

County of Maui Water  
Supply

**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI**

**REGULAR BOARD MEETING**

Held at the Kahului Shopping Center, 65 West Ka'ahumanu Avenue,  
Unit 29, Kahului, Maui, Hawaii, commencing at 9:00 a.m., on  
Wednesday, November 27, 2002.

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

IWADO COURT REPORTERS, INC.

**A T T E N D A N C E**

CHAIRPERSON:

PETER RICE

VICE CHAIR: MICHAEL NOBRIGA

Board Members: CLARK HASHIMOTO

KENT HIRANAGA

HOWARD NAKAMURA

GINNY PARSONS

JONATHAN STARR

MICHAEL VICTORINO

DIRECTOR: DAVID CRADDICK

DEPUTY DIRECTOR: GEORGE TENGAN

DEPUTY CORPORATION COUNSEL: EDWARD KUSHI, JR.

BOARD SECRETARY: CATHY HOWARD

FISCAL OFFICER: HOLLY PERDIDO

ENGINEERING: HERBERT KOGASAKA

PAUL SEITZ

ALAN MURATA

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY

WEDNESDAY, NOVEMBER 27, 2002.

HEARINGS OFFICER: Good morning, everyone. I'd

like to call to order the meeting of the Board of Water Supply,  
County of Maui. It's Wednesday, November 27, 9:00 am. We are  
in the Kahului Shopping Center. Before I start, pagers and  
cell phones on off or silent, please.

We have a quorum present. Members present, Kent  
Hiranaga, Clark Hashimoto, Jonathan Starr, Howard Nakamura,  
Ginny Parsons, Mike Victorino, myself, Peter Rice, Director  
David Craddick. And I didn't notice there's no Corp Counsel,  
I'm sorry.

Let's move along. We have approval of the minutes.

We have the regular meeting of October 8th and the special

meeting of October 15th has been included in your packet.

MR. VICTORINO: Mr. Chairman, move to approve the minutes of the October 8, 2002, and our special meeting on October 15, 2002.

MR. STARR: Second.

CHAIRMAN RICE: Moved and seconded to accept the minutes, place them on file for 30 days pending review. If no comments, that they be filed. Any discussion to the motion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried.

At this point in the meeting we have testimony from the public. As I have done in the past, if you would like to testify at the beginning of the meeting on any item that's on the agenda, we will hear that public testimony. If you would rather testify at the point of the meeting where we discuss your particular topic, we will also open up the meeting for a brief period before that. Mr. Victorino?

MR. VICTORINO: Nothing.

CHAIRMAN RICE: Testimony. The first name I have is

Anders Lyons.

MR. LYONS: I'd like to testify at the time of our  
matter.

CHAIRMAN RICE: Okay, Anders. And I have

Mr. DePonte. I'm sorry, I'm not very good at reading this.

Oh, Miss Ruth, I'm sorry, I couldn't read it. Ruth?

MS. DePONTE: I'd like to testify when it comes up.

CHAIRMAN RICE: Edwin Misaki.

MR. MISAKI: I'd like to testify on East Molokai.

CHAIRMAN RICE: And Roger Sussman.

MR. SUSSMAN: I'll go later, at the time.

CHAIRMAN RICE: All right. I see that Corp Counsel is here, so we will take -- drag our feet a little bit here as he gets set up. Mr. Kushi, we have approved the minutes and we have talked to the people about public testimony, all of which -- a late arrival, the well-regarded Isaac Hall.

Okay, anybody else who would like to give any public testimony at this time before we start on the agenda? Mr. Craddick?

MR. CRADDICK: The people from Molokai wanted to be moved up because they have got to catch a plane back.

CHAIRMAN RICE: Yeah, they're going to be pretty quick here. I think we will take care of it. What time is your plane? (Inaudible) We should be able to handle that.

Okay, hearing and seeing nobody wishing to testify, then we will move on to Director's Reports. The first one is 02-43 regarding proposal for a cooperative study between USGS and the County of Maui groundwater. Mr. Craddick?

MR. CRADDICK: Okay, on this item we previously received a proposal from USGS. I believe the Board has had a chance to look over that. In our budget is \$100,000. The

proposal will need \$180,000 for this fiscal year, which won't end until October, or I guess the end of September, 2003 for the federal government. So it's a little bit longer than our budget. But they expect to, I guess, need that amount of money this year.

And on the designation issue I guess the Water Commission did not designate. One of the things they wanted to see is that this was in place within, I believe it was, 60 or 90 days, George? 60 days I'm getting. And one other item I'd just caution you on is the peer review of this work. The Water Commission would like to work with us on it and be able to

provide comments. And however you word that peer review portion of it, I think that needs to be well understood that, you know, assumptions without a real basis for those assumptions would probably not be acceptable in the model.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: First of all, I believe that what's required of us is \$150,000. That their \$30,000 is expected to be matching that. I'd like to request clarification from Mr. Tribble on the first year, the first year budget requirement.

CHAIRMAN RICE: Yeah, come up here. Why don't you

come up. The budget, why don't you come up.

MR. TRIBBLE: Thank you. For the record, my name is Gordon Tribble. I'm the District Chief of the U.S. Geological Survey in Hawaii. The question is the budget for the proposed groundwater remodeling effort. As we sent the proposal into the Board, the funding for this year was to be \$180,000 total, of which \$30,000 would be covered by federal funds. The remaining \$150,000 would come from local sources.

MR. STARR: I understand that this is on a federal, a federal year, is that correct?

MR. TRIBBLE: That's correct. One of the details

that we need to work on, though, is the timetable for this was predicated starting in October. Obviously we have slipped past that, so there would be some slippage in the following years, if you would, on the timetable. The scope would remain the same, but the whole schedule would be offset perhaps by six months or so.

CHAIRMAN RICE: Hold on a second. There are folding chairs right there, folks. If you folks would let these people have seats. Okay, go ahead.

MR. STARR: What I'm trying to ascertain is we have

\$100,000 in our budget for this fiscal year, which would end on, I guess, the end of June. And I'm trying to ascertain whether that is sufficient for the period between the initiation of the project and the end of June, or whether we would need to put more funds into it for that period. It sounds like not.

MR. TRIBBLE: That's correct, presuming that we would at this point probably start at the -- halfway through our fiscal year, which would be March.

CHAIRMAN RICE: I think it's important we begin the process. Any other questions? Mr. Nakamura.

MR. NAKAMURA: I have one question. The project includes funding through the year 2007 ultimately, is that correct?

MR. TRIBBLE: That's correct.

MR. NAKAMURA: So are you asking the Board to make a commitment to continue to fund this project for the next five years, or are you just asking for funding for the first year?

MR. TRIBBLE: Ideally it would be most efficient in terms of the paperwork to have a funding agreement that covers the full scope. I understand that there's some timetable issues that may make that difficult. What I would ask for now

is an expression of commitment that we don't go two years into this project and then stop, because the value of doing that is pretty minimal. It's either we either do the project or you don't do the project. So there would be a tremendous waste of money on all sides and a lot of effort wasted if two years into the project the funding was terminated.

MR. NAKAMURA: Mr. Corporation Counsel, what is the limitations that the Board has for something like this?

MR. KUSHI: Yes, Mr. Chair, Board Member Nakamura, as in all County agencies we can only commit to what the budget states. Your budget is based on a fiscal year basis. I

believe you have allocated some funds for this fiscal year.

However, I believe in the proposed contract itself it does say,

it does mention, it does have some language in that the future

years are subject to funding. Is that correct?

MR. TRIBBLE: Yes, the language is such that the

continuation of the project is subject to the availability of

funds by both parties. So it's not an unrealistic scenario

that my budget could be cut, and so then we would have to think

about how to scale back. Similarly --

CHAIRMAN RICE: I think we -- it would be the

Chair's preference that we proceed with this item, and that given the questionable nature of this Board, that we resolve to recommend to whoever the future authority is that they continue with this project, and I think that's something that is --

MR. VICTORINO: Mr. Chair, are you saying that then we are now recommending just for the one year and the \$100,000 that Member Starr has mentioned that because of the start dates and probably starting in March of 2003, and our true fiscal year completes in 2003 June. So then we're really asking for \$100,000 that already is in the budget. So what action do we need to take, because it's already in the budget? That's my

question at this point.

CHAIRMAN RICE: Traditionally, even though it's in the budget, the Board takes the action to approve the expenditure.

MR. VICTORINO: So in other words, the motion would be set up to approve the \$100,000 to get this project started. Am I correct, Mr. Starr?

MR. STARR: If I were phrasing the motion it would be to approve the proposal by the USGS to proceed with the model and utilizing the \$100,000 of funds that's already in this year's budget.

MR. VICTORINO: So would you like to make that into  
  
a motion?

MR. STARR: Sure. I would like -- I have one last  
  
question before I proceed, and that is it's -- I would hope  
  
that possibly some additional funding might be available on the  
  
federal side, and if that's the case, I'm hoping that that  
  
would allow the co-operator side to be reduced accordingly. Is  
  
that assumption -- is that assumption reasonable?

MR. TRIBBLE: Yes. It's my intent to bring as much  
  
federal project funds as possible. And one of the reasons we  
  
have been able to put more in the following years is that I've

started withdrawing funds from lower priority projects that have been ongoing.

MR. STARR: With that being the case, I'd like to move that the Board approve and participate in the proposal for numerical water modeling for the head and shoulders area of Maui in accordance with the October 2 proposal from the USGS. And that the funding of \$100,000 that's already in our budget for this fiscal year be used for the initial co-operator portion.

MR. VICTORINO: Second.

CHAIRMAN RICE: It has been moved and seconded. Do

you understand the motion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried, unanimous.

The next item on the agenda is approval --

MR. CRADDICK: That was just \$100,000 now?

CHAIRMAN RICE: That's what's the budget, approve

the proposal and authorize the expenditure from this year's

budget.

Okay, the next item is the East Maui Watershed Protection Agreement. Anders. Could we have Edwin come up also? I think we can handle both. Also Edwin is your item D on the agenda, that's East Maui -- East Molokai Watershed Partnership contract for the Nature Conservancy.

MR. LYONS: Thank you. My name is Anders Lyons, I'm director of the Maui programs for the Nature Conservancy. I have a very brief statement. I just want to thank the Department of Water Supply, David Craddick and his staff, for the incredible support that they have shown us in the last several years in our watershed protection efforts, and the

concurrent support that we have felt from this Board.

We are very, very appreciative of your support of our watershed protection, and we thank you wholeheartedly and deeply for that commitment to our watershed. Thank you.

