter, yes.

MR. HIRANAGA: So the meter, the proposed meter location would be on a public road?

MR. CRADDICK: That's, I think, what he is wanting, in the alternative to us just signing on the building permit.

MR. HIRANAGA: Is that Kauhikoa Road?

MR. WAGNER: No, it would be off Kauhikoa. On the private roadway.

MR. HIRANAGA: It doesn't have a name?

MR. WAGNER: It's called -- Kane Road is the private roadway lot. It borders Kauhikoa Road.

MR. HIRANAGA: I have a concern. If we're going to allow off-site meters, I would prefer to have it on the public road. Because are you going to be making the meter readers go down private roadways looking for meters? I don't know how much further you would have to extend your private line.

There has to be some logic and consistency for operation of this -- if the road is deemed private, and then put the meter on the closest public road, not what's most convenient to the user.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: The board can hear me and maybe to clarify the issue from now and in the future. There is an issue about public versus private roadways. However, I believe from the board's standpoint, it's the placement of the meter which connects the main line.

If it's a public main line, which is the department's responsibility, we can have main lines in private roads as long as we have the proper easements. What we don't want and can't do is put meters on private lines. So whether it's a public or private road, that is not the issue. It's the ownership and access to the main line.

CHAIRMAN RICE: If we put the meter on the public road, he then has to -- if we approve it, he has to then extend that to his property?

MR. KUSHI: It goes against the board's -- the department's general rule. If you need to review that. You made exceptions in the past.

CHAIRMAN RICE: That's what I hate.

MS. PARSONS: If he obtains an easement for where he would like to have the meter situated, would that suffice? The argument of not wanting to go around checking meters doesn't --

CHAIRMAN RICE: But then I think what happens is, he gets the easement and we require him to put in a line from the public road to his property and according to our standards, which might be expensive. And I think what Mr. Wagner wants to do is put the meter on the public road and put a less than department standard line to his property. That's where we -- I think why we're at this point. Mr. Starr?

MR. STARR: I don't think we're at that point yet. I think that there's several questions here. The first question here is, what I understand Mr. Wagner is requesting today is the ability to build another dwelling unit without getting a new meter at all. And that's something for which I'm not particularly in favor.

The question is, what do we do to deal with that issue? Does that require action on our part? And then if we deny that, then the issue will come up about if he's able to get a meter, where it would be located. To my understanding, he is -- right now he is not asking for a new meter; he is asking for the ability to construct another dwelling without having any meter at all.

CHAIRMAN RICE: Is that true, Mr. Wagner? Let's cut through all the bullshit here.

MR. WAGNER: I want a permit for my second farm

dwelling. Mr. Craddick says okay, you have to install a meter and we want it on your property. And that's what started this. The rules and regulations say it doesn't go on a private roadway lot. So I came in here requesting that the water meter be put next to Kauhikoa Road.

And I'm assuming all the time that I did need this meter, I didn't question that. I didn't question the fact that he wanted me to now put in my own meter. I was just questioning where to put that. After finding this new rules and regulations -- that's what brought us here. And that was my first request and maybe I should just stick with that one.

CHAIRMAN RICE: Mr. Craddick -- or Kent.

MR. HIRANAGA: I was going to make a motion.

CHAIRMAN RICE: Let Mr. Craddick speak first then.

MR. CRADDICK: What Ed Kushi said, this was a court ordered partition. The subdivision has never met the subdivision requirements. They never met them. That includes fire flow as well as service.

Now, we can't offer the 50 percent reimbursement because now in his situation he is not doing a subdivision. And we have also allowed meters off of Kokomo Road for the properties that are adjacent to Kokomo Road. We allowed them

to get a meter. There may even be one or two in the back that have a meter on Kokomo Road that have run through. So there's a lot of things we have done wrong.

In this particular situation, are we going to continue to do wrong and create more Palmer and Crouse situations out there, or are we going to finally put our foot down and correct the situation? And I'll grant you that the expense is rather high for him.

So the issue should be, how do you reduce the expense for him but do it right, not put the meter out somewhere in Timbuktu half a mile away where there's no fire protection for the house or anything like that. I mean, that's totally waiving your responsibility. And it makes a real problem for the staff and it's not just to read the meter.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: I would like to make a motion to deny this request for a waiver in order to obtain a building permit.

MR. NOBRIGA: Second.

CHAIRMAN RICE: It's been moved and seconded to deny the request for a waiver in order to obtain a building permit. Discussion? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion carries. Okay.

CHAIRMAN RICE: Mr. Wagner?

MR. WAGNER: Deny the waiver of what?

CHAIRMAN RICE: You are asking for a waiver so you can get a building permit. You are asking us to waive the requirements.

MR. HIRANAGA: Fixture.

MR. WAGNER: No, I never wanted a waiver. Actually, I want the department to follow the rules and regulations, stating that the meter not be put -- that a 6-inch line be put in a private roadway lot.

MR. HIRANAGA: That's step 2. Your request was to get a building permit without having to install it.

CHAIRMAN RICE: That's what you said.

MR. HIRANAGA: That's been denied. Now there's step 2.

MR. WAGNER: Step 1, waiver of having to have my own meter.

MR. HIRANAGA: Meter to get a building permit without having to get a meter. That's denied.

MR. WAGNER: That's cool. Step 2.

MS. PARSONS: It's placement where you would like the meter. Where specifically, Mr. Wagner, would you like the meter to be? You just tell me, on your lot?

MR. WAGNER: At the intersection.

MS. PARSONS: Which intersection?

MR. WAGNER: Kauhikoa and Kane Road.

CHAIRMAN RICE: But you are not objecting to that?

MR. CRADDICK: Yes, he is.

MR. WAGNER: Yes.

CHAIRMAN RICE: I thought you didn't want it in some Timbuktu.

MR. CRADDICK: That's Timbuktu. That's a half mile away from the property.

MS. PARSONS: How are these other lots being serviced?

MR. CRADDICK: The ones adjacent to Kokomo Road are served off of Kokomo Road. A lot of them are being serviced off the two meters the subdivision has. They are already --

MS. PARSONS: I think to keep from having Palmer and Crouse issues coming up again, getting his own meter and putting it in, if this makes sense for it to be here, we're eliminating the Palmer and Crouse issues. So he has a meter, he's working --

MR. CRADDICK: You are creating more --

MS. PARSONS: Why?

MR. CRADDICK: Because what does he have to do to get his easement? Does he have to --

MS. PARSONS: He has to get an easement, that's his problem.

MR. CRADDICK: That's what should have happened in the Crouse and Palmer issues.

MS. PARSONS: Let's not deal with that.

MR. CRADDICK: I know you don't want to deal with that, that's the real problem. One at a time.

MS. PARSONS: If Nick brings the easement in without giving water away, he knows he can't do that because that's illegal. There's no reason why we can't provide for him. That's the way it should be, instead of making it more difficult.

MR. STARR: Make a motion.

MS. PARSONS: I make a motion that Mr. Wagner provide us with an easement for placement of the water meter, with no strings attached, nothing illegal attached to it, it's a clean easement and that the Department of Water, supply Mr. Wagner with a meter.

MR. STARR: At the point adjacent to Kauhikoa.

MS. PARSONS: Right.

MR. STARR: And I second that.

CHAIRMAN RICE: Discussion? Yes, Clark.

MR. HASHIMOTO: What happened to all this -- I guess, is there a waiver for fire protection? What about fire protection?

MR. CRADDICK: There won't be any fire protection whatsoever.

MS. PARSONS: By the time the fire department gets here, if he does not have sprinklers, he is dead meat anyway. Let's be honest, where we are --

MR. STARR: I suggest we have a hold harmless indemnification, hold harmless clause.

MR. CRADDICK: Plus insurance. What's the plus? Hold harmless plus?

MS. PARSONS: Hold harmless clause. Provide him with a hold harmless clause that we used in the past, that we're not responsible if your house burns down.

MR. CRADDICK: The hold harmless clause is to make it so he covers the adjacent houses when they burn down, and corp counsel has previously told you that hold harmless is a road map to the Board of Water Supply when you make them sign

that if there's no -- which is insurance, which is where we were with Dante's.

MR. STARR: I said indemnification also. I would like to offer that as an amendment, that hold harmless clause plus indemnification, and to the satisfaction of corp counsel, be included in this.

CHAIRMAN RICE: Is there a second to that amendment? Who made the motion?

MS. PARSONS: I made the motion.

CHAIRMAN RICE: The original motion.

MS. PARSONS: Second.

CHAIRMAN RICE: We need to repeat the motion.

MS. PARSONS: I made the motion that if Mr. Wagner will bring us an easement that is clean, with no strings attached, no selling of water, that where he wants this meter placed, that the department will bring -- David's biggest concern was the easement situation in the Palmer and Crouse -- that there is no water selling or anything else. And he tells us that he has got the easement and for us to bring the meter in and place the meter in for his use.

In addition to that, Mr. Starr asked that we have a hold harmless indemnification clause with insurance. You want

to make that insurance a million dollars?

MR. STARR: I would like to ask counsel if there's a standard of what it is.

MR. KUSHI: I'm sorry, I was talking to the director; I did not follow your discussion.

MS. PARSONS: For an insurance policy, is there a standard we have been using in the past? The amount for indemnification, is it a million?

MR. CRADDICK: This will be the first time we do something like this to require insurance.

CHAIRMAN RICE: You understand the motion, Kent?

MR. HIRANAGA: Are you specifically saying at the corner of Kane and Kauhikoa?

MS. PARSONS: Yes.

MR. STARR: We're waiting for the second.

CHAIRMAN RICE: Ginny seconded it. Mr. Kushi?

MR. KUSHI: I would like to make a point when you discuss the motion.

CHAIRMAN RICE: We're in discussion.

MR. KUSHI: You need the second.

CHAIRMAN RICE: Ginny seconded.

MR. KUSHI: You vote on the amendment.

CHAIRMAN RICE: We're in discussion.

MR. KUSHI: Mr. Chair, just for the board's clarification and the department's clarification, what you are doing is you're allowing a meter -- and I'm assuming that this property is in the Kula priority list situation. So I believe this is subdivided lots. He needs to apply for a meter. You are not just granting a meter; he needs to apply for the meter within 60 days of last week.

Then as far as improvements are concerned, you are deviating from the rule. Because of the circumstances, you are allowing a meter to be placed off premises with a private line, private line coming down to this property with the necessary easements through that -- I want to make sure that the department understands that.

MR. CRADDICK: We understand.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Clarification on the rule. Was it on the property line or reasonably feasible?

MR. KUSHI: The rule just said all meters shall be installed along the property boundary or wherever feasible. In this case, you are making an exception to the property boundary. And from where the meter is installed to his property boundary, that's a private line. You have no

responsibility to get in there.

MR. HIRANAGA: I don't think it's contrary to the rule, where we believe it's reasonably feasible. Also -- we're in discussion?

CHAIRMAN RICE: Yeah.

MR. HIRANAGA: How is the easement within the private roadway lot or outside of the private roadway lot? He is going to obtain easements from lots 120, 119, and 118? Or 108 and 109? Is the line going to be outside of the private roadway?

CHAIRMAN RICE: He is going to have to obtain whatever easements are necessary, as I understand the motion, to get the water from the meter to his property.

MR. HIRANAGA: I would assume it would be difficult to get an easement on a private roadway, because you have to determine who the owners are first.

CHAIRMAN RICE: Well, that's the -- the onus is on the applicant at this point. The way the motion reads at this point.

MR. HIRANAGA: I guess, do we need to amend the motion saying we're not granting him a meter, but we're allowing him if he qualifies for a meter?

MR. KUSHI: Mr. Chair, I would state the

understanding is, if he complies with the rules as just amended, the department will issue a meter. And the board has stated its intentions to allow a meter to be placed not on the boundary. If he does not apply for a meter, then he goes on a priority list.

CHAIRMAN RICE: That's an important clarification. We're not giving Mr. Wagner a meter. The only thing we're doing is allowing -- if he qualifies for a meter, we're allowing it to be on that road subject to the easements and the hold harmless and the insurance provisions of the amended motion. Does everyone understand that? Mr. Starr, you want to make an amendment?

MR. STARR: I just want to mention that this is the way the department had been operating for many, many years until recently. It was recently where the clause -- where we had been demanding that the meter be on site.

CHAIRMAN RICE: In regards to that point, I think we have a policy and procedures committee, and I made that note, so hopefully they made the same note and they will add that to their investigation before the report. I think, again, I want to stress, it's important to acknowledge that we're not giving Mr. Wagner a meter.

MR. STARR: He is to be treated as anyone else with the exception that --

CHAIRMAN RICE: The location.

MR. STARR: -- the physical location.

MR. KUSHI: And for the department's clarification, this is on a case-by-case basis.

CHAIRMAN RICE: That's correct.

MR. NOBRIGA: Discussion.

CHAIRMAN RICE: Discussion, Kent still.

MR. HIRANAGA: Just a personal opinion. I think when we have had these subdivisions created in the past, that were substandard as far as infrastructure, I don't believe, in
4 my opinion, that we should be forcing private individuals who are owners of these subdivisions to bring the system up to standard.

I think we should identify these subdivisions and schedule them, whether it's within the next five years or the next ten years or the next two years. The department should be working to bring these up to standard and not make the individuals. Because he wants a meter, you have to put in an 8-inch line. I don't think that's appropriate. Whether it takes us ten years, we should be scheduling these things for upgrade.

CHAIRMAN RICE: The chair would like to make a comment. I need a clarification there, because in the event that the subdivision opted to put in a private water system and we're approved and they want public water, they want water from us. They, at their expense, have to upgrade the system. In the event that it's a subdivision that has public water, I would agree with it. You want to say something, Mr. Nobriga?

MR. NOBRIGA: I am still going to remain with my original vote on the topic. What I see here is a situation where a large piece of property was expanded and 11, 12 more lots was put into place by either the courts or whatever, or the people already living there, which is fine, but we're not helping our situation by trying to move again for waivers.

The situation could come up and face us again anywhere on the island where we have a big piece of property, somebody putting in a T and open up all these lots. Are we really sure we are doing what we want to do? That's all.

CHAIRMAN RICE: I don't think that -- the sharing of meters, which Mr. Wagner is sorry that he brought up, is not allowed, I don't believe. And I don't think anyone allowed it. It's something they did. That may result in a different action by this board. That's not the request that's before us,

I don't think.

MR. KUSHI: Last comment, Mr. Chair, just to address the board members of the previous concerns. And it is alarming if you didn't know the history. There might be a few of these things out there, these partition subdivisions.

But when this happened it was like 20, 30 years ago that the court system on partition cases just said that if the court decree is the subdivision decree, they bypassed county rules and regulations. About 15 -- or 10 or 15 years ago, maybe longer, they amended the HRS to say that even with the partition case you still have to go to the county. So these are kind of old prehistoric partition cases. So hopefully this does not come up before you again.

CHAIRMAN RICE: Yes, Clark.

MR. HASHIMOTO: If we grant this application of water meter, we're also saying that we're waiving fire protection requirements?

CHAIRMAN RICE: We're not granting a water meter. All we're doing is we're voting to allow the meter once he qualifies for a meter to be put in a certain location. That's all we're voting on.

MR. HASHIMOTO: Okay.

CHAIRMAN RICE: I want it to be clear.

MR. HASHIMOTO: On the director's report, there's a denial of fire protection waiver.

CHAIRMAN RICE: We're not voting on that, that's not the motion.

MR. CRADDICK: No, you are. Because if you are saying you'll take a hold harmless, that's waiving the fire requirements. So you are doing that.

CHAIRMAN RICE: We have a motion on the floor.

MR. HIRANAGA: My feeling is, if the individual wants to take the risk of having inadequate fire protection, that's his personal decision. As long as the county is protected from any type of liability. They choose to live out in an ag area that's not being serviced by urban services, that's his decision.

CHAIRMAN RICE: Are you finished with it?

MR. NOBRIGA: Yes.

CHAIRMAN RICE: We're going to vote on the amendment first, which is the requirements for the hold harmless and the insurance as recommended by Mr. Starr. All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried.

Now the motion. All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

Okay, we need a roll call.

Mr. Starr?

MR. STARR: Aye.

CHAIRMAN RICE: Ginny?

MS. PARSONS: Aye.

CHAIRMAN RICE: Mike?

MR. NOBRIGA: No.

CHAIRMAN RICE: Adolf?

MR. HELM: Aye.

CHAIRMAN RICE: Clark?

MR. HASHIMOTO: No.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Aye.

CHAIRMAN RICE: Chair votes aye. Motion carries.

That's it.

MR. WAGNER: As far as the fire protection, it's the second structure on the property; fire protection isn't required until the third structure. I have a letter dated here May 17th from the water supply saying that the water system --

to provide adequate fire protection, I'm exempt from that.

MR. NOBRIGA: May we have a little recess?

CHAIRMAN RICE: We'll take a one-minute recess.

(A recess was taken.)

CHAIRMAN RICE: We're back in order. We're on Old Business B, decision, acceptance, rejection of Final Supplemental Environmental Impact Statement for the East Maui Water Development Plan. We have testimony from Jeffrey Parker. Mr. Parker?

MR. STARR: Could he get the microphone?

MR. PARKER: Good morning. Is this a three-minute testimony?

CHAIRMAN RICE: Yes, please.

MR. PARKER: I'm representing my company Tropical Orchid Farm, Incorporated. Two years ago several of us went to the meeting in Pukalani where the BWS hired Mink & Yuen to do the SEIS. We felt that Mink & Yuen would be incapable of doing an objective EIS.

We also suggested hiring additional hydrologists so there would be a diversity of views in the SEIS. The board declined our suggestion and now the results are in and we were correct. This is a fatally flawed document that will not be

able to withstand judicial review. In my 20 years of involvement with EIS cases, this is the worst EIS I have ever seen.

Could I ask for a show of hands from the board members as to which of you have read all of the comment letters?

CHAIRMAN RICE: Mr. Parker, you are here to testify.

MR. PARKER: I guess the record will show that no one read the comment letters. Because if you did read them, you would know this SEIS is doomed once it gets into court. We don't have time to get into all of the many fatal flaws but a few of the real problems.

As part of the original lawsuit, there was a court order issued, which all the parties agreed on, which spelled out a testing protocol. It stipulated the test bore size. And through this court order, a monitoring well was to be drilled as part of the SEIS, which is not a production sized well and which does not have production sized pumps. And BWS did a production well. I don't think a judge in court will feel very good about that.

Also, it was agreed upon a test protocol, and that William Myers, from the USGS, would design that protocol, and everyone agreed on it. This is the letter from William Myers

that was put in about the SEIS.

Just to quote shortly from it, It would appear from the information presented on page 42 of the SEIS that the protocol followed while drilling the monitor well was not that which was recommended. The video information is not remotely the same thing as a log of morning water level in the well as it was being drilled. Which is one of his key points.