MR. MISAKI: I'm Ed Misaki from Molokai. I'm the director of the Nature Conservancy there. I also want to add to Ander's appreciation of the Board of Water Supply and the Department of Water Supply for providing funds for Molokai. I have handed out a summary of the things we've done this past year, and we were able to do this because of the Board of Water Supply, your contribution, and we were able to match that with

some government funding, federal funding also. So it really

helps in attracting other funding to do the work on Molokai.

I am here to answer any questions you may have on  
our request for \$25,000 for the fiscal year '03. Thank you.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: I don't have any additional comments  
there. The money is budgeted.

CHAIRMAN RICE: The monies are budgeted. I might  
note for the record, Board Members, that the East Maui request  
is via a five-year agreement, and I believe Mr. Kushi has

indicated that we can approve funding for the current budget year. I know Anders was attempting to create a situation where he didn't have to come back every year, but we have only authorization for one budget year of funding. Any comments by the Board Members?

MR. VICTORINO: Mr. Chair, are we going to accept on these?

CHAIRMAN RICE: Yes, we'll have two motions.

MR. VICTORINO: So there will be two motions, one will be for the East Maui and the other one will be for the Molokai watershed?

CHAIRMAN RICE: Yes.

MR. VICTORINO: May I ask the other question I have is what is the funding allocated this year? Is it \$100,000, Mr. Craddick, for this year? What do we have allocated this year?

MR. CRADDICK: Yes, that's correct.

MR. VICTORINO: It's \$100,000 for this year. So our motion would have to incorporate that for the fiscal year 2003?

MR. CRADDICK: Yes.

MR. VICTORINO: Mr. Starr, I think you have some

questions.

MR. STARR: I'm certainly in favor of the project.

My question to you, though, is with the current funding how are you doing in terms of progress of keeping feral animals, feral ungulates, and also invasive species such as Miconia under control? Are you winning the battle or losing the battle or breaking even or something else?

MR. LYONS: Well, I mean it's a simple question, but it's a complex answer. Watershed protection is a long-term project. A native ecosystem is a dynamic environment, and it requires a long-term commitment towards management. Are we

making headway on undulates? For sure, absolutely. I mean, for example, last year we removed 14 pigs out of our preserve, and that's way down from ten years ago when we were removing about 100 a year.

So absolutely there's progress, progress on Miconia mapping, there's progress on outreach in the community, letting them know the important support that this Board is providing for watershed protection. Yes, there's progress, but it's long-term.

CHAIRMAN RICE: Any other questions? Mr.

Victorino.

MR. VICTORINO: I want to make the motion to approve the East Maui Watershed Protection Agreement with the Nature Conservatory with the funding for 2002-2003 for \$100,000.

MR. NAKAMURA: Second.

CHAIRMAN RICE: Moved and seconded to approve the request. All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried. Molokai?

MR. VICTORINO: I move that we approve the Molokai Watershed Project for the -- I'm sorry, I don't have the amount in front of me.

CHAIRMAN RICE: \$25,000.

MR. VICTORINO: For \$25,000.

MR. NAKAMURA: Second.

CHAIRMAN RICE: Okay, moved and seconded to approve the request for East Molokai Watershed Partnership contract.

Discussion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried. Thank you, gentlemen.

MR. LYONS: Thank you very much for your support,  
thank you.

CHAIRMAN RICE: Okay, back to item C, report  
regarding the request from Kawela Plantation Homeowners  
Association. Mr. Craddick?

MR. CRADDICK: I believe there are some people here  
from Molokai.

CHAIRMAN RICE: There's no request. Is there anyone  
here from Molokai who wants to say anything on this issue?

Yes, sir. If you do, please slide over and pass the gentleman the mike, please. State your name for the record.

MR. ANOS: I'm Arvel Anos and I represent Kawela Plantation Homeowners Association. This is Mark Martie, he's also with me, and we thank you for having us here and we appreciate whatever we can exchange.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: Okay, we've reviewed the maps and drawings of this sent to us, and aside from their water system, the property, watershed property also is one of the better

sites for drilling for an exploratory well for additional backup sources for Kaunakakai. So a joint effort with them I think would be advantageous to the department. And our recommendation is to continue this process with the group. The problems that the system has we feel are manageable.

CHAIRMAN RICE: So it would be your opinion that the department prepare a document for the Board's approval that would -- that would be subject to their approval, I guess. So no action is needed other than authorization to proceed?

MR. CRADDICK: Yes.

CHAIRMAN RICE: Any questions or comments, Board

Members? Mr. Starr.

MR. STARR: Yeah, just what would that action to authorization to proceed be?

CHAIRMAN RICE: I believe the authorization is to proceed to bring back a contract for the Board's approval.

MR. CRADDICK: That's correct.

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: So we don't have to take any immediate action, it's just a matter of passing it on?

CHAIRMAN RICE: Yes. No objections? Then that's so ordered.

Okay, item E, request approval to award contracts, amend the 2003 budget for additional funds for water system development fee, and issue Notice to Proceed for East Maui Water Transmission Project. Mr. Craddick?

MR. CRADDICK: Okay, this project here is the phase 1-A and B of the East Maui Transmission Project. We have the low bidder on the contract here from 1994, Coluccio. We have a letter from their bonding company that says the original bond is still in force and effect. We have a letter from the state that the monies are still encumbered. And the department has been put on notice that the state funds would lapse in December

should we decide not to move forward. Both contracts would complete the first phase of the East Maui plan.

You have got all the various footages of pipe in there and the sizes. The difference between the low bidder and the second bidder in 1994 was \$334,000. Our engineer's estimate at the time was \$7.2 million.

At this time should the job be awarded, we would expect it to be subject to a request for delay of award charges. And we have negotiated a number with them, and that is an additional \$1.48 million, or 3.21 percent per year for

eight and a half years, totalling 27.3 percent increase in the contract amount.

The 27.3 percent was arrived at by using the Engineering News Record Construction Index from April 1994 to November 2002, which is 21.6 percent, or about 2.5 percent per year. And to that we have added a Hawaii freight and labor factor of two-thirds of one percent per year for a total of 5.7 percent added to that 21, which is how we get the total of 27.3 percent. The contract amount with this change would be \$6.9 million, so still less than the engineer's estimate in 1994.

Now, there are also some things that we have talked

with them about doing which the Board, when they approved the supplemental EIS, didn't want to do. But we have checked with OEQC whether downsizing the scope of the project would require a new EIS, and the answer to that was no, it would not. So the Board could downsize the pipe feeding the tank on Baldwin Avenue to 24-inch. And as I told you before, it would reduce the amount of water, total amount of water that could come in to 9 million gallons instead of the envisioned 10 million gallons.

If we did that, they would buy so many feet of our pipe for \$240,000, and other deducted amounts would reduce the

contract to \$6,276,538. And again, that's with not including the \$240,000 that would be paid to us for materials.

So going forward with this option, the Board would have to amend the budget with \$856,691 additional funds from the water system development fee in order to give notice to proceed, knowing that that is what the cost increase would be if we go ahead. Should the Board not want to reduce the line size nor utilize the scope change alternatives, the budget amendment request would be for \$1,480,153.

And my evaluation of the issues surrounding the wisdom of giving notice to proceed on this contract involves

understanding the nuances from probable additional delays due to legal challenges to the EM Plan Supplemental EIS. Should the jobs not be given notice to proceed, additional delay charges can be negotiated before notice to proceed if we are able to hold on to the state funds.

The other scenario is, should we give notice to proceed using presently available state funds and the job has to be shut down due to legal challenges, we would have to negotiate additional delay costs with the contract in place, and then we suggest some -- if you want to go this way, some

mitigation issues. And one is that we limit notice to proceed to the purchase of materials only, subject to seeing what the issues are in a legal challenge, if any.

And we have actually already talked with them about using the same process for any further delays of the job, and they have said they're agreeable to that. And in this matter we would not be subject to them mobilizing for the job and then demobilizing again after we have given them notice to proceed.

The staff recommendation for this matter is to award the contracts now and give notice to proceed limited to material purchase only, and the contractor agrees now to

limiting future increases to the Engineers News Record

Construction Cost Index with the Hawaii freight and labor

increases of two-thirds of one percent, and utilize the scope

additives -- let's see, you don't have those scope additives in

here, do you? Yes, you do, they are on page -- let's see.

It's not numbered here.

Oh, no, it is, 166. One is to change the pipe size

from 36 to 24 from the Cane Haul Road to Baldwin Avenue. One

is changing the butterfly valves to 36-inch resilient seat gate

valves, and eliminating the 16-inch line on phase B. And

either eliminating that totally or using some portion of it to

change the 12-inch portion of line on Baldwin Avenue to a  
  
36-inch line.

CHAIRMAN RICE: Mr. Victorino?

MR. CRADDICK: I'm not totally finished.

CHAIRMAN RICE: Oh, you're not finished.

MR. CRADDICK: In discussions with future people that  
  
may be somewhat in charge of this, the feeling was that the  
  
36-inch line probably should remain in place because in any  
  
case, the water is going to be needed in the future, whether we  
  
develop it in this portion right here or not. The problem with  
  
that is if you're thinking about doing future portions then

there's an argument that you are parcelling. So anyway, I will leave that for what it's worth. There is, I think, the consensus that the water needs to be developed and the decision for whether the EIS is adequate or not adequate. It seems like a decision can't be made on whether that's good until they review those documents. And they would defer to this group here on whether the EIS documents are sufficient or not.

CHAIRMAN RICE: Okay, Mr. Victorino?

MR. VICTORINO: Okay. Just to summarize what you

have just gone through, and you have gone through a long

dissertation, what you're recommending is approval of this with all the limitations with the contractor who this is going to be awarded to, based upon some increases in cost and all that factored in?

MR. CRADDICK: Yes. But keeping in mind now, keeping in mind the decision on the 36-inch line, that is one where the recommendation from future people is that we proceed with the 36-inch line, not going down to 24. So I don't totally disagree with that, but I guess because of one thing that I haven't listed down in here, and what I told you at the meeting when we were discussing the EIS, is that the wisdom of

putting all your eggs in one basket in this day and age after

9-11 probably obviously was not discussed during the

preparation of this EIS, and it is a factor.

So if a future project were to do another line, I

think you're just that much more secure being able to get the

water to the top. There's not one line that somebody can take

out and all that water is lost.

MR. VICTORINO: Well, let me continue. You kind of

cut me off in the question, but that's fine. The second part

of my question was basically this. If we approve this as

stated, whether you go 24-inch, 36-inch, whatever options we

have with the contractor, how does this -- if the next group of people coming behind of us or the new administration, being that I want to see this approved so that we do not handcuff them in any way, they can make their own decisions in whatever manner they want to move on this whole issue. And knowing legal challenges are around the corner, does that \$4 million from the state, would that be incorporated with this or do we have to somehow lose that going in another direction?