In conclusion, I believe that the information presented in the SEIS falls considerably short, providing the information needed to resolve the issue with regard to groundwater occurrence in the Haiku area.

So these are things that the board agreed with, with the plaintiffs on and which were not done. And so it's possible that the other issues may not even be reviewed. The SEIS may be thrown out on those two matters alone.

Another major issue for me is the pipeline size. We now learn that the pipeline can carry up to 30 MGD; yet the project described in the SEIS develops only 10 MGD. This amounts to segmenting; in other words, splitting the project up in order to avoid studying the entire project. The EIS rules are very clear about this. A project must be studied in its entirety.

We're concerned that you'll simply add on more and more wells to fill up the 30 MGD, and that has not been studied in this EIS. That's a fatal flaw that will get this thrown right out of court.

I requested to be a consulting party in this EIS process and I'm sure you are aware that no one has consulted with me or with any of the other parties who are critical of this project.

Another real critical flaw in this document is the absence of specifics, such as tax key numbers for where these wells are going to be located or where this pipeline is going to run. And this is a clear violation of EIS rules. You have to have all the information so that you can make an informed decision.

Other alternatives. In my comment letter, I said in Section 12-14, alternatives to the proposed action, possible sources of water are Waihe'e, Spreckels -- and North Waihe'e ditch. The one constraint given was that the Wailuku Agribusiness depends on that water for irrigation. Now we know the entire water system is for sale. That EIS is not up-to-date on that matter.

It's clear that there are so many faulty issues with this document that a court case would likely go on for years.

And those of us that are critical of the project are prepared to go on to the State Supreme Court, of course. And so I'm just wondering if perhaps a more serious look could be taken at some of these other alternatives that are available now.

I guess I just don't understand when Mr. Craddick says this document is bulletproof, is he talking about rubber bullets? I would strongly recommend that you not accept this SEIS in its present condition. Thank you.

CHAIRMAN RICE: Thank you. Any questions for Mr. Parker? Ms. Parsons?

MS. PARSONS: Thank you, Mr. Parker, for your information and for your submission to the SEIS, could you state for the record your educational background and your employment history, please?

MR. PARKER: Well, yes. I never finished college. I've been in a very innovative field of agriculture for 25 years. I'm one of the top companies in the United States in the niche that I'm in, which is rare and endangered orchid species. I guess you would say I'm self-educated in that regard.

CHAIRMAN RICE: Thank you. Any other questions for Mr. Parker? Mr. Starr?

MR. STARR: Mr. Parker, I know you've been involved with this since, I believe, the first EIS. What would you say the likelihood is that this will indeed be challenged?

MR. PARKER: Well, that is fully underway at this time; fortunately a lot of good people have come forward to support that challenge financially and otherwise.

MR. STARR: How do you rate the response to the comments made by Attorney Hall, which I believe -- who I believe represents the folks who are currently challenging this EIS?

MR. PARKER: How would I rate his comments?

MR. STARR: No. The comments made -- well, yeah, give me your comments on his comments and on our responses to them.

MR. PARKER: I think the entire community and this board is very fortunate to have Mr. Hall, because he actually does that enormous amount of legwork to come up with those issues. The replies to his comments or let's say the reply to my own comments, even, there really -- they are very trite and short replies that really say nothing.

And also I kind of offended that Mr. Craddick -- actually, I think it's Mink & Yuen that write the responses but Mr. Craddick signs it. It goes down my eight-page comment

letter and it picks and chooses which of my comments it wants to respond to and others just completely skips.

MR. STARR: Was there another issue regarding community involvement? Do you have any comments regarding that?

MR. PARKER: Could you be more specific on that?

MR. STARR: I know one of the comments that Mr. Hall raised was that the community -- he felt should have been allowed to participate in the discussions somehow, that that was part of -- and he feels that that didn't occur. Do you have any comments on that?

MR. PARKER: Well, many of us requested to be so-called "consulting parties," but we were never consulted with. So I can answer it that way.

I might also mention that meeting in Haiku a couple of months ago, that was a very strange meeting because it was a -- it's kind of hard to understand, but that was a meeting to gather comments on the preparation notice which actually was an event that happened a year before. And I think it was you that came to that meeting that day with the final EIS.

And to us this just seemed outrageous, that we would be going back to reconstruct this public comments from

something that happened a year ago that's supposed to have bearing on the final EIS, when, in fact, the final EIS itself is finished.

MR. STARR: I would like to comment, I did not have a final EIS. The board members had been issued copies of a draft EIS which neither I nor anyone else made available to the public.

MR. PARKER: Excuse me, sorry.

MS. PARSONS: I was going to ask Mr. Parker, did you see a copy of this?

MR. PARKER: No, it was a draft, I guess.

MS. PARSONS: Did you see a copy of the draft?

MR. PARKER: Jonathan, would you answer her on that?

MS. PARSONS: No, wait a minute. I don't want Mr. Starr to answer me. I want to know, did you see a copy of this draft EIS?

MR. PARKER: I saw a thick booklet.

MS. PARSONS: You saw that. Where did you see that? Don't talk to Jonathan about this. I want to know where you saw this.

MR. PARKER: Well, I think if you go back and look at the record --

MS. PARSONS: No, no, no. Don't do this. You've seen this. Where did you see this?

MR. PARKER: He shows this right there in his testimony.

MS. PARSONS: He shows this in his testimony?

MR. PARKER: He says it's private and I can't show the contents to any of you, but it is finished.

MS. PARSONS: Thank you.

CHAIRMAN RICE: Any other questions for Mr. Parker? Thank you, Mr. Parker.

MR. PARKER: Thank you.

CHAIRMAN RICE: Board members? I did want to say one thing, at our last meeting I believe we voted to engage Mr. Matsubara -- I keep saying his name incorrectly -- he is not available to provide that service to us.

Mr. Kushi, could you elaborate on that for me? I have not spoken to him, I just want to make the board members aware of that situation.

MR. KUSHI: Mr. Chair, I did speak with Mr. Ben Matsubara, the legal advisor to Mink & Yuen. He is not available to do any further work in viewing the final SEIS. He did mention that he has looked at it, he has -- he has advised

the consultants in the final document. However, he is not available.

CHAIRMAN RICE: Thank you, Mr. Starr.

MR. STARR: I made comments before and I want to be consistent with them, that I don't really feel that I have the confidence in this document as it stands today that it will be successful. I believe that if we do pass it, there's a very good chance it will be held up by the court for years or decades.

And so I really feel that we should at this point take the time to look at it carefully and correct any possible omissions or flaws and those that especially relate to our response to the letter of Attorney Hall, who is, as I understand it, the lead counsel for the opposition.

And that responses to Mr. Hall were made by Director Craddick without input from the board. I don't know if that was input from Mink & Yuen on that. But I certainly do not feel confident particularly in those responses and several other areas.

It's my belief that we should have our own counsel and it should be someone who is really knowledgeable in these areas and will provide us with the continuity and the ability to research it. Which I don't feel we have now.

Although we have excellent representation by corp counsel and deputy corp counsel and the man sitting here with us is an excellent attorney, and I have no qualms or problems, but I don't think he has the time to spend with it or the ability to do whatever research may be necessary.

And also we do have a history of discontinuity where several -- I don't know if it's four or six other deputy corp counsels have dealt with this issue in litigation over the last 11 years. And I don't really believe that the people who are there now will necessarily be there when the thing goes to trial or goes through the process.

So I would like to once again request that we look at this thing and take great care in making sure the document that we do ultimately submit is the best that we're capable of submitting, and it does include comments from members of the community who have asked to be part of the process. And to my belief so far --

CHAIRMAN RICE: Thank you, Mr. Starr. Mr. Nobriga?

MR. NOBRIGA: Question about -- in our packets, there's a page 74, handwritten notes. I need to know if this is suggested amendments to the SEIS.

MR. CRADDICK: Yes, that's correct. Mink & Yuen met

with the OEQC and these recommendations were made by OEQC, and those are in -- the final letters that's submitted to OEQC should be -- on page 73 there's a letter in writing to back up Mr. Mink's statements at the previous meeting.

CHAIRMAN RICE: Anybody else? Is that acceptable, Mr. Nobriga?

MR. NOBRIGA: Yeah.

MR. HIRANAGA: I have a question.

CHAIRMAN RICE: Yes, Kent.

MR. HIRANAGA: The attorney retained by Mink & Yuen, why he is no longer available, is it because he has a personal illness, or there's a conflict of interest, or he no longer wishes to provide service to the Department of Water?

To say "I'm no longer available," I find that rather puzzling. He has been working on this project, it's near completion and he can't complete it? I guess I'm looking for a more detailed reason why he is denying our request.

CHAIRMAN RICE: I don't know. After our last meeting I was informed that he was not willing to do the work. So I asked Mr. Kushi to call him personally, because as Mr. Kushi said, he has known him, so I thought maybe there was a personal appeal, if necessary. That's all I know.

MR. HIRANAGA: It's not he is no longer available;

he just doesn't want to do the work?

MR. KUSHI: I'll respond in two ways. Ben Matsubara, as the consultant to Mink & Yuen, feels that he has completed his task as consultant to Mink & Yuen; secondly, I guess as a personal matter he doesn't want to deal with this anymore, regardless of the contract between Mink & Yuen and himself.

Thirdly, he will never represent or not -- he finds himself -- he will be in a conflict position if this department or the board hires him, if he would work for the department or the board because he is Mink & Yuen's attorney.

CHAIRMAN RICE: Now, board members, my personal opinion. Is that okay, Mr. Nobriga?

MR. NOBRIGA: Yeah. Yeah.

CHAIRMAN RICE: I'm not necessarily supportive of the accusations that there are misdeeds in the preparation of this SEIS. There is definitely opposition. There is going to continue to be opposition.

However, simply as a business person, I don't know -- and there is a need that's undefined to me for -- to move quickly on this. But as a business person, again faced with possible opposition, I don't know why we wouldn't take the

time to make sure that we are putting our best foot forward. That is not a reflection on Mink & Yuen or anyone. It is simply, I think, a cautious way to go about it.

And again I stress that I don't think there's misdeeds -- there's a lot of technical data in here. For the record, I read the whole thing more than once, including all the submissions.

There's a lot of technical data in this document that I don't understand and I'm not going to understand it in the future, maybe not until -- not ever; but there are people who do know that kind of stuff, and there are people who are well-versed in litigation. So that's my only thought as a body. End of story.

MR. NOBRIGA: Mr. Chairman, I believe the process is well-defined. We're basically at this point because of an action, judicial action 10, 12 years ago from the first -- there's a lot on the table; there's a lot of work yet for us to do.

I feel it's in this body's best interest to accept the SEIS with the amendments and let's see where it goes. Because I don't think we're going to reach the final SEIS in our tenure on this board, any of us. It's going to go on for quite some time. That's all I have to say. Ready to make a

motion.

CHAIRMAN RICE: Go ahead.

MR. NOBRIGA: I move we accept the SEIS including the amendments proposed by Mink & Yuen as listed on page 2, parties involved; page 3, list of changes; page 4, replace page 4; page 5, replace page 10; page 6, testimony, May 17, 2002; page 7, testimony to draft SEIS.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded to accept the EIS with the amendments as distributed. Discussion? Mr. Starr?

MR. STARR: Yeah, Mr. Chair, I, for one, will be voting against it, because I don't think it's prudent to accept and file a document of this importance and magnitude without having our own legal counsel, expert legal counsel look at it and give us an opinion and see if there is ways to improve it.

I feel that, as the chair stated, in a business matter, this is something that I would not do as a prudent businessman, to proceed on a document that is certainly headed for long litigation, without first having legal advice on the document before it's submitted on a path that will take it very rapidly into the courts.

I would think that any attorney we would use later

on to defend it in the courts will be telling us, "I wish I could have reviewed and dealt with this document before it was submitted." And so I think we're heading into a path of potential failure at the most important task that this board has ever been confronted with.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: That is true, and I'm just giving you the option to reject the entire piece as well with this motion. It's not going to change what's there. It's there. Either we're going to accept what's there or we're going to reject the whole thing, scrap it, and end this whole fiasco.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: I'm trying to understand the process. If the SEIS is submitted to the courts and there is a lawsuit filed to challenge the validity of it, during the lawsuit, can the opposing parties negotiate for a settlement or is it once it's submitted it's set in concrete, it's either accepted or rejected by the court and no negotiating is allowed during the judicial process?

CHAIRMAN RICE: Mr. Kushi, can you respond, please?

MR. KUSHI: Mr. Chair, Board Member Hiranaga, my understanding is that this document will not be submitted to the court. The court will look at it if it's challenged after

your acceptance. The challenge would come via existing court case.

The court will not reject or accept the final document. It will just say it's adequate or it's inadequate. If it's inadequate, go back and do it again. If it's adequate, no challenge -- like in any litigation, there's always room for settlement. If the parties settle before a judge makes a final ruling, then it takes it away from the court's jurisdiction.

MR. HIRANAGA: You are saying that during the process, if negotiations occur and the opposing parties are satisfied, they can remove their lawsuit and it's up to the court to accept or reject it?

MR. KUSHI: That's, in essence, correct. The court always approves any settlement. I would imagine if there were negotiations conducted and it came to an agreement, the negotiations would take a form of amendment to the document and they would have to go back and do it again, publication, all of that stuff. I don't think the court can use its judgment to say yes or no as amended. You understand?

But if there is a settlement and let's say there's a section that the opposing parties say you have to do this again, and we do it again, the board does it again, and we do

it correctly according to the settlement, I can't see the court entertaining another appeal. You understand? You settle in good faith.

But again, anything is possible. But the court is basically looking at whether the document is adequate or inadequate.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: In the previous court case, an offer was made to settle if we would reduce the pipeline size from 36 inches to 12 inches. So I would expect that same issue would probably be on the table, because I think that is a concern that East Maui system will go much further --

MR. KUSHI: Just a minute.

(There was a discussion off the record.)

MR. KUSHI: Mr. Chair, I would advise you to disregard those comments.

CHAIRMAN RICE: Mr. Kushi has that esquire after his name and Mr. Craddick does not. Yes, Kent.

MR. HIRANAGA: Certain board members wish to have this document reviewed by an expert, does that expert have to be an attorney or can it be -- the only experts that we can look at to review this product is an attorney? I don't know who can answer that.

CHAIRMAN RICE: I'm one of the people that advocates for that. I would say that certainly everybody in this room agrees that a challenge is inevitable. I have not heard one person take the opposite position. Our side or the other side, for that matter. If that's the case, wouldn't you want the person that's going to work with you on that challenge to have a chance to look at the document before it's submitted? It's logical.

Mr. Starr's claim about improprieties I don't necessarily agree with. I don't necessarily know of them. I'm talking about logical business sense. I'm not talking about rejecting it, either. I'm just saying we don't have to accept it until it's reviewed. Because if someone says to tweak it a little bit because I'm going to be better able to defend it, then we tweak it, and then we accept it.

MR. HIRANAGA: This expert, is it only attorneys we would look at? If you are going to have to do a procurement, you would have to solicit or invite experts. Are experts on the list only attorneys? Is that what we're looking at? Who is going to be the expert? What field of expertise are they coming from?

CHAIRMAN RICE: Well, I think the way I would

approach it is that there are attorneys who specialize in this and they would probably know. They might have to have other people helping them, probably would. If it's going to be challenged in court, the lead person is going to be an attorney.

CHAIRMAN RICE: Ginny?

MS. PARSONS: I don't disagree that I think that -- you realize there is going to be a challenge for whatever purposes, whether to stall it or whatever, and it won't matter if you change this or review it.

You have had -- our legal counsel reviewed it, we have had Mink & Yuen's legal counsel review it, and they have come to the conclusion that procedurally we're correct. And that Mink & Yuen is standing behind the SEIS. And our director stands behind the SEIS.

It won't matter if you have Bill Clinton come in here and review it as an attorney. It will be challenged. Period. That's the bottom line. And it's not going to help which way you tweak it, because the purpose and the intention of the challenges are not necessarily what is wrong with the EIS.

So I think at this point we need to move forward and we realize that we need to probably hire some counsel if we are

challenged or we can't come to some agreement. We do have a videotape here. The monitoring well issue is something that the board is concerned about. You can see the water that wasn't there.

The public comment issue. The only thing that I can think of about the public comment issue is the May 17th meeting. I understand that was an open meeting where all board members could have attended if they wanted to.

And the other question of the stream flow, we won't use the well if we're into the stream flow issue. So even the things that Mr. Parker brought up, those have been addressed. So I think we should go forward, the motion is on the table, let's see where we go from there.

CHAIRMAN RICE: Mr. Helm?

MR. HELM: Just to share my perspective into this. I read this, maybe not as detailed and not quite understanding some of the detailed scientific issues, but what I look for is basically some of the stuff that I'm concerned about and that has to do in relationship to some of the social impacts and environmental impacts that some of this document shows.

And my concern is that basically I look at impact from industry flow standards. Impacts on some of the comments

that were made by Mr. Parker in regards to our ocean coastlines and the fishermen that depend on some of those things for subsistence. It's all of those kinds of issues that I kind of look at because these are my interests.

I am basically a person that supports businesses and environment as a whole. So what my concern would be is that what would it take just to get another person to reevaluate it to pinpoint some of those issues and clarify some of those issues that are on the list and then go from there? It doesn't take much to get that.

It's been ten years already, what's another six months or three months to dress up this and fine-tune these documents to cover some of those issues. My concern is that I would be very uncomfortable if we didn't attempt to clarify some of those issues that are hanging out there.

CHAIRMAN RICE: Clark?

MR. HASHIMOTO: So what happens if we don't accept it today? What are the ramifications? It just sets it back?

CHAIRMAN RICE: I think if there's a motion on the table to accept it, if it passes, then it's accepted. If it doesn't --

MR. HASHIMOTO: If it's not accepted, it goes --

CHAIRMAN RICE: Then we have to take some other

action.

MS. PARSONS: Mr. Craddick, could you answer the question of the issues that we would be up against if we don't pass this today or accept it?

MR. CRADDICK: This is an alternative to using Iao and Waihe'e aquifers. And we know that item is on the table before us here. We have to comment to the water commission by November 4th and having this as an option on the table would assist in that.

Back in your time of the draft EIS -- brought up an issue of lapsing funds for portions of this project as an issue. And other than that, I just wish you would ask some questions here and go through it. Because we have the marine resources study and I'm just quoting, In the basic finding of the report, the potential effect of the proposed project on water chemistry and marine community structure revealed that there appears to be no potential for negative impacts to marine ecosystems in the region of East Maui.

So the reasoning behind that is the fresh water that goes out to the ocean, EMI takes about 15 percent of it. The other 85 percent still goes to the ocean. If you minus the groundwater that is going out there, it's a very small

component of the near-shore water chemistry.