MR. CRADDICK: Once the contract is signed, currently right now today the monies are encumbered. That's all I can say on that. You know, if you wait, whether we lose

that or not, I can't say.

MR. VICTORINO: But there's a strong possibility?

MR. CRADDICK: That's the wording that we've gotten.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I personally believe that it would be folly to issue a \$7 million contract for a pipeline that may never get built, that in most likelihood will not get built for the next ten years when we go through the litigation. All we do when we do that is to give the contractor a very good justification to generate enormous extras and have the ability

to sue us if, as is most likely the thing is delayed for a long period of time or never transpires in its current form.

It really seems a much more reasonable alternative to wait until the outcome of litigation is finalized, or at least is on the horizon, and then proceed with actually buying the materials and proceeding with the project. You know, we have all seen what happens when projects are contracted and materials are bought and then they sit stockpiled and the project gets delayed or doesn't happen, and that's not a good sight, and it's not something I feel we should subject the -- as David said, the future people.

I'm not quite sure what he's referring to by the future people, but I wouldn't want to saddle them with \$7 million worth of pipe that probably won't enter the ground for many, many, many years, and a contractor that has a right to sue them and create all kinds of trouble. I think we should leave this for the future people when they -- when the future litigation gets settled, if it does, and if at that point the future people decide to proceed with drilling wells in East Maui in lieu of other solutions to the water problem.

CHAIRMAN RICE: Mr. Craddick?

MR. CRADDICK: That's why we sat and negotiated with

them what any future increases will be. If they want to speak for themselves, we are not open to any lawsuits. We have already negotiated what the future increases will be, and we will use the same methodology that we've used to calculate the fee to date, which is using the Engineer News Record, which is a published record nationwide available to anybody, and adding that two-thirds of one percent factor for Hawaii freight and additional labor cost here in Hawaii. So it is not open-ended in any way, shape or form. And I don't know if your contractor would like to speak.

CHAIRMAN RICE: Miss Parsons?

MR. PARSONS: I move to accept the Director's request in full as stated. I make a motion.

CHAIRMAN RICE: Is there a second?

MR. VICTORINO: Second.

CHAIRMAN RICE: Okay, moved and seconded to accept the Director's recommendation. I think that ought to be clarified. The Director's recommendation was --

MR. CRADDICK: To issue a limited notice to proceed to purchase materials only, accept the scope changes A, B, C as listed on page 166, with the proviso that the notice to proceed

be with agreement that any future increases be limited to the methodology used to calculate the increases to date.

CHAIRMAN RICE: Discussion? Yes, Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, just for the record, I am going to recuse myself on this, but I would like to say that I have some very serious reservations about the procedure.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: Public testimony, if any.

CHAIRMAN RICE: Is there any -- Kent, Board Member Hiranaga.

MR. HIRANAGA: Just for my understanding, when we

have award charges, that's basically an inflation adjustment because of the passage of time?

MR. CRADDICK: That's correct.

MR. HIRANAGA: And if the motion to proceed is approved, you would actually expend funds to purchase materials or would you just delay the purchase of the materials and still give notice to proceed?

MR. CRADDICK: If you just gave notice to proceed and did nothing to start the contract, then I would not recommend that, because then you would be subject to a cancellation of the job charge, and having done nothing.

MR. HIRANAGA: Prior to construction of the pipeline, you would have to negotiate the location of the pipeline, correct?

MR. CRADDICK: No.

MR. HIRANAGA: And acquire easements. Or has the line, the location of the line been determined in the fact that you have got -- you have rights of ways through all of the properties that it impacts?

MR. CRADDICK: Sunnyside Road, there's some debate on who owns that road, whether -- obviously it's not a road to County standards, but it's been a public right-of-way for many,

many years. The Cane Haul Road is subject to easements with A&B, but that has already been basically agreed to under the amendment that the Board had with A&B some number of years ago.

CHAIRMAN RICE: Okay, let the record show that written testimony was submitted this morning by Isaac Hall regarding this issue.

MR. CRADDICK: No, that's for Hamakuapoko Wells.

CHAIRMAN RICE: Oh, it is, sorry. Any other public testimony before we take --

MR. COLUCCIO: Can I speak for a minute?

CHAIRMAN RICE: Yes, Mr. Coluccio.

MR. COLUCCIO: My name is Frank Coluccio. I just wanted to say that I tend to take a little bit of issue in the event that -- which was spoken in the words that we're trying to set up for any kind of litigation as such. We have been wanting to do this job for over eight and a half years. We looked forward to it for the longest time. We have kept in contact with Mr. Craddick's staff on a pretty regular basis over the course of the last eight and a half years. And we would just like to get in and build you that project.

And you guys need to make use of that \$4 million before you lose it, or when this project does eventually come to fruition, the prices will be extravagant -- they will be, you know, instead of 6, 7, you are looking at probably 10 or 12. If you are talking 15 years, 10 years, it could be up to \$20 million for a project of this scope.

So you're getting, as Mr. Craddick said, the price even with the escalation charges and the full-blown scope of the project, we are still lower than what the engineer's estimate was nine years ago. And you guys have got the \$4 million coming from the state.

MR. CRADDICK: It's actually \$5 million.

MR. COLUCCIO: Five. So I do just take issue with the -- we're not the type of contractor that looks for lawsuits. We just want to do work and try to keep our customers happy.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yeah, I did not mean to imply that you are in any way litigious or whether you were acting in any other way than in good faith. And I believe, you know, to the bottom of my heart that you are a good faith contractor trying to do the right thing. At this point I feel sympathetic with

you because you did enter into a contract in good faith a long time, and the County has not been able to do its part.

But I do want to be very clear on this, what this contract is for. This is the pipeline for the implant for the East Maui Water Development Plan that will run a 36-inch pipeline from Paia across to the Hamakuapoko Wells and further east.

MR. CRADDICK: That's not correct. The scope, as the motion said, reduces that to 24-inch.

MR. STARR: I did not -- I did not hear that. I

think that before we vote on that we should be very clear about what we're approving.

MR. CRADDICK: That's point A, which I said point A on page 166, which envisions installing 24-inch ductile iron pipe in lieu of 36-inch.

MR. STARR: I mean I feel it's a rather cavalier way that we're handling a change in pipeline for the implant. I don't know, it seems like we should be a little more thoughtful about this, you know. I, for one, am not clear what size pipe we're laying. But irregardless of that, and any of the things that are being put before us without any real review, it is my

belief that it will be many, many years before any of this will actually be put in the ground.

If it's not, you know, if we go another eight years and then it's not put in the ground, then I think that we've harmed the contractor even further, you know, and that was what I was trying to -- trying to comment on. But we should be clear that by doing this we're actually going ahead with the East Maui Water Development Plan, and I don't think we're really going to be able to really proceed with it. I think we're just backing ourselves in a corner, and I don't understand what size pipe we're laying, where, or what the

justification or what the flow is.

I don't know if the other Board Members are much more technically aware than I am, but I feel like we've got a shell game going and we are approving a shell game with, you know, in a lame-duck manner. I feel this is wrong and it may not come back to haunt us, but it will come back to haunt the citizens of Maui. So I, for one, will be voting against and feel that the Board is making a serious mistake by proceeding here.

The one thing it will do is it will create, make the litigation happen a lot faster. It will probably mean that,

you know, within a very short period there will be filings for

injunction and stop-work orders and all of that. I wish

Mr. Hall was still here. Is Mr. Hall still in the room?

Because he came and served us with a paper that's on a very

similar matter regarding Hamakuapoko Wells. I am sure if he

had been aware of this he would be serving us on this matter as

well.

MR. PARSONS: Mr. Chair, can you call for the vote

please?

CHAIRMAN RICE: Okay, all in favor say "aye."

MR. HIRANAGA: Mr. Chair, I think there was a question as to what the motion is. Are we adjusting the size of the pipeline or not?

MR. VICTORINO: It's one of the recommendations.

MR. CRADDICK: That's one of the items. I'm saying go ahead with the changes A, B and C as itemized on page 166, which will reduce the amount of water that we can bring in from the East Maui Development Plan from 9 million -- or from 10 million gallons to 9 million gallons.

MR. HIRANAGA: The recommendation I see is the last paragraph of his memo does not say to reduce the pipeline. I

just want a clarification of what I'm voting on.

MR. CRADDICK: No, it says utilize the scope  
additives A, B and C. The scope additives A, B and C are  
listed on page 166.

MR. HIRANAGA: I just wanted clarification.

MR. VICTORINO: Mr. Chair, before we call for the  
question, I want to make one thing perfectly clear. The people  
of Maui do deserve water and need to have the water moved  
around in certain areas. I want to ensure that the East Maui  
people are not being abused or taken advantage of, and that's  
why many of my recommendations have been stated in this

manner.

I have lived here many, many years. My family have deep roots here. I tend to say litigation is there because people want to make it a part of our life. Then it has to happen. But I refuse to step back every time somebody says there's litigation on the horizon, not to proceed. This is my home, my family's home and the homes of many of us for many years to come, and I want to see us ensure that the next administration, whether I have personal feelings or not, has the opportunity to move on these things and not be losing state monies or other areas of income that can help us proceed in

making Maui a better place.

MR. HIRANAGA: Mr. Chair, may I say something?

CHAIRMAN RICE: Yes.

MR. HIRANAGA: Now that I understand that the recommendation is for the reduction in pipe size from 36 to 24, I just wanted to inform the Board, based upon that issue, I will be voting against the motion.

MR. CRADDICK: May I change my recommendation to the board then?

CHAIRMAN RICE: We have a motion and a second on the

floor.

MR. PARSONS: I will amend my motion. I took it --

I apologize that I read the book before the rest of you did.

What I saw was the Director making a suggestion on how to move

forward with this, and if the Director would like to amend his

recommendation I will be glad to amend my motion. I just think

we need to give -- I agree totally with Mr. Victorino, I think

we need to give the next administration as much ammunition as

they need to go forward. And if they determine that they don't

want it, then they can make that decision and they can override

us. They will have that ability to do it. There is no reason

that we shouldn't move forward for this for the people of East  
  
Maui.

MR. STARR: Point of order. Mr. Corp Counsel, are  
  
you awake?

MR. PARSONS: Don't be insulting, Jonathan, okay.  
  
You don't need to be insulting.

MR. STARR: Okay. The maker of the motion is making  
  
an amendment to their own motion. Is that in order?

CHAIRMAN RICE: Excuse me. I was going to offer to  
  
the maker of the motion that they withdraw their motion and  
  
then withdraw the second.

MR. KUSHI: You can withdraw it.

MR. PARSONS: I will withdraw the motion.

CHAIRMAN RICE: Does the second accept that?

MR. VICTORINO: Yes. For the sake of conversation purposes, I withdraw my second.

CHAIRMAN RICE: Here we go, we're back to square one. Mr. Craddick?