And the complete consultant report is in there. And Adolf, who has hit only the most important issue in the EIS, which is what I feel is a legitimate issue, the stream flow issue, we have beat that one and flawed it to death. And I forget who it was that stated that's been an original concept of the whole plan, the effect of stream flow. That well will be sealed up, it will not be used. So by definition, we will not affect stream flow.

CHAIRMAN RICE: The question, Mr. Craddick, was what will happen if we didn't accept it today? And your comment was?

MR. CRADDICK: Wait for another day. And please say what you want done, we'll get it done.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: I guess I said this at previous meetings. The board members, prior to me being on this board, selected Mink & Yuen as their consultant to prepare the SEIS, Mink & Yuen felt it appropriate that they hire their own legal counsel to review the product that they created.

I don't believe that another attorney would know significantly more as to what would be required in order to eliminate any legal challenge to this document. So it comes to

a point, in my opinion, that you study a matter to a certain degree, then you need to move forward. I'm prepared to move forward at this time.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I just would like to remark that that attorney has not come before us and given any comment to us directly on this document. So as far as I'm concerned, it is not -- on our behalf, it has not been reviewed as far as content goes.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I was talking with Ed Kushi to see if there's any way we could speed up the process of getting some consultant. I think as long as the person that you got to consult with was not a special counsel, perhaps we could get somebody with some legal knowledge and some engineering background that the board could consult with on a shorter time frame.

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

(A chorus of ayes.)

Opposed say "nay."

(Three said nay.)

MR. STARR: Nay.

CHAIRMAN RICE: Nay.

MR. HELM: Nay.

CHAIRMAN RICE: Motion does not carry. Starr, Rice and Helm said nay.

MR. STARR: Mr. Chair, there was a motion made at the last meeting that I don't believe was rescinded, that related to funding for counsel, I believe. I'm not clear on what that was. Can we ask to know what that motion was so we know where we stand before -- I have another motion to make, but I want to make sure that it jibes with what we did previously.

MR. CRADDICK: I don't believe we have the minutes of those meetings here before us, but my understanding was that it was a certain amount of money to hire special counsel to advise the board on legal issues. And in particular, to try and get Ben Matsubara to review, complete his --

CHAIRMAN RICE: I think the first motion was very simply to hire outside counsel. It was unanimous. If I remember correctly. Yes, Kent.

MR. HIRANAGA: My recollection was that the motion to hire legal counsel was denied and the motion to fund Mr. Matsubara's completion of the review was approved.

MR. STARR: Could we have a short recess?

CHAIRMAN RICE: Yes, we'll take a short recess.

(A recess was taken.)

MR. STARR: I have a motion, Mr. Chair. I move that the Board of Water Supply chair be empowered to hire outside counsel to work with corporation counsel to review the EIS document and report back to the board, after following the proper procedure to obtain county council approval with a maximum expenditure of \$30,000 with funds to come from the Board of Water Supply professional services budget.

MR. HIRANAGA: Could you repeat that?

MR. STARR: I move that the board chair be empowered to hire outside counsel to work with corporation counsel to review the EIS documents and report back to the board members, after following the proper procedure to obtain county council approval and with a maximum of \$30,000 with funds to come from the Board of Water Supply -- I guess Department of Water Supply professional services' budget.

CHAIRMAN RICE: Is there a second?

MR. NOBRIGA: Second. Question.

CHAIRMAN RICE: Yes.

MR. NOBRIGA: We passed on this motion last time.

CHAIRMAN RICE: We're not sure if we did or not.

MS. PARSONS: The motion was for Ben Matsubara.

MR. NOBRIGA: No, it wasn't.

CHAIRMAN RICE: One second. What, Ginny?

MS. PARSONS: Well, I would like to amend it, if possibly, just to say consultant rather than counsel. Because I think the issues that we're discussing on this EIS have nothing to do with the legal procedure. They have to deal with the engineering issues, and I think we need a consultant, not a counsel.

CHAIRMAN RICE: Kent?

MR. HIRANAGA: Nothing personal with the chairman, but I am a little concerned with granting a unilateral authority to select the expert to review the documents. I think if we're going to go down that path, the board needs to decide who that expert would be.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I'm sure that if it's our desire, the chair will bring his recommendation back to the board before he acts. I think that's the way of dealing with that.

My belief is that you hire a licensed attorney when you are going to do legal work. You hire -- and that's what this is. I also feel that if we try to use a different term to

circumvent the county council, that's a corner that we may regret. I think it's in our benefit to have the county council on our side on this and proper procedure be followed all the way through.

CHAIRMAN RICE: Yes, Ginny.

MS. PARSONS: Can we get a clarification from the board? Because the reason I understand Mr. Helm did not support this document, and I'm going back to read it off the record, were issues of engineering. That was why -- that's what he wanted clarified.

Can we get a clarification from the board before we issue a dictate to buy an attorney? Are we looking at this EIS on its merits that Mink & Yuen produced, or are we looking at procedure that was violated, that possibly was violated? Which is it? And let's be clear.

Because, one, an attorney is only going to give you legal opinion as to how we proceeded, not to the validity of the document. An engineer can review the document and tell you the validity of the engineering issues. Right now we are pretty close in a vote for five across the board.

Mr. Helm, could you maybe tell us what you were looking for in this document and how it was decided we need a

consultant or an attorney?

MR. HELM: Again, I guess what I had questions about is issues that surfaced from all of the letters that was part of this document in here, and issues that probably covers a wider spectrum than just engineering things.

So my concern is obviously things of social impact that weren't very clear, and there were issues that needed clarification on riparian rights, pertinent rights, in-stream flow standards, things of that nature that I also had concerns about outside of some of the engineering concerns.

CHAIRMAN RICE: Any other discussion? Call the question. All in favor say "aye."

MR. STARR: Aye.

CHAIRMAN RICE: Opposed say "nay."

(A chorus of nays.)

The rest of the board said nay. Motion does not pass. Okay. Mr. Hiranaga?

MR. HIRANAGA: I would like to make a motion to defer this matter to the next board meeting.

MR. NOBRIGA: Second.

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

(A chorus of ayes.)

Opposed say "nay."

(None.)

Okay, it's on the agenda. We're done with this one.

MR. HIRANAGA: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Hiranaga.

MR. HIRANAGA: I would also urge all board members to attend that meeting, because it's a very important meeting. I understand one board member is recusing himself and we have one absent board member. And again, if we can urge all of you to mark your calendar and keep it open so we all can attend. Thank you.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: So the vote that you made on accepting the EIS failed. And I think there's some -- if you want to put that item back on the agenda, there's some process you have to follow to do that.

CHAIRMAN RICE: Fine.

MR. CRADDICK: Nobody has said why they think it fails and that is --

CHAIRMAN RICE: Mr. Craddick, the motion was to accept it, it failed. The motion was not to reject it.

MR. CRADDICK: Okay. Okay.

CHAIRMAN RICE: Okay?

MR. CRADDICK: Okay.

CHAIRMAN RICE: There's no problem putting it back on the agenda.

MR. CRADDICK: Okay.

CHAIRMAN RICE: If there's no objection, we have counsel here, Jim Tam, and he is here to talk with the board on the possible purchase of Wailuku agriculture lands. And I believe you received a document from Jim's firm. Board members?

MR. STARR: I haven't.

MS. PARSONS: I haven't.

MR. TAM: I thought it was mailed out.

MR. STARR: Was it mailed directly to members?

MR. TAM: Staff took care of it so I'm not sure. I can check. But I have copies I can distribute. I have to just make copies.

CHAIRMAN RICE: Before we go any further, if there's any discussion, we need to go into executive session and consult with our attorney on this issue. But before we do that, I want to make sure there's an opportunity if anyone wants to say anything in public. Mr. Starr?

MR. STARR: Mr. Chair, before we go into executive session, I would like to ask that whatever part of this, if

any, or just some generalized statement of what we're discussing can be made in open session without harming --

CHAIRMAN RICE: I think I can do that. It's the chair's intention to come away from this meeting with a resolution to make an offer to purchase property from Wailuku Ag. And there are some issues that the board needs to discuss in order to come -- to give direction to the law firm to make that offer. And the letter that the law firm prepared was -- asks some questions that the board needs to think about or to get to that point. So that's the gist of that.

MR. STARR: I just want to be clear. I'm asking corp counsel that the propriety of discussing item -- discussing this issue prior to making an offer, whether that's a proper use of executive session.

CHAIRMAN RICE: We're not making -- we're consulting with our attorney so that we can make an offer.

MR. STARR: Is that acceptable?

MR. KUSHI: Mr. Chair, prior to going into executive session, under 92-5, in one of those sections, when you are dealing with the negotiations you are entitled to do it in executive session. In terms of public testimony, again, the public may testify on the agenda. But what you do in executive

session is you deal with your special counsel to work out terms, and any terms coming out of executive session you need to go into open session.

MR. STARR: I just wanted that clarified.

CHAIRMAN RICE: Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, am I correct in understanding that you wish to go from item 6, Old Business, at this time, to item 8, Other Business?

CHAIRMAN RICE: Yes, sir.

MR. NOBRIGA: Thank you. I have no objection. Mr. Chairman, I would like to make a motion that pursuant to HRS Section 92-5(a)(3) in order to deliberate concerning the authority of persons designated by the board to conduct negotiations of labor or to negotiate the acquisition of public property, or during the conduct of such negotiations that we move to go into executive session to consult with our attorney, Mr. Tam.

MR. STARR: Second.

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

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried. We're in executive session.

(Whereupon the board convened in executive session.)

CHAIRMAN RICE: We're back in open session. I would like to thank Mr. Tam for coming out to the meeting of the board regarding the important information. And at this point the chair will entertain a motion. Mr. Starr?

MR. STARR: I would like to move that Mr. Tam's firm's contract be amended to include a painting and appraisal for the conservation district watershed land above the conservation line on West Maui.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Discussion?
Mr. Hiranaga?

MR. HIRANAGA: Is it appropriate for the counsel to review the -- prior to their selection of the appraiser, for comment by the board versus just unilaterally selecting an appraiser? I would like to have some comment as to who he is going to select as his appraiser, because, I mean, you put five appraisers in the room, and you get five different numbers. The number is the important thing. I don't know if that's --

CHAIRMAN RICE: You want to be a committee of one to work with him?

MR. HIRANAGA: Other board members may have input

also, as to who would select the appraiser.

MR. STARR: How about Kent working as the chair?

CHAIRMAN RICE: Everybody happy with that?

Mr. Kushi?

MR. KUSHI: Mr. Chair, the understanding is that Mr. Tam's office will come back with the proposal to amend. The understanding also is that this has to go to the county council to amend its master contract.

CHAIRMAN RICE: Yes. Okay.

MR. KUSHI: That's part of his contract which the counsel approved. Either that or you just do a separate hiring of an appraiser to work with Mr. Tam. That's another avenue you may want to review.

MR. STARR: I was thinking at a subsequent meeting we have an agenda item to deal with funding for Mr. Tam's firm. To just deal with that --

CHAIRMAN RICE: Okay. Everybody in agreement? More comments? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried. Yes, Mr. Starr.

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

that Mr. Tam's firm prepare a suggested proposal on offering a letter for the potential purpose of the board acquiring the watershed land above the conservation line on West Maui and that he bring this proposed offer back to the board for review.

MR. NOBRIGA: Second.

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

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried. Thank you. Very good. Are we done?

Moving on. Mr. Moretti has been sitting here patiently and if there's no objection from members of the board, I'm going to move Mr. Moretti up to the next person on the agenda. Mr. Tam, you want --

MR. TAM: If you don't need me, I'll catch an airplane back.

MR. STARR: Thanks.

CHAIRMAN RICE: Mr. Moretti -- seeing no objection, so ordered. Mr. Moretti, step forward, please. Mr. Moretti sent a letter -- at our previous meeting we discussed getting a second opinion. Mr. Kushi was going to give us an opinion in

writing, but that has not been done. Mr. Kushi is prepared to make a statement. If you would, Mr. Kushi, it's possible we can move along on this issue.

MR. KUSHI: Yes, Mr. Chair, thank you. Again, I apologize to the board for not -- I was instructed and I had a request for a formal legal opinion about the specific issue, not only on Moretti's case but the general issue as to the jurisdiction of the department, which includes the board, concerning private water systems.

My understanding was that after I had issued a written opinion, the board was of the feeling that they may request a separate counsel to review and issue a second opinion. That's where we are right now. I can still do that, but obviously I have not done it today.

However, in discussing this matter with the board and the director, I would like to make some statements again. At this point in time, I don't feel my opinion as given to you previously orally will change. It's my opinion that reviewing your departmental rules you have no jurisdiction over the private water system. You did have it several years before; you did a rule change to specifically take that out.

So that being the case, in terms of private water systems, as long as they are not connected to the public

department system, you have no jurisdiction. Your rules and regulations do not -- which govern systems attaching to your public system do not apply.

However, the director did point out, and I agreed that the county code, specifically Title 18 of the subdivision ordinance, does have some mandatory language that in a request for subdivision, director of public works, upon receiving an application, is mandated to forward it on to the director of the Department of Water Supply; that the director of the Department of Water Supply then has an obligation, and it seems to be mandatory, to review comment on subdivisions. It vacillates in some sections about private -- public water systems.

However, that being the case, the director of the Department of Water Supply can and may and in some instances has an obligation to comment on the subdivision application, be it private or public. If it's public, then of course the board rules take over.

In this instance, I would suggest, notwithstanding the opinions that are due you, that the department through its director, if he feels obligated or compelled or for whatever reason goes ahead and comments on subdivision applications

involving private water systems, his comments would then be reviewed by the director of public works, who in his position is the sole authority to approve subdivisions.

If the applicant of a subdivision then feels that the water department director's comments are not justified as incorporated by the Department of Public Works' director, he can then appeal that to the Board of Appeals, not to this department. Variance of the -- Board of Variances and Appeals would then decide, hopefully, finally, what to do in the cases of private water systems. That's my statement for the record at this time, and it would be my suggestion.

In the specific case of Mr. Moretti, there is also a side issue of the collateral issue, as I viewed it, on the recorded agreement that was done on the large lot subdivision, which at that point in time A&B did it, I believe.

I still contend that -- my office still contends that the agreement that A&B entered into is still recorded against Mr. Moretti's property, is still valid and binding provided that the subdivision connects to our system, the public water system. So that agreement still would bind the public.

So therefore, if this property goes through with the subdivision on a private water system and passes and is in

existence, and at a point in time later says that they want to connect to our system, then that agreement would come into play. So the fact that the agreement is recorded is just what it is, it still binds the public.

I would concur with the Moretti's attorney that that agreement does not disappear, but it's not applicable if it's a private water system.

CHAIRMAN RICE: So the approving body for Mr. Moretti's subdivision is the director of public works, not this body?

MR. KUSHI: That's correct.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I wonder if there's -- the fact that the property was encumbered by this water agreement in a knowing fashion did not, in a sense, create an expectation that the subject property and in it's later subdivided state would be connected to the public water system.

When he signed an agreement like this and recorded it, it means you intend to subscribe to that process. Which in this case is being a part of the county water system. It's my belief that by having this agreement in place, the previous owners had said that this property will be part of the public

water system and that is what Mr. Moretti bought into. I would like some comments from counsel.

MR. KUSHI: Mr. Chair, Board Member Starr, again, I was not here when that agreement was made, but I assume that is true. I assume that it's true, that you enter into agreements with the understanding that the intent is that I need water, I will go to the public utilities.

However, it's still binding. But again, the intent is one thing. I guess the bottom line is this, neither the code, Title 18, which governs subdivision, nor your rules force any applicant, property owner to hook up to our systems. That is clear. Some jurisdictions may, but there's nothing mandatory that you have to hook up to our system.

If that was the case, then that agreement, the intent is not -- it's just following the rules and regulations. But I agree with you. At that point in time, probably they were thinking about maybe in that area the public systems would be upgraded and come to the property.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Another issue, considering the fact that we have indemnified the people who live below Mr. Moretti's property, that their spring would continue to flow potable water and that if it stops doing that we would provide them

free water --

MR. CRADDICK: It's not a spring, it's a well.

MR. STARR: I recall them saying it came out of the side of the gulch.

MR. CRADDICK: No.

MR. STARR: Anyway, whatever it is, we have kind of indemnified that so that we take on responsibility that that spring or well would always provide water to those people. Is there any way that we can protect that by not allowing new wells to be drilled immediately above that?

MR. KUSHI: Board Member Starr, I'm not too sure about the agreement you are talking about, the Hokoana (phonetic) or --

MR. STARR: Is that the family?

MR. KUSHI: I'm not sure. Maybe the director can give more insight on that. I was under the understanding it involved a different area or well.

MR. CRADDICK: No.

MR. STARR: It's at the bottom of the gulch, maybe a couple of hundred feet away. So there is a good chance that these wells could cause the well that we have indemnified to dry up or to change. So is there anything we can do to prevent

this new well from being utilized in a way that could cause us to have to make reparations to the Hokoanas? In other words, our office is being gored here.

MR. KUSHI: Board Member Starr, again, the question is -- I'm trying to think of this in terms of connection, who is responsible for what.

If the board at one point in time indemnified or guaranteed Hokoanas' perpetual water rights from a private well, I'm not sure why -- what you did -- in any event, Moretti's property, as I understand it, has received approval from the commission -- again, this body is not involved with approving or disproving well purpose. How that comes into the mix, I'm not sure at this point in time.

Now, if the water commission at that time or the state water commission, whoever approved those, had they known about this indemnity or effect, I'm not sure if they would reconsider it; but again, I'm just talking in the past tense.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: All of the state permits for drilling in undesignated areas, they say if you affect anybody else's water rights we can stop you from using this -- whatever particular well it is that you use. So although it would be better to not have people dependent on that water at the time

it was taken away from them, I myself personally don't feel that's a proper way to go, taking away rights after you get people dependent on it. It's a little bit hard to do that.

The water commission has a copy of the agreement and they are fully aware of it. We did apprise them of that when they issued the permit.

CHAIRMAN RICE: Yes, Mr. Starr.

MR. STARR: I would like to see if the board can issue a letter to the water commission, stating that we have indemnified these other users in proximity to where the new wells are and we feel there's a chance that the pumping of these wells could endanger the viability of the existing user, in which case the public -- the board would have to indemnify them.

CHAIRMAN RICE: If we have a liability, then we ought to make sure they are aware of it. A letter, I think, is appropriate to outline that. I think that -- Mr. Moretti will speak after. From what I heard from corp counsel, this body is not empowered to rule on the request.

Mr. Moretti seeks his subdivision approval from public works. Public works wants comments from the director, the director gives comments. It's the decision of public

works. It's not Mr. Craddick's decision, it's Mr. Goode's decision. We're all clear on that. I don't think this board needs to take any action. It shouldn't take any action. That would be the chair's recommendation.