MR. CRADDICK: I'd like to change my recommendation to go with the 36-inch line in Schedule A, and not accept the deductive amount of the \$394-some thousand dollars and go with the 36-inch line. And I will say, you know, the future

administration concurs with that method of going ahead, too.

CHAIRMAN RICE: Mr. Kushi?

MR. KUSHI: Mr. Chair, because the motion was withdrawn, the second was withdrawn, I would suggest, before you entertain any further motions, please call for public testimony. If there's none, close the public testimony on this agenda item.

CHAIRMAN RICE: Counsel recommended that there be another period of public testimony. So given the Director's recommendation has changed, is anyone -- sorry?

UNIDENTIFIED VOICE: Would you use the microphone,  
because I can't hear you clearly back here.

CHAIRMAN RICE: Okay, at this point is there any  
other public testimony? Hearing and seeing, seeing and hearing  
none, I will close testimony. Okay.

MR. PARSONS: I move to take the Director's  
recommendations as stated and amended for the 36-inch pipeline  
project for East Maui with B, C -- B, C and D, and move  
forward.

MR. CRADDICK: I'm not recommending D.

MR. PARSONS: B and C.

CHAIRMAN RICE: There's a motion on the floor.

MR. VICTORINO: I second.

CHAIRMAN RICE: Okay, moved and seconded to approve the request to award contracts as recommended by the developer, I mean by the Director with his recommended -- with his recommendations amended to include the 36-inch pipe and not the 24-inch pipe. Okay, discussion?

MR. VICTORINO: Mr. Chair, I would still support the item, even though I am a little upset that the reduction in pipelines to ensure that East Maui is not regged (phonetic) of all their water. But I will still support just to give the new

administration an opportunity to make decisions in that area.

I will still support the motion. But I am still appalled at

the fact that I really think East Maui people need some

assurances that we are not going out there just to grab water

and leave them high and dry in the future.

CHAIRMAN RICE: Okay, any other discussion? All in

favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. STARR: Nay.

CHAIRMAN RICE: Let the record show there's one

nay. The motion is carried.

MR. NAKAMURA: Let the record show I recused myself.

CHAIRMAN RICE: There's an abstain, recusement by

Mr. Nakamura.

CHAIRMAN RICE: Director's Report 02-51.

MR. CRADDICK: On this item there is a previous

agreement to build a water tank with Kulamalu and yourself, and

the percentage that we took and the percentage that the

developer took, the developer now wants to change, they want to

pay for more of the project. And because we have already paid

them some of the money, my recommendation would be to go along with this, let them reimburse us for storage that they need that we have already paid for, with the four percent interest charge on that money.

They have agreed to do that, and they should be able to move forward. And we will be reimbursed with -- how much money, Herb, was being reimbursed?

CHAIRMAN RICE: 396.

MR. HASHIMOTO: \$396,000, page 213.

MR. CRADDICK: That's correct.

CHAIRMAN RICE: Board Members?

MR. VICTORINO: Question.

CHAIRMAN RICE: Yes.

MR. VICTORINO: Being that they're going to  
reimburse us this \$396,000, is that what you're saying, David?

MR. CRADDICK: Yes.

MR. VICTORINO: Is there any other provisos that  
were mandated with this reimbursement, such as shares,  
percentage of water usage?

MR. CRADDICK: Yes, they get a larger percentage of  
the tank.

MR. VICTORINO: And that percentage is? Just so

that everybody is clear on it.

CHAIRMAN RICE: 37.1 percent.

MR. VICTORINO: Is that the percentage?

MR. CRADDICK: That's what the percentage ends up

being.

MR. VICTORINO: I just wanted to make sure that was

clear, because I'm in favor of this. I just wanted to make

sure the percentages were all clarified.

CHAIRMAN RICE: Okay. Mr. Nakamura?

MR. NAKAMURA: Mr. Director, I assume that when we

went into this agreement that there was some public purpose for

the Board agreeing to purchase the degree of storage that it did. In what way has the public purpose changed to the extent that you now suggest that we sell a portion of the storage back?

MR. CRADDICK: What has changed is that the development project originally envisioned building another tank just above where the Kamehameha Schools is for a large housing development. Because that housing development is not being built, that tank over there is not needed. And because it's too close to Kamehameha Schools in order to be of any use to

them, Kamehameha School needs the storage back at the tank.

And Kamehameha Schools already has their meter. We wouldn't be able to charge them an additional charge for their meter.

So if Kulamalu provides that storage to them and reimburses us the money, we will get additional funds for that additional storage that they need. And our participation in the tank was mainly to take state funds and build storage for King Kekaulike School, and then any additional storage we had was just for future development. So if this is the future development, Kamehameha Schools, then that's what it is.

CHAIRMAN RICE: Okay, Mr. Starr?

MR. CRADDICK: It's mainly a need to relocate the storage from just above Kamehameha Schools to a higher elevation.

MR. NAKAMURA: So just to follow up, you are recommending approval, and you are basically telling us that you don't see any disadvantage to the public interest by approving this?

MR. CRADDICK: That's correct, yes.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yeah, I have a couple of concerns with this. One is, you know, this tank is on a completely separate

system from Kamehameha Schools.

MR. CRADDICK: No, it's not, it feeds Kamehameha Schools currently. The tank currently feeds Kamehameha Schools and it is on the same system as Kamehameha Schools.

MR. STARR: This is -- you are talking about the tank?

MR. CRADDICK: The tank is above the polo field right above King Kekaulike School back in the trees there.

MR. STARR: Oh, okay. You are not talking about Kaupakalua?

MR. CRADDICK: No.

MR. STARR: Okay, that eases one of my concerns.

The other is just will the remaining portion that we have, will that be sufficient for other development in the community by other citizens? I know that we are about to start issuing water meters in the Kula area and, you know, in issuing those water meters we will be collecting storage, transmission, and source fees. I want to be sure that we are not going to have to stop issuing meters to people who have been on the Upcountry waiting list because we run out of storage because we have sold the storage that we had that we were going to use for those

people. How much storage capacity excess will we be left with in that area after we do this?

MR. CRADDICK: I am not 100 percent positive I can answer that totally. But the only other properties that need meters in the area are what was the old Malama Pacific property just above Pukalani. There's two pieces of land there where we had an old tank. Those properties would be able to be served from this tank. I know Maui Land and Pine is trying to get some rezoning request, but they had always planned to do a tank lower down anyway, so that would not necessarily be taking any storage out of this tank here.

MR. STARR: How much capacity do we have left? I am not talking about the other developers in the region, I am talking about I just want to be sure that there's some decent amount left for the people who would be wanting the one, two or three meters in that neighborhood.

MR. CRADDICK: There is, there's no doubt about that.

MR. VICTORINO: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Victorino.

MR. VICTORINO: Unless there's more questions, I feel very comfortable with the overall statements, and I'd like

to make a motion to approve the recommendation from the  
Director to I guess relinquish to 37.1 percent the usage of the  
550,000 gallon capacity, and also accept the payment of  
\$396,577.54 cents from the developer as an exchange for the  
percent of changes of our agreement.

MR. PARSONS: I second.

CHAIRMAN RICE: It's moved and seconded. Any other  
discussion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried, it's unanimous. We will take a  
  
one minute break.

(Whereupon a brief recess was had).

CHAIRMAN RICE: Back in order. Director's Report  
  
02-52, budget amendment for large scale scanner. Who is going  
  
to do it?

MR. KOGASAKA: The department is requesting a  
  
supplemental fund for purchase of a large scale scanner, and  
  
this is to replace an existing scanner that is not functioning  
  
any more. The intent was that when the scanner gave us

problems this was in August of 2001. We were trying to, trying to repair the existing scanner. And after working with the supplier and with the updates of our computer, we were not able to accomplish this.

Initially we had wanted to put this on our equipment budget on the 2002-2003 budget, but we opted to try to repair the existing scanner that we had and tried to use that to make it last another couple of years, but we have not been successful in doing that. I think rather than to pursue this avenue of approach, I think it would be better if we can replace it.

CHAIRMAN RICE: Questions, Board Members? Miss

Parsons?

MR. PARSONS: George (sic), is this the state of the art for you, these scanners at this point?

MR. KOGASAKA: Yes. It's the one we're looking to purchase, yes. It's an updated one. Actually, the old scanner is no longer available. They're selling products to improve that product.

MR. VICTORINO: Mr. Chair?

CHAIRMAN RICE: One second, Mike. The request is for \$12,000. Can you orient me to where the -- how the \$12,000

relates to the bids that we see on page 256? Am I missing something?

MR. KOGASAKA: It included the base amount plus the \$8,800, plus the one year warranty, shipping and handling costs.

CHAIRMAN RICE: Let me check my math. Which scanner are you recommending?

MR. KOGASAKA: Graphtec.

CHAIRMAN RICE: The Graphtec, \$8,800. Comes with a one year warranty, plus shipping. Shipping is \$4,000? I don't get it.

MR. VICTORINO: George (sic), excuse me.

Mr. Chair. Are you doing the one year or the two year

warranty? Is that inclusive of that \$12,000? Because you say

one here, but down below I see here, "Cost to change from

1-year to 2-year return-to-factory warranty is \$1,995."

MR. KOGASAKA: Yes, I'm looking at the two year.

MR. VICTORINO: The two year, that's what you're

recommending? Okay, so I think that's what we're trying to

get, is where the \$12,000 comes about.

CHAIRMAN RICE: Okay, I see. You're saying so we

pay them another \$2,000 to extend the warranty from one year to two year?

MR. KOGASAKA: Yes.

CHAIRMAN RICE: I want to be in that business.

MR. CRADDICK: All the computer companies, that's the major scam going on, I figure. Even Microsoft.

CHAIRMAN RICE: So the recommendation from staff is we need to have the two year warranty, it's worth \$2,000 bucks? And \$2,000 then for shipping, or thereabouts.

MR. KOGASAKA: The shipping is \$500 plus tax.

CHAIRMAN RICE: Okay. It may be a little bit

higher. Go ahead, Mike.

MR. VICTORINO: Okay, just so that we get this all clear, George (sic). We are looking at the Graphtec one, which is \$8,800, right?

MR. KOGASAKA: Yes, that's right.

MR. VICTORINO: And then you're also recommending an additional \$1,995 for the two year return to factory warranty?

MR. KOGASAKA: Yes.

MR. VICTORINO: And then was shipping included with this, or the \$500 is an additional to that?

MR. KOGASAKA: It's added to that, shipping and tax

is added to that.

MR. VICTORINO: You need to add the tax to that?

MR. KOGASAKA: That's right. It's an approximation that would include everything.

MR. VICTORINO: Just so we get that clear,

Mr. Chair, okay.

MR. KOGASAKA: I think a rough estimate of the shipping is around \$500 and the tax I don't have it written down over here. I made an estimate of that as well.

MR. VICTORINO: That should be around \$360, \$400, something like that.

MR. KOGASAKA: Yes, it's \$11,680.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I move to approve the  
request.

MR. VICTORINO: Seconded.

CHAIRMAN RICE: Moved and seconded. All in favor  
say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Motion approved.

Supplemental budget for meter inventory. Who's going to do that, Holly? I missed that \$200,000 item. I'm sorry, go ahead.

MS. PERDIDO: What we're requesting is an additional fund of \$200,000 to purchase additional meters. And currently how we have always been budgeting in the past is the meters we budget for are pretty much installed within a year. We still have a few more of the meter replacement program to get done.

And we have this year the Hawaiian Homes. To finish up the

Hawaiian Homes project would take out what we currently have in

stock. So we would be low on stock for this year.

So when we were speaking with the Director we came up with if we budget \$200,000 purchase, if you see on the back of the sheet how many meters, and that would give us a stock that would hold us not just year-by-year like we've been doing.

CHAIRMAN RICE: So what's our normal stock?

MS. PERDIDO: We usually budget about \$200,000.

This past year we also purchased some construction meters with backflow preventers on them, and those were like a test. And in the future we are going to budget for more of those also. But our current stock we usually have, I think this year we

purchased about 1,100.

CHAIRMAN RICE: And people pay for these  
meters, correct?

MS. PERDIDO: Correct.

CHAIRMAN RICE: So isn't this like a wash account?

MS. PERDIDO: Well, actually -- here, David.

MR. CRADDICK: The fee they pay, the water  
development fee does not pay for the meter. The meter comes  
out of the normal funds, operating funds. And because we're  
going through the meter list or expect to go through the meter  
list, we know there's going to be a lot, an unusually high

demand for meters this year.

But you're right, the total big bottom line number to the Board of Water Supply will, for instance, if people take all these meters we will be getting well over \$6 million in fees.

CHAIRMAN RICE: So I guess I heard you say something I want to clarify. These meters will carry us more than a year?

MS. PERDIDO: They will help finish up this year, which we're having an increase in meter installations this

year, and then should carry us through part of next year, we're hoping, so that we don't have -- we have stock that we can continue installing and not have a backlog like we did in June of this year. We ran out of meters, in other words.

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: I move to approve this additional appropriation.

MR. PARSONS: Second.

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

(A chorus of ayes).

Opposed say "nay."

(None).

Motion is carried, approved.

Now we are on the issue that most everyone must be here for, Ulumalu-Peahi. Mr. Craddick, why don't -- we have public testimony here regarding this issue, so why don't we hear it, okay. Let's start with, I got written testimony from Margaret Koebke. I'm sorry if I pronounced your name wrong. Is Margaret here, not here? Written testimony. Let the record -- Margaret, do you want to speak or are you just submitting your testimony? Okay, let the record show we have received

testimony. Roger Sussman.

MR. SUSSMAN: I defer for that.

CHAIRMAN RICE: Roger is going to defer for now.

Mary Murphy? I am going to close public testimony when we start into this, so I'm going to close -- I am not going to keep a dialogue going here.

MR. SUSSMAN: For other people who have not put in that paper --

CHAIRMAN RICE: Mary is next, and that's all the testimony. Okay, Mary, come up. Anyone who speaks come up here to this empty seat next to the stenographer, get the mike.

MS. MURPHY: My name is Mary Murphy. How many people here are from the Maui Ranch Estates? I'd like to see. Raise your hands. All right, you can see there are many of us concerned about this issue. I am a homeowner there, I have been in the Maui Ranch Estates for over seven years. My house was one of the first built there 29 years ago.

First of all, I'd look to say I think that the developer should be held responsible for this. When developers come in, make their money, skip town and leave people 20 years later with a water system that's so shabby we have to replace

it, it's not right. And how many other developments -- you know how many have been going in the last five years. How many more people are going to be in this situation 20 years down the road, same as us.

You know, I don't believe you people have any jurisdiction over this, but I think it's very important for the public to see what's going on here. Look at our situation. I only found out a few weeks ago that we were to be paying for new water meters. It was my understanding, and Nan Powell made it very clear to me several years ago, that everything was included in the personal loans we were taking out. I believe

it was something like \$7,000. She assured me the new water meters were covered in that amount and we would not be paying anything else.

I'm a single mother, I'm an artist, I make baskets, I wholesale, I retail a couple times a month under the banyan tree. I have a 17-year-old daughter. Last year when she turned 16 I made her go out and get a job and get a car because I barely make it month-to-month, and I don't have any extra money to be paying for a new water meter. This new extra burden of a personal loan is enough to take on. I can't afford it. So I am shocked and appalled, and I don't understand why

we should have to pay for a new water meter.

The figure thrown at me was \$4,850 or \$4,890. Why?

We are not consuming any more water. All we are doing is going

from a master meter to individual meters. We are paying for

the installation, and I believe when you get new water meters

-- Jo Anne Johnson has been speaking with me about this --

when you get a new water meter you are paying for the

installation. Besides the actual meter itself, you're paying

for the installation. That's covered. Nan Powell got that

loan, \$1.4 million plus the other grants, so why should we have

to pay for new water meters?

It's not fair. There's no common sense in this, I don't understand it. I don't know where that reasoning came from, that we should pay at the new rate, apparently from what I understand. Not the old rate, but the new rate which went into effect last summer. It's not fair, it's just not fair.

And also there's the question about the credits.

Apparently we're supposed to pay, the information I have is that next Tuesday we are supposed to come up with \$4,890 or else go to the bottom of the water list. It doesn't make sense. Have I got some facts wrong? You looked like you wanted

to ask me something. Okay.

MR. VICTORINO: I do want to ask you something, but not yet. Okay.

MS. MURPHY: Okay, our president knows a lot more than I do. I've just been living there, and all this just came to light to me a few weeks ago, and I'm shocked. And that's why all of us are here. It's not fair. What are our credits due then? We shouldn't have to pay the full amount. The feds and the grants that we've gotten, plus our personal loans, is paying for this. But the main thing I'll reiterate again, why are we paying for new water meters? We are not taking any more

water. It's just changing from the master meter to the

individual meters, and this doesn't make any sense to me.

I would like to see some common sense prevail in this, because this is not fair to us owners. And if we are to pay something, that a reasonable payment schedule be put into place. Because a lot of us I believe are in the situation as I am, we get by month-to-month. We don't have a lot of money sitting around that we can just pull out and pay for a new water meter. So at least some kind of reasonable payment schedule and the credits, whatever they are. I do not know if it's you people that decide on the credits. Okay, that's all I

have to say.

CHAIRMAN RICE: Mr. Victorino, I know you have a question.

MR. VICTORINO: Now I'm afraid to ask the question.

MS. MURPHY: Watch out.

MR. VICTORINO: She seems the type that would bite my head off if I ask the wrong question. If I do, I apologize. You mentioned a lot about the master meter, the grant, the \$1 million something dollars.

MS. MURPHY: \$1.4 million.

MR. VICTORINO: Plus you all put in a \$7,000 loan,

you all went out and got a \$7,000 loan.

MS. MURPHY: Correct.

MR. VICTORINO: Now, all that money went to the original system, is that where that money went??

MS. MURPHY: This new system, it is being built currently. I have seen the trucks for almost the last month. It is going in now.

MR. VICTORINO: It's all incorporated for the new system.

MS. MURPHY: Yes.

MR. VICTORINO: So now I understand, David, we're coming up short and that's why this is occurring?

MR. CRADDICK: No.

MR. VICTORINO: Try to update me on that.

MR. CRADDICK: Okay, the water system development fee basically says when you turn in a large meter you can reduce the size to whatever size you want. Any additional meters you get you have to pay for. They have already paid for source or storage, so that's not included in the analysis. I believe Mr. Pennington gives a correct analysis there under C on his amounts. Those are, as near as I can tell, correct.

And we have chosen not to, well, we are not debating those numbers here, but that's what it comes out to.

We have actually worked it in both scenarios, one with the old fee and one with the new fee. And you allow the 50 percent reimbursement to go towards the project. If it's the new fees the additional amount they have to come up with is \$240,287. If we use the old fee with the reimbursement it comes to \$34,547, and both those numbers are divided by 81.

MR. VICTORINO: And who would decide on this old fee or new fee?

MR. CRADDICK: You would.

MR. VICTORINO: We would, okay.

CHAIRMAN RICE: Questions for Mary, please, and then we will get to the Director.

MR. PARSONS: Mary, how long has this litigation been going on?

MS. MURPHY: That we have been working on it for getting the grants and the money?

MS. PARSONS: Right.

MS. MURPHY: Approximately ten years. I recall Nan Powell telling me -- I moved in over seven years ago and she told me she had been working several years at that time on

getting the grants, because we had been cited by the EPA for substandard water because the developer put in such a crappy water system that it has holes everywhere in the water. It's breaking all the time. So this is a project ten years in the making.

We have had the federal money since 1999, and because of delays or whatever we just got the order to start work this summer. This is not our fault, we have been working on it. We should have precedence, we should have some kind of an exemption. I really don't think that we should fall under

the new rules because we are already existing. We are not taking any more water from the county, it's just changing from the master meter to the individual meters, which we are paying for.

MR. PARSONS: Would you say it would be fair to say that you should be grandfathered in to at least the old rates because this has been going on for so long?

MS. MURPHY: Certainly.

CHAIRMAN RICE: Okay, thank you, Mary. Actually, I thought it would be easier to have the testifiers come, but as they're raising questions I think for the benefit of the new

members of the Board, Mr. Craddick needs to explain the history of this project. This is a private development with a private water system that went bad. It's not a Board of Water Supply development.

MR. CRADDICK: Okay, I will give you a little history on this system. I guess originally this property was subdivided around 1969 or 1970 or so, and we did collect the storage fees for it and never provided any storage for them.

Subsequent to that, somewhere around 1990 they got the County to pay a \$400,000 improvement to move their meter off of -- by Henry's junkyard across the gulch closer to their property.

After that project was done, I guess the idea behind that project was to try to reduce some of the pressure within the subdivision, but it really didn't do that. What this project now is doing is it's using Rural Utility Services funds, which is Department of Agriculture funds. They have a program to upgrade substandard systems in rural areas where the level of income is reduced.

And this particular area, a HUD survey was done and they found out that the average income was around \$36,000 per year in the Ulumalu-Peahi area. Keep in mind this project is not just Maui Ranch Estates, it's outside of there on Ulumalu

Road also.