Mr. Moretti can seek -- if he is unhappy with the decision from public works, he can seek an appeal from the Board of Variances. Mr. Moretti?

MR. MORETTI: I just wanted to say or everybody to know that in the same area, only a few hundred feet from where I am, there is other two wells, to my knowledge, there are another three or four wells in the Haiku area in the proximity of -- or behind there, and all of the wells -- State Water Commission is aware they are permitted with numbers, and so it's not just my well that would be inflicting the Hokoana family directly.

CHAIRMAN RICE: Thank you, Mr. Moretti. All the more reason for us to go along with Mr. Starr's suggestion, that we make sure that the water commission is fully apprised of our agreement. We're not taking any action. There's nothing for us to do. We're not approving anything here.

Do you understand that, Mr. Moretti? We don't approve your subdivision.

MR. MORETTI: I do understand. And Mr. Goode was

also -- since he was present at the last meeting, he was waiting for the resolving of this situation so that he could go ahead with this.

CHAIRMAN RICE: I would be happy to call Mr. Goode and apprise him of this decision that the board has not made. Mr. Kushi can probably do that on our behalf. Mr. Kushi?

MR. KUSHI: Housekeeping matters. Communications C and D, is it the suggestion to just file these matters?

CHAIRMAN RICE: I would suggest the appropriate action would be to file them. When your written response is ready, you can copy Mr. Jorgensen. I would be happy to call Mr. Goode and explain to him that we're not about to take action on something we have no jurisdiction to take action on.

MR. KUSHI: The board still needs a written response from me, then?

CHAIRMAN RICE: I think we might. What you just said, write it up there, please.

MR. KUSHI: I got you.

CHAIRMAN RICE: Anyone disagree? Okay. Thank you, Mr. Moretti.

MR. MORETTI: Thank you.

MR. CRADDICK: We'll get a letter out to the water

commission.

CHAIRMAN RICE: Yeah. If you sent them anything else, I'd like to see that. Let's leave Mr. Craddick for last.

Let's whack out Communication 02-30, Marion and Maxine Hanks. I believe this started because Ms. Hanks called me and then followed up with a letter because their longtime request for a meter -- this did have -- I think you'll find in your packet that this was taken up by the operations committee and the minutes of that meeting are in your packet. Right?

Mr. Craddick, their claim is that someone else got a meter when we told them that there was not adequacy and they could not get a meter?

MR. CRADDICK: That's right.

CHAIRMAN RICE: That somebody was?

MR. CRADDICK: There is a bunch of them, supposedly, since the time they have been asking for a meter.

CHAIRMAN RICE: Is there any new information?

MR. CRADDICK: No. We were supposed to get something from corp counsel reviewing the supposed civil rights claim.

CHAIRMAN RICE: Yes. What's that?

MR. CRADDICK: If you want to go into that, you

probably want to go into executive session.

CHAIRMAN RICE: The minutes, again, the operations committee minutes are in the packet. The operations committee went into executive session and came out and voted to defer it pending further information. So it's on the agenda because the Hanks have been waiting for a response. If we are not prepared to do something here -- yes, Ginny.

MS. PARSONS: Did we make a mistake and issue a meter across the street? I just want clarification.

MR. CRADDICK: I think you better go into executive session if you want to go into that kind of stuff.

MS. PARSONS: We don't have it listed in here.

MR. CRADDICK: Yes, we do.

MS. PARSONS: I make a motion that we go into executive session.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded to go into executive session for the matter conferring with our attorney on the issue of Marion and Maxine Hanks. Discussion? All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried.

(Whereupon the board convened in executive session.)

MS. PARSONS: Mr. Craddick, if we don't act on this, the proper thing is --

MR. STARR: Back in session. Mr. Chair, I move to defer and -- until staff can give us a report of some options of improving the system out there.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Discussion?

MS. PARSONS: I would like to go on the record that it might be equitable to give the Hanks a meter, review the system and improving the system with community input and go from that point forward.

CHAIRMAN RICE: Okay. Any other comments? Motion is deferred. All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Motion is carried.

Mr. Starr made a request a while ago -- rules committee? Mr. Nobriga to -- he is requesting that we amend our water rules to amend the definition of subdivision.

MR. NOBRIGA: Actually, I would like to somehow find a way to endorse condominiumization outside of a two-lot subdivision. Right now our rules stipulate that a condominiumization of land must be treated the same way as any subdivision.

CHAIRMAN RICE: Well, that's exactly what --

MR. NOBRIGA: Being that the director has proposed new rules which include some brand-new standards of water service, all those rules will come under discussion hopefully soon and within those rules it would be more pertinent to discuss the issue of condominiumization of property.

So we shall defer this until we can have meaningful discussion about the proposed rules with the new water standards. Pertinent standards? What kind of standards? Some kind of standards.

MR. CRADDICK: You are talking about the pro rata share?

MR. NOBRIGA: No, the standards. Where there are two-lot subdivisions will be required to do the same thing as a three-lot subdivision. The size of the --

CHAIRMAN RICE: That was fire flow standards.

MR. CRADDICK: Subdivision is subdivision, it does

not make a distinction between how few lots.

MR. NOBRIGA: It does.

MR. CRADDICK: Right now?

MR. NOBRIGA: Yeah.

MR. CRADDICK: There's no --

CHAIRMAN RICE: I have not seen any. My preference would be to have the committee look at it. I don't know that we ought to be amending our rules inconsistent with whatever the county is deciding. If the county wants to allow condominiumization or two subdivisions, I don't know exactly what he was looking for. I'm not sure if we could have a committee to look at this and come back to the board.

MR. NOBRIGA: The question is, is this the appropriate body to look at changing the definition of condominiumization and subdivision? Is a condominiumization and subdivision parallel exclusive to the Department of Water Supply or is it a standard use by all departments?

CHAIRMAN RICE: That's a good question.

MR. CRADDICK: I don't know if other departments define in their subdivision plan building units and condos. But ours does.

MS. PARSONS: Ours does?

MR. CRADDICK: Yes. It includes it in the

definition of a subdivision.

CHAIRMAN RICE: I can tell you that ag subdivisions are a big, big issue in other counties. The Big Island just passed ordinance limiting how someone would go about doing ag condominiumization.

MR. CRADDICK: That's where it was happening, in ag areas.

CHAIRMAN RICE: Because what was happening, they were using this as a way to get around subdivisions. The county went nuts, the new mayor. Kent?

MR. HIRANAGA: It is my understanding that agriculturally zoned areas, condominiumization does not allow for additional density. You are still limited to one dwelling and the second dwelling, and that's, I believe, County of Maui. I'm not sure what the other counties are like.

What they are saying is you've got a 2-acre lot or 50-acre lot, then you have one house and a thousand square foot dwelling, whether you condominiumized or not, it doesn't matter. So the argument is, if a house and a thousand square foot dwelling can function off of one five-eighths inch meter, why condominiumize -- I don't see a reason for a second meter, because the condominiumization is a form of ownership.

MS. PARSONS: That the sale -- rather than buying a TMK -- and two TMKs, it's one TMK and it's a condominium.

MR. HIRANAGA: You define ownership but the density still remains the same. It doesn't allow for more density. Personally, I believe the rule should be changed.

CHAIRMAN RICE: Is there some documentation that Mr. Starr has provided besides the letter of request as to what he is proposing?

MR. CRADDICK: He -- no, not that I know of.

CHAIRMAN RICE: Would it be appropriate if we defer this and have that information distributed to everybody so that we know --

MR. CRADDICK: Some suggested language he wants.

MR. STARR: I believe he gave it to us six months ago.

CHAIRMAN RICE: That was on --

MR. STARR: The condominiumization.

CHAIRMAN RICE: I looked for something from him and the last thing I found from him was his comments on the new standards.

MR. STARR: He gave us this a long time ago.

CHAIRMAN RICE: Can we get that distributed again to the members and we'll defer it? Is that appropriate, members?

MR. NOBRIGA: Yes.

CHAIRMAN RICE: Motion is appropriate.

MR. STARR: Move to defer.

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Moved and seconded to defer, subject to our review of the specific information provided by Mr. Starr. All in favor say "aye."

(A chorus of ayes.)

Opposed say "nay."

(None.)

Mr. Hashimoto, last communication.

MR. HASHIMOTO: I guess a couple of meetings ago, Chairman Rice appointed me to form a committee for the purpose of advising the board on recommendations on the issue of water allocation for the ag line.

And we have had a couple of meetings, one of the first meetings -- actually, I joined up with the Upcountry Maui Watershed Committee and the sponsoring agencies is the state Department of Ag, Brian Kau; Dudley Kubo of the USDA and NRCS; Neil Fujiwara also of NRCS. The sponsoring agencies, the Olinda-Kula Soil and Water Conservation District, they are the sponsoring agency.

So you have the minutes there, so I won't go through the -- this committee is charged with pushing this project along. And phase I of the pipeline has been completed and it's all the way up to Kimo Drive, up in Kula, and it's ended there. I think there was another 3 million appropriated by the State Legislature, but the bill was vetoed by the governor; therefore I guess the project has stalled for the moment.

In the next meeting, I'll have the second set of minutes available for the public and for the board.

But tentatively, the Upcountry Watershed Committee chaired by myself will comprise of the following: Wayne Otani, of the Olinda-Kula Soil and Water Conservation Districts; Warren Watanabe, from the Maui County Farm Bureau; Doug MacCluer, of the Central Maui Soil and Water Conservation Districts.