Anyway, the process of getting the Rural Utility Services was more association driven than it was driven from our side. But in the course of things the Rural Utility Services said they will not fund a program if the water system is not turned over to a responsible party, public agency, to operate and maintain the system once it's built. That's where we came into the picture. And we also came into the picture now that we have to provide storage for the project. That's why we're kicking in the \$500,000 that we're kicking in, to

actually get it to where we've got fire flow storage to supply  
their project.

Anyway, they somehow, because of the low income,  
were able to get the maximum grant amount, which is 75 percent  
of the project in grant funds. They do have a loan for  
\$295,000 that they are required to reimburse. All of the  
project, other than what we're doing, is related to  
distribution lines. It is not related to source, it's not  
related to storage, it's not related to transmission lines.  
But in our rules it is a subdivision. In our rules we are  
allowed to do a 50 percent reimbursement.

The federal government has said that they will allow the 50 percent reimbursement that goes to them to go towards this group to reduce their costs. That's the only commitment we have so far. And those are the two numbers that you look at there on page 268. You can see what it is with what the remainder is. It has to be paid per person if the new fees are charged, which is \$240,000, and that's divided by 81 participants in the program. And if you use the old fees, it's \$34,000.

And then I guess there's another issue raised.

They're asking if they can use the payment plan from the new

rules, which would allow some people to probably come up with,  
  
-- well, they would be able to come up with less than \$400 in  
  
order to go forward.

Now, obviously with the Board passing this Upcountry  
  
meter rule and the December 3rd deadline, in any case, even if  
  
you don't make a decision in their favor on the meter cost, if  
  
you can at least extend the time that this can be worked out  
  
with them, maybe for another 30 days, because for whatever  
  
reason they feel that they have been caught off guard. I think  
  
it's like anybody in the community, the rules get published and  
  
things like that, and they don't know whether it applies to

them. But the community has been informed with the publication of the rules and things like that what is required.

But that's basically the project, where we are today. The job has been awarded, it's moving forward, but there is still this fee issue. When the project gets done and actually applies for a meter this won't kick in for a long time. But because the Upcountry meter rule passed and set, all of these lots without meters have until December 3rd to apply for them. That is what has precipitated this matter coming before the Board right now.

CHAIRMAN RICE: Do you want to keep your -- write

your questions down. Let's hear the rest of the public

testimony. Okay, Davis?

MS. KAHAKAUWILA: Me and my mom together.

CHAIRMAN RICE: Okay, come forward.

MS. KAHAKAUWILA: My full name is Davis Kahakauwila

Cortez.

MS. SANTOS: And I'm Barbara Santos.

MS. KAHAKAUWILA: I bought my place 15 years ago.

And by the way, I am not doing a statement as a fool, okay.

CHAIRMAN RICE: You are not doing a what?

MS. KAHAKAUWILA: I am not doing a statement as a fool, okay, as some of my members have told me. I just want you to know I have been with Nan for awhile, and I was also one of the meter girls that read the meters. At the time what Mr. Craddick just said about them moving it from Herman's over to Ulumalu dirt road, yes, it is true, they did move it to help the water pressure and everything.

At the meantime, I feel as a homeowner for 15 years, for me and my children and my mom that the cost of the meter is very high. On the promissory note that we had in the beginning it was a little over \$3,000, and the forms that I have they

want over \$6,000 if we are a non-member, and if we are, it's like \$4,890 if you are a member.

I feel as a single parent, again, okay, trying my best, I feel that that is a really high cost. And for all the rest of the homeowners there that is very high for all of us to just come up with the money by the 3rd. And they told me in your office that I had to come up with that money with the check on that day, and I don't have that money. If I don't, you folks are going to shut us all off or what? That's what I needed to know also.

And on the behalf of all the people in Upcountry, I

think the Board should really look into this a little bit better for all of us and all of our future and our children and on customer service.

Mom, your turn.

MS. SANTOS: Thank you. Okay, my pet peeve

basically is our meters are not broken. Why do we have to get

a brand new one at a high cost when ours are working fine?

What is the basic reason for changing a meter, does anybody

have an answer for me?

As it is, I know our lines are lousy, I know they're

plastic, I know I've seen her on the side of the road fixing somebody's broken pipe in front of the other peoples' yards.

And I know eventually those pipes will have to be changed. But why water meters change when they're working fine? Is there any reason for that?

CHAIRMAN RICE: Make your testimony. This isn't question and answer, okay.

MS. KAHAKAUWILA: And on my mom's behalf, our water meters were bought by ourselves. I paid for my own and had them installed, and the service came through Maui Ranch Estates. I do know at the time when Nan did the paperwork and

all that it was a very big challenge for her, and I really appreciate her work, what she has done for us. But we need help, and our cost is just a little bit too high for us. And I think everybody should understand we're all human, okay. Thank you.

CHAIRMAN RICE: Questions, Board Members? Thank you. Okay, Roger?

MR. SUSSMAN: My name is Roger Sussman, I live on Kalipu Place on Maui Ranch Estates. I've lived there since July 2000. And this has all come as a great shock to me, I found out about this about two weeks ago. We got something in

the mail that there was going to be all this fee.

When we acquired the house in the summer of 2000, one of the significant, perhaps the only significant disclosure was that there was a loan for our part of the improved water system that was coming up, and that was offered in addition to the beauty, you know, the other attractions of the house, that the value of the purchase that we were making was -- it was an important aspect of the value, was the fact that all of this had been approved. The approved water system in terms of health issues for the community, because it was considered substandard, and also for fire safety.

And that this was something that was already accomplished, that the only thing that we had to do was to do our part of the loan, which I believe was \$3,000 or a little bit more, and it was spread out over many years. But other than that, everything was included, pre-established.

And now in the mail two weeks ago we get this notice that we're going to have to come up with \$5,000 additional.

And I've learned a lot this morning. It makes no sense to me that we should have to come up with these fees. So that's my testimony. I also have been asked by one of my neighbors,

Mr. Ken Pinsky of Waipulani Road to say basically what I've just said, and also I want to second also what Mary said. And what Ken expressed to me, I feel a little uncomfortable being a proxy, but he asked me to express basically what I've just said and also what Mary said. Thank you.

CHAIRMAN RICE: Questions for Mr. Sussman? Thank you, Roger.

Anyone else want to speak who has not given their name?

MR. PENNINGTON: Okay, my name is Rich Pennington. I'm the president of the Maui Ranch Estates Homeowners

Association. You have a copy of a correspondence that I wrote that came along with the Director's Report. I'd like to further state that, you know, it is a low-income area, that's been certified. Most of the people in the area are unable to come up with meter fees and the water source development fees. Everybody is a little confused over whether they're paying \$6,000 for a meter, or what that's for.

We have been working with the RDUS on possible future funding. I think that's part of David's note as well. We'd like to get an extension of time, possibly 60 to 90 days. As we all know, the government doesn't work overnight. I think

that will afford us a lot of opportunity to meet the deadlines that you have got, if we can extend them for Maui Ranch Estates, this Ulumalu-Peahi water system.

We've all been working very hard. We lost Natalie Powell in the process, she died of cancer. She was our spokesman down at this Board over the years. And it's fairly new to most of us, so forgive us if we're not within the guidelines. We respectfully request an additional time to comply.

CHAIRMAN RICE: Questions for Mr. Pennington? Mr.

Starr.

MR. STARR: Yes, Mr. Pennington. If the Board were to make and approve the motion that would -- and I am not even sure if it's legal for us to do so, we'd have to ask Corp Counsel. But to go by the old rates and to utilize the new payment terms, if someone wants to avail themselves of those payment terms, and also to extend the deadline by say 30 days, do you think that would be a fair solution that would allow most of the people to have some solace in this?

MR. PENNINGTON: We've looked at David's report on the water credits and whatnot, and I think the association can

probably come up with the funds out of the coffers, the remaining approximately \$35,000 worth of funds out of those coffers. Whether the people can reimburse the association or not is our problem at that point. But I believe that would be a viable solution for us.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: I was going to ask basically the same question. You are asking for an extension of time to apply for the meters, that's your request at this point, that that deadline be extended?

MR. PENNINGTON: Well, Mr. Nakamura, there are

several things that are at issue, at least within our association. Part of the issue is how much are the fees going to be and what's the participant's cost of each of those. Because the project was extended several times out of our control, the federal funds were available in 1999, and we all know it takes time to do good things. We feel like we should fall under the old fee rules, and that would afford us an opportunity to comply.

The 30 days is to try -- we have a lot of absentee owners. The Board could fill out the paperwork and write a single check. I don't know how that works. But we still have

a lot of people to collect, there's 81 participants in the  
  
system.

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: No, my question is for David, so I  
  
will wait until you're done.

CHAIRMAN RICE: Clark?

MR. HASHIMOTO: So what is the exact amount that  
  
each member, each of the, any one of the homeowners are asking,  
  
being asked by the water supply to pay at this time? What is  
  
the amount?

MR. PENNINGTON: It's my understanding that since

most of the members have paid water storage fees in the late '60's, early 70's, whenever the subdivision was conceived at, the old fees less the water source development fee would be around \$2,350. I have not confirmed that. There may be some tacked on for water meter installation. I think David's, Mr. Craddick's report showed \$2,350 plus \$70 for installation.

MR. CRADDICK: About \$430 for each of the 81 people.

MR. PENNINGTON: Yes, the total amount. But if we apply the construction credits, or the off-site credits, rather, the total amount for all 81 occupants would be

\$34,547.50.

CHAIRMAN RICE: Richard, question for you. The issue here, because we did all this with Natalie, and this has been at least for the several years I have been on the Board, this has been on the agenda regularly. Is it -- are you surprised that there is a charge for a meter fee or is it that you're charged the new fee versus the old fee? That's one question.

MR. PENNINGTON: Okay, I think a little of both.

And unfortunately, a lot of the members didn't come down to the Board meeting, so we relied on Natalie's expertise. We were

under the assumption, because there was two 2-inch meters, and we were using no additional water, if you read the regs, since we are not using any additional water we didn't think there would be a fee.

But, you know, let's set that part aside and then go to the next part of the question. Because this was approved so long ago and it's taken so many delay turns, the old fees I think, given the credits, is more than acceptable. I think it's something we can handle.

CHAIRMAN RICE: Okay, because I seem to remember pointedly reminding Natalie that there would be a meter fee.

But be that as it may, if we acknowledge that that was not the main issue, but the fee is the main issue, I think maybe the Board can work something.

MR. VICTORINO: Are we done with the discussion and public testimony, because I do have a few legal questions. But anyway, go ahead.

CHAIRMAN RICE: We're finished with Richard. Thank you, Richard. Any other testimony? Lucienne, do you live in this project?

MS. DeNAIE: Well, I've managed property there for about five years. Who do I turn this in to?

CHAIRMAN RICE: Right here.

MS. DeNAIE: Good morning. My name is Lucienne

DeNaie, and I was a property manager back in the earlier part

of the '90's, up until about the year 2000, and one of the

properties that I managed was in this area. I managed several

other properties in the Makawao area as well, and had the

chance to compare just what the level of service and level of

price for the water was.

And I would just like to use this opportunity to

say, although no one here is responsible for the situation that

the folks are facing from this development, that it's a really good opportunity to avoid this situation in the future.

Because, you know, what happened here is a group of people have been left holding the bag, because County approvals were made without much oversight, and the Board of Water Supply didn't have much to say about whether a system would meet their standards or not.

So I think it's a good opportunity here to see that we want to avoid this in the future and we don't want to -- we want to carefully scrutinize projects that propose the same thing and tell us the same thing is going to be okay, because

30 years later is where the cows come home to graze here.

So these folks basically have been paying taxes for 30 years on their property. Most of the people who bought here, it was very affordable when they bought, so they're lower income people, as they've said. They've also paid higher-than-average fees for their water for all of this time.

I used to pay the water bills for all of these different properties that I managed, and the one in Maui Ranch Estates I was astounded, these people used less water because it rains there a lot, but they paid a much, much higher water bill. This is because they had a condominium-type meter, plus

they had to pay fees to the private water association. So, you know, these folks have been paying higher rates all along, everybody that lives there, for a lower rate of service. The water service was terrible there. My tenants were always calling and complaining. And there were just certain hours of the day where you didn't even have water. And anybody here who lives there can testify to that. That was just a fact of life right here in the USA.

And when the notice was circulated that the system was going to be upgraded, the property owner that I represented was under the impression that if he put in his \$5,000, which he

was hard-pressed to come up with, and we debated back and forth  
wasn't there anything that I could do, could I go to the  
County, and this and that. Could I go to Nan. He was under the  
impression that that was like the basic fee to cover  
everything.

So I just want to reiterate that folks really  
weren't aware that there was going to be a meter fee on top of  
this. Now maybe it was clear to Nan and she didn't make it  
clear to other people. But the general impression when the  
notices went by, and I read them too as the property manager,

was that basically this was it: You paid your \$5,000 and you were going to be working in cooperation with this federal grant and the county to get, you know, the decent system that everybody else who lived in Haiku had.

So I just want to conclude by saying that I would definitely support this Board. You know, I am not a resident there, but I have many friends who are, in extending the deadline so that a reasonable solution could be worked out and people aren't left on the bottom of the water meter list. To consider payment schedules, because people are low income genuinely. And to evaluate carefully what level of meter rates

are really appropriate since folks have really worked on this for years to try to get their system in the loop.

And it's really no fault of theirs that now the meter fees are higher. And I understand that the meter fees need to be higher, but these are good tax-paying people who have been supporting our county for 30 years. Thank you.

CHAIRMAN RICE: Any questions? I have one statement. You know, maybe your intention wasn't to do this, but I resent any implication that these people paid for something that they didn't get through this Board, a private water system. They bought into it, and when you buy property

it's your duty and the duty of the seller to let you know what you're buying. This Board, since I have been on it, has been working to help the people.

MS. DeNAIE: That was my first statement.

CHAIRMAN RICE: And I don't want that to be misunderstood here. And I don't want it to come out that people didn't get something that they deserved because of this tax implication.

MS. DeNAIE: No, my first statement was that no one here is responsible for this situation.

CHAIRMAN RICE: But, but, but. I resent the buts

because they don't relate to this Board, and they don't relate to the actions taken by this Board for the last two years.

MS. DeNAIE: I understand that. This Board has been very supportive in bringing this system up to compliance and so forth. I'm just speaking to, you know, the human side of it, because that was my experience in trying to manage this property where people barely got water and paid higher rates than people living in other places in Haiku that I managed.

CHAIRMAN RICE: Well, we are very human here. We don't need to have any implications, that's my point.

MS. DeNAIE: Well, I apologize if you felt this was criticizing your actions. That was not my intention. My intention was just to deliver some information about what it was like just being a property owner over the last ten years there, and what they've had to deal with. And hopefully that they can find, you know, redress through the actions of this Board today. Thank you.

CHAIRMAN RICE: Mr. Victorino? We're done. Any other public testimony?

MR. VIERRA: My name is Brian Vierra. I have lived on the property for like 14 years now. The thing that what

everybody said is fine, and it all has to do with the history of the project and everything. The guys, the contractor is actually working on the system now as we speak, and they're just doing what they have got to do.

Before this meeting we had another meeting which was supposedly with the County and the developer. Now, that was to open up the floor for any questions they had for anybody. But prior to that meeting we had another meeting which all of a sudden gave us this \$4,700 raise in what we were supposed to pay, additional to what we had agreed to.

I'm a plumber, I have been a plumber for

20-something years. Installing meters and stuff like that, I've helped guys from the County do it and everything. The developer is running the pipeline, he's doing the tap, he's coming up to our property, he's installing the box that the meter goes into, he's doing the check valve and the normal shut-off. So now for \$4,700 for one meter, just the meter, is my only question. I understand it's not question and answer, but my thing is one meter doesn't cost \$4,700.

What I guess I'm asking, everybody is asking for extensions to try to, you know, make everything clearer, which is okay. But my whole question is, don't we just pay for the

meter? That's all that's being supplied to us by the County to bring it up to County standards. We are doing everything physically possible, financially possible to bring the whole system up to a County standard so it can be taken over, other than the grey area, which is just put the meter inside of the box.

So if it can be dropped down to whatever the meter cost is, and for the workers to come in, take out our old meters, put in the new meters, that's fine. I think everybody would agree to paying for it that way. But like Mary said

earlier, the \$4,700 would work out to like as if it was a new installation where the guys from the County would come dig up the street, run the new meter in, the shutoffs and everything, where that's not actually happening. We're paying for that through this federal grant.

So at the last meeting we had that's what I considered the grey areas. Where we came to bring all the water and everything there, and the only exchange was our meter for your meter. So whether it's the old fee, new fee, it think it should just be the charge of the meter and the amount of time. I've changed them several different times over a period

of 20 years. It takes about 10 minutes to knock one out and put another one in.

I think that's what we need to be charged for, you know, not as if it was a brand new installation happening to a ductile line, running a service into the house or onto the property, and then it's the owner's from there. That's pretty much the bottom line on my part.

CHAIRMAN RICE: Questions? Thank you, Mr. Vierra.

Any other public testimony?

MR. CRADDICK: I wish we had meetings like this when we were trying to get everybody to sign the loan documents.

CHAIRMAN RICE: State your name for the record.

MR. TESTER: Monty Tester. Monty Tester. I've sort of taken over the duties since Nan passed away. I have been elected as the secretary-treasurer. And I wanted to support Rich's comments on the requesting an extension for the deadline for submitting the form for meter reservation, if possible, to help out our community. And also if you could help us with a fee reduction. And also with paying the fee in installments, if possible. That's really all I have to say. I'm just requesting your help in our situation here. Thank you very much.

CHAIRMAN RICE: Thank you, Monty. Are there questions for Monty?

MR. VICTORINO: If we -- I guess in this I still want to go on as soon as we're finished. In your case, Mr. Tester, you feel if we can A, extend it, B, go back probably to the old rates to be fair, kind of grandfather you folks in, and thirdly, some kind of amortization of the payment, or some kind of payment schedule, that many of you out there would be acceptable to this, then I think we would be able to accommodate most of you, if not all of you. I see a

lot of nods. I hope that means you like me. Okay, thank you.

CHAIRMAN RICE: Okay, thank you, Marty. Sorry,

Monty. Monty, sorry. Monty Hall.

MR. STARR: I have a question for you, Monty, and

also Richard. This is a point of concern for me that, you

know, I feel that this issue, I think we can deal with it

today. But there's another issue, and I just want to be sure

now that this community is here that it's clear and it's been

taken care of. And that is, the last time this project had

been before the Board, and this was, if I remember, about six

months or so ago, there was another issue with the project

where it turned out that when the bids had come in for doing the work as originally proposed the bids were a lot higher than the money that was available to do it. That includes the \$1.4 million and all of that. And so at that point it's my recollection that the Director had recommended that the scope of work be reduced.

MR. TESTER: That's true.

MR. STARR: And that took out a dedicated storage component, instead using the Kaupakalua tank and some other pipe work. And at that point it was not 100 percent clear that hydraulically it was going to provide the pressure all the way

up to the top-most portion of the area. And I know that there was a public meeting scheduled, which unfortunately I didn't get notice of until earlier the day of the public meeting. So I don't know if that meeting, you know, if people attended that public meeting and if this was discussed.

But I just wanted to clarify, you know, with the community here that there is an understanding and a confidence that the project as it's being done will satisfy the needs of the community, and whether you have had a full disclosure and understanding of the current scope of work. And that's to you and also to Richard as representatives of the association.

MR. TESTER: Yeah, I'm pretty sure, yeah, I attended the meeting and it was disclosed that there would still be some lower pressures at the upper lots. I live on an upper-most lot, which has fluctuating water pressure. And with the tank not going in, it substantially reduced the pressure at the upper lots. But since we should have a larger pipeline, we should have more volume of water and not as much of a fluctuation anyway in pressure. So I understand that. I'm happy with that, and I'm sure a lot of other people support me on that.

CHAIRMAN RICE: Okay. Richard?

MR. PENNINGTON: Yes, Mr. Starr, there was a meeting, and that was one of the items that was discussed quite at length. We have a tank at the top of North Lanikai or it's actually South Lanikai, and we have taken pressure readings on that tank with a memory-type gauge. And typically we will get as high as 40 pounds on that end of the system, and that's even through our system.

Our largest problem up there is a lack of volume because of the deterioration on the inside of the pipes. We just don't get the volume of water through the pipes that we

need. Of course they leak, they break, they do all kinds of things. But we believe that the pressure is going to be more than what we currently have by leaps and bounds, okay.

CHAIRMAN RICE: Thank you.

MR. PENNINGTON: Thank you.

MR. TESTER: Thank you very much.

CHAIRMAN RICE: Okay, any other public testimony?

Hearing and seeing none, I close public testimony on this issue.

Mr. Victorino, you wanted to ask the Director some questions?

MR. VICTORINO: Definitely. Before I make a motion, I'd like to ask between Corp Counsel and our Director, Mr. Craddick, the legalities A. Before I go into the legalities, I want the public to hear this, because in the past -- and I have been on this Board only nine months -- but other private systems have come to us for approval or other systems or subdivisions want private systems for their development, to skate around some of our codes and policies that are set by the Board and other entities in the governmental system. And this is a classic example of developers skating around, leaving you holding the bag, and coming back to the County of Maui and the

Board of Water Supply to correct the problem.