Buzz Stluka, S-T-L-U-K-A, of Haleakala Ranch, mainly because the pipeline is going through an easement through Haleakala Ranch. Also Ben Yamamoto, from the Maui Farmers Exchange; also Neil Nakamura, from the Maui Produce Processing Co-op; and also a member of the Board of Agriculture.

And we try to get farmers representing different districts on the committee so that we have equal input from all the segments of the farming community. Also we'll have Elliot

Krash from the Kula Community Association. She will not be an official member, but because the Kula Community Association has been a big supporter of the dual line, she will be invited to the meetings but not be a voting member.

Also another member from the Department of Hawaiian Home Lands, the homesteaders, I'm going to have a member from that community, which I guess they will have some ground breaking probably in December -- on the committee.

So I will start a meeting, maybe have David Craddick and -- explain to the committee on the structure of how the water is going to be distributed. I think -- right now I think the maximum is 1 million gallons a day of ag waterline.

MR. CRADDICK: That's roughly what's currently being used.

MR. HASHIMOTO: So the commission is charged with the task of trying to see how the distribution will be made to the farmers. And also the Maui County Farm Bureau will be sending a survey to the users of ag water to see if they are still interested in agricultural water and how it's being used, in order that we don't have gentlemen farmers that are not really using ag water to get on the line.

I'll be distributing the second set of minutes at

the next board meeting. I'll e-mail it to Kathy. Any questions?

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Reading the minutes here on the list of issues and concerns, the top one, No. 1 on issue says, "Haleakala Ranch intentions of giving up land for the pipeline project were to help farmers and being able to utilize the water. Somehow the Haleakala Ranch request was miscommunicated and the capacity of the Upper Kula Ag Water System was misunderstood. Will Haleakala Ranch reduce its water use as other demand on the system increases?"

That seems to imply that the entire 1 million gallon that the system is able to provide is already being used by Haleakala Ranch. I'm curious, is that --

MR. HASHIMOTO: Remember, I guess a couple of meetings ago they had the request for Haleakala Ranch, Maui Pine, and I think one of the protea -- Jim Heid, and their -- request amounted to something like 900,000 gallons. So I guess in the meeting they agreed that they got to cut back, because the line ends there. So once the line continues, I guess -- David, were they given meters? Or they're going to be given meters?

MR. CRADDICK: No. I think between our board and

the Department of Ag, we have got to get that item No. 7 resolved on how you are going to manage the system. That was a point there that in that agreement that said --

MR. HASHIMOTO: That was one of the concerns of the farmers, where the whole million gallon allocation is taken, there's nothing left for anybody else.

MR. STARR: That's my concern too. And I just want to express my support for the small farmers of Kula, that it was really intended to help them and instead what's happening is a large corporate thing is happening to use all of it, and I hope that they --

MR. HASHIMOTO: That's why we have the committee. And I guess because the line is going through Haleakala Ranch, I guess they will make some considerations, but that's a big concern of the committee.

MR. STARR: If the small farmers need the board to stand with them --

MR. HASHIMOTO: I think they understand the situation. Any other questions?

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: It's not a question. There seems to be a lot of concern about why we put in a 24-inch line, not

really expecting any service to be in that area. And just for board clarification, my understanding for the reason for putting in that line was to avoid having to put in a booster pump station where everybody downstream would have to have that added into the cost of operating the system.

Because essentially what was one user, and I guess the perception is because this line is so huge it can provide a lot of water up front, and it's not true, that big line was put in just to avoid pressure losses to avoid putting in a booster pumping station.

And then one item that I just handed to Peter here, in that meeting that Clark had, the issue came up that in addition to the \$6 million that was appropriated for that project, which was supposedly through the Department of Ag, there is an additional \$2 million that was directed to the County of Maui. That did not get vetoed.

And there's a request in right now to have us delegate those funds back to the Department of Ag to begin a third phase. Does it say there, Peter --

CHAIRMAN RICE: Design for phase II is nearing completion. Phase III is to begin as soon as funds are available.

MR. CRADDICK: So they are asking for us to release

those funds to them. I would expect because it's County of Maui, I'm not sure if we have to get mayor involvement in there. I suspect we need to get mayor involvement in there too. The mayor concurs with that decision.

CHAIRMAN RICE: But if the motion to approve this appropriation of funds back to Department of Agriculture, would that be appropriate?

MR. CRADDICK: If we can do that.

MR. HASHIMOTO: So moved.

MR. NOBRIGA: Second.

CHAIRMAN RICE: Moved and seconded. Shall I read the letter to everyone?

MR. KUSHI: What are you moving to do?

MR. STARR: I feel the same way. Don't feel bad.

CHAIRMAN RICE: We'll agenda it for the next meeting. I thought it fit under the report of -- okay. Thank you, Clark. I got to ask Clark, you appointed the committee?

MR. HASHIMOTO: Pardon me?

CHAIRMAN RICE: The committee was appointed by you?

MR. HASHIMOTO: Yes.

CHAIRMAN RICE: Anybody have any objections? That's why we asked Clark to head that up. Let the record show

there's no objection to the committee members presented by Clark Hashimoto.

One last item on the agenda, we have the continuing evaluation of the director. Unless I missed something.

MR. NOBRIGA: What about discussion and possible action of ramifications?

CHAIRMAN RICE: That's if we had to go into executive session. That's the same as this.

MR. NOBRIGA: I wanted to hear what would be the ramifications.

CHAIRMAN RICE: Okay.

MR. NOBRIGA: We can defer it.

CHAIRMAN RICE: We deferred it to the next meeting.

MR. STARR: Mr. Chair, on this last agenda item, it's something I really want to see us pursue; however, I'm kind of out of steam today, I think everyone is.

Also, we should have before us a documentation from the previous go-around on that. So I would like to suggest we defer that and when we come back we have the documentation from the previous portion of the review and so on available for us in our package.

CHAIRMAN RICE: The chair has no objection if the rest of the board members agree. My only comment would be that

we do it in an expeditious manner. We owe the director that.
As quickly as we can.

MR. STARR: Let's do this the next time.

CHAIRMAN RICE: That's fine with me. Any
objections?

MR. NOBRIGA: No objection.

CHAIRMAN RICE: Mr. Hiranaga?

MR. HIRANAGA: So is it the purpose to reevaluate
him? What are we doing?

CHAIRMAN RICE: We told the director that we would
reevaluate him.

MR. HIRANAGA: So we're going to have the blank
forms again that we fill out at the next meeting?

CHAIRMAN RICE: Yes.

MR. HIRANAGA: I believe you consolidated comments?

CHAIRMAN RICE: Yes.

MR. HIRANAGA: We can look at those and decide if he
needs improvement or not?

CHAIRMAN RICE: Right. Is that good?

MR. HIRANAGA: (Nods head.)

CHAIRMAN RICE: Is there any other business to come
before the board at this time?

MR. NOBRIGA: When is the next meeting scheduled?

MR. CRADDICK: 24th.

MR. NOBRIGA: I'll be out of town.

CHAIRMAN RICE: Motion to adjourn.

MR. STARR: I was hoping just to state that the following meeting we keep that to basically one area, which is Central Maui availability and source and so on.

CHAIRMAN RICE: We got a bunch of things now.

MR. STARR: That would be following the November or whatever.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: We have to answer that letter to the water commission on the 4th of November, so can't go much further than that.

MR. NOBRIGA: One special meeting next week.

MS. PARSONS: I think we should.

MR. CRADDICK: Maybe you can put the item for the attorney on there.

MR. NOBRIGA: We need a new agenda. We have six days, tomorrow until Thursday.

MS. PARSONS: Do you think you can put one together?

MR. CRADDICK: I don't do the agendas.

CHAIRMAN RICE: On what issue?

MR. NOBRIGA: Central Maui for -- answer the commission.

CHAIRMAN RICE: Not Central Maui. You mean the SEIS?

MR. CRADDICK: That and the record on Iao and Waihe'e from the water commission.

CHAIRMAN RICE: Oh.

MR. NOBRIGA: Those guys in da kine, the guys in Ulupalakua that clean the mawae (phonetic).

MR. CRADDICK: Next week Wednesday, the item about the water commission is going to be on the council's agenda. Also they are asking me to come to that meeting and give them something. I don't know what.

MS. PARSONS: Meeting for Thursday?

MR. CRADDICK: Today we can file it for -- there is still time to Tuesday.

CHAIRMAN RICE: What's the date?

MR. CRADDICK: The 15th.

CHAIRMAN RICE: What would be on the agenda?

MS. PARSONS: SEIS, central valley.

MR. CRADDICK: Water commission report, whatever the

board needs here.

CHAIRMAN RICE: SEIS, water designation report.

What else? That's it.

MR. CRADDICK: Those are the only two?

CHAIRMAN RICE: Is that all right with everybody?

MR. HIRANAGA: What date?

MS. PARSONS: 15th.

CHAIRMAN RICE: Tuesday the 15th.

MR. NOBRIGA: Really?

CHAIRMAN RICE: That's what they're saying.

MR. NOBRIGA: Wednesday, get the da kine here.

CHAIRMAN RICE: Motion to adjourn.

MR. HASHIMOTO: So moved.

MR. STARR: I want to be sure this is not going to preclude us from looking into the availability of source for Central Maui at a later date.

CHAIRMAN RICE: I wouldn't think so. It would not be my intention. We're adjourned.

IWADO COURT REPORTERS, INC.

(The proceedings were concluded at 2:08 p.m.)

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"By Water All Things Find Life"

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