I have no qualms in doing that. You deserve it like any other subdivision. But it's something that the public has to know and buyer beware when you get into a private system this could occur again, and we are not always going to have the ability to make corrections, okay. So I empathize with you, I feel that you have been the victim of this whole scenario and that we're here to help you correct the problem.

Now, the legal issue I have with you, Corp Counsel, and Mr. Craddick, if we are to A, ask for an extension would

that be legal? An extension, Mr. Craddick?

MR. CRADDICK: First of all, the rules allow that.

But as I heard Mr. Pennington's testimony that should you decide to apply the old fees the association will pay the entire amount. And I have confirmed with him they will pay the entire amount by December 3rd, which would not necessitate any extension of time.

MR. VICTORINO: Thank you. You answered my second question because I was going to ask you can we also ask for grandfathering of the old fees for this particular situation, is that allowable?

MR. CRADDICK: The rule allows you to do it.

MR. VICTORINO: Mr. Starr did state that earlier,

Member Starr asked that, about legalities, so I wanted to make sure that we don't go ahead and be improper in our motion and then all of a sudden get zapped someplace else.

MR. CRADDICK: If you look on page 269 of I guess

Mr. Pennington, a letter from Mr. Pennington, they go over the water system development fee 16-8-8(e), which is the standards that have to be met in order to allow a change in the rules. And his analysis there, he goes over it pretty clearly. It is not something that would be applicable to everybody. The

financial impact seems to be about a \$200,000 difference

between paying the new fee and the old fee. So again, like I

said, I don't contest any of the items that he's given in

there.

MR. VICTORINO: You don't contest that. Okay, then

the last question, and I think maybe this is a moot question

because I was going to put this as part of the motion, but if

-- Mr. Pennington, I guess the question goes to you. If the

association is able to pay the \$34,547.50 of funds that is the

50 percent reimbursement, if the association is capable of

paying that in its entirety and then somehow work that out with

your association members, then I don't think I would have to go for some kind of payment plan or installment plan because the people would be taken care of. So am I correct in saying that you could do it if we accept that part?

MR. PENNINGTON: That's correct. We believe we have money in the coffers to cover that entire amount. It will put us a little at risk for any future breaks, but we will handle those as they come up, if they come up.

MR. VICTORINO: I guess looking at the audience out there, which is a lot of members, would that be acceptable to

you? Instead of an installment plan through us, to work it through your association.

Mr. Chair, unless there's other discussion, I'd like to make a motion, because I think I've clarified all the points.

CHAIRMAN RICE: Kent has a question. Mr. Hiranaga?

MR. HIRANAGA: I'm waiting for an opportunity for discussion. I'd like to say something.

CHAIRMAN RICE: Now?

MR. HIRANAGA: Before a motion is made.

CHAIRMAN RICE: Go ahead. Before a motion is made.

MR. HIRANAGA: When is the 50 percent reimbursement applied, is it after the meters are hooked up or is it -- the monies have to be paid then you get a reimbursement subsequently?

MR. CRADDICK: That's correct. In order to apply it up front, that I guess also is going to have to be looked at.

But the rules do allow the Board to modify the subdivision requirements.

MR. HIRANAGA: So in your report to the Board you're saying under the old rule each meter would cost \$2350 plus \$70.

MR. CRADDICK: Well, that's minusing one thousand

dollars for storage, which was already paid back in 1969.

MR. HIRANAGA: Under the new rule it would be 49

plus 7?

MR. CRADDICK: And that is, yes, that's correct.

And let me go back a little bit here to make something real,

real crystal clear. This is, in general, the people inside

Maui Ranch Estates. There are people outside of Maui Ranch

Estates that are hooking up to this project. They did not pay

the storage fee. They would have to pay the full storage fee.

And -- well, never mind. That answers your question.

MR. HIRANAGA: So now you are talking about a \$400

payment, but it's not really a \$400 payment, it's \$2350 plus \$70 payment which will net to \$400 once the reimbursement is received.

MR. CRADDICK: Yes.

MR. HIRANAGA: So it's not that the association would have to pay \$400 before the end of the year.

MR. CRADDICK: No, no. That \$70 could be deferred until the meter is actually put in.

MR. HIRANAGA: The \$2350 is under the old rule; under the new rules, \$4890.

MR. CRADDICK: That's correct.

MR. HIRANAGA: This system is currently under  
construction.

MR. CRADDICK: Yes.

MR. HIRANAGA: When is the completion projected?

MR. CRADDICK: July next year.

MR. HIRANAGA: So at this point the Board, unless  
they're going to waive the \$2350, that's what's owed under the  
old rule.

MR. CRADDICK: Yes.

MR. HIRANAGA: By December 3rd.

MR. CRADDICK: Yes.

MR. HIRANAGA: The new rule would be \$4890.

MR. CRADDICK: Yes.

MR. HIRANAGA: And eventually they would get a reimbursement of approximately \$2,000. Under the new rule they would get a \$2,000 reimbursement. So their net would be \$3,000 for the meter under the new rule.

MR. CRADDICK: Try that again.

MR. HIRANAGA: I'm sorry, if they paid the \$4890, eventually they would get a 58 percent reimbursement, which would be about \$2500 they would be paying for the meter under

the new rule, net reimbursement.

MR. CRADDICK: Yes.

MR. HIRANAGA: And how long for the reimbursement?

MR. CRADDICK: The 50 percent reimbursement?

MR. HIRANAGA: Yes.

MR. CRADDICK: That's spread over five years. But I

think they're also asking if that can be applied up front.

MR. HIRANAGA: Who is asking?

MR. CRADDICK: They are. He says -- I think it's

the last comment there in his letter.

MR. HIRANAGA: The reimbursement comes from where?

MR. CRADDICK: It comes from our normal operating fund. That's where all the reimbursements come from. In this case here it would just be a reduced water system development fee that they're paying now, and I guess over the years we would have to take from our 50 percent reserve fund and pay into the water system development fund as the five years go by.

MR. HIRANAGA: Thank you.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: David, just to clarify, so the

project is under construction right now. The scope of the project is to install transmission line, distribution lines and also lateral, service laterals, and the meter box?

MR. CRADDICK: No transmission lines, mainly distribution lines. That's all.

MR. NAKAMURA: Service laterals.

MR. CRADDICK: Service laterals.

MR. NAKAMURA: And the meter box?

MR. CRADDICK: Yes, with the meter box.

MR. NAKAMURA: And what is the total cost of the project, approximately?

MR. CRADDICK: It's about \$2.3 million. It's about  
  
\$2.3 million.

MR. NAKAMURA: And what is -- at this point what is  
  
the participation of the Board financially, how much money are  
  
we putting into it?

MR. CRADDICK: \$500,000.

MR. NAKAMURA: \$500,000.

CHAIRMAN RICE: Plus a guarantee.

MR. CRADDICK: Plus the guarantee on the loan.

MR. NAKAMURA: And then they have two master meters  
  
right now?

MR. CRADDICK: Yes, that's correct.

MR. NAKAMURA: So in the process of computing this meter charge, you give credit for basically turning back those two master meters, did I hear you say that?

MR. CRADDICK: I don't believe that has been figured in here, but two meters, yes, they would be able to get two meters with only paying the installation charge, the \$70.

MR. NAKAMURA: I'm sorry?

MR. CRADDICK: They have two meters, so in downsizing those they would get those two meters at no charge, just the installation charge.

MR. NAKAMURA: They would get 2 five-eighths inch  
meters without charge?

MR. CRADDICK: Right.

MR. NAKAMURA: There's no offset for the fact that  
the master meters are larger?

MR. CRADDICK: No.

MR. NAKAMURA: So what kind of meters do they have  
at the present time?

MR. CRADDICK: Two 2-inch meters.

MR. NAKAMURA: I mean, I'm sorry, to service their

individual units.

MR. PENNINGTON: Five-eighths.

MR. CRADDICK: That's what they're getting, is  
five-eighths meters.

MR. NAKAMURA: To replace existing five-eighths inch  
meters?

MR. CRADDICK: There will be an issue of some of  
them exceeding the fixture units, but those people are on the  
priority list in order to upsize the meters.

MR. NAKAMURA: And can you give me a little bit more  
information as to how you computed this reimbursement amount?

Does this include money, this is all money that the property owners have put up front through the loan, or is this a combination of County funds, federal funds and loan funds?

MR. CRADDICK: This is the 50 percent reimbursement?

MR. NAKAMURA: Yes.

MR. CRADDICK: Okay, what we've taken is we've taken all the off-site outside of Maui Ranch Estates' distribution system, because that's all that qualifies for the 50 percent. We took that total amount, and then off the top we minused the \$500,000 that we are putting in. I told them I didn't think

you guys would agree to give them 50 percent reimbursement on what we're already giving for free, although that is maybe an issue, but it's only an issue with the federal government side. They're saying that that's part of the project, and therefore they should get the 50 percent reimbursement on that, which they are allowing the association to use. But I haven't offered that to them. We are going to reimburse them for what we've already given them.

Anyway, what we've then done is we have come down to the amount that is left over that is the 50 percent reimbursable, and then we've just taken the fees that are there

and minused off that amount to come up with the amount, net amount that you would get if they were able to receive the 50 percent reimbursement up front.

MR. NAKAMURA: Okay, thank you, Mr. Chair.

MR. VICTORINO: I'm ready to make a motion.

CHAIRMAN RICE: Why don't you wait one second.

MR. STARR: I have one quick question, something I just heard kind of made my blood run a little cold here. What would happen if you identify that one of these people exceeded the fixture units for a five-eighths meter?

MR. CRADDICK: We're just going to have to identify

them, and I think we've identified them already and they are on

the list to upsize. They would have to upsize their meter.

MR. STARR: Well, would you issue them a

five-eighths meter?

MR. CRADDICK: Yes.

MR. STARR: And when would they have to upsize,

would they be prohibited from using water or anything like

that?

MR. CRADDICK: I don't know how it's going to be,

but we're telling them they can't upsize until their name comes

up on the list.

MR. STARR: But they would be issued a five-eighths and they would have use of that for all of their required uses, is that correct? They wouldn't have to close off fixture units or anything like that, is that correct?

MR. CRADDICK: We are not requiring that, no.

CHAIRMAN RICE: Mr. Kushi, Mr. Victorino asked some legal questions which Mr. Craddick answered, so I just want you to nod your assent to his answer, because the last time I looked he is not in the department of Corp Counsel.

MR. KUSHI: If I remember correctly, I believe the

question was what authority does the Board have, and I believe the Director answered it when he referred to Mr. Pennington's reference, and I believe that's correct. In your rules, specifically your rules for water system development fees, section 16-108-8, which is entitled Exceptions from the Rule, this body may modify, may waive or modify requirements of the rule, which are the fees, two-thirds majority vote.

And there's three factors for the Board to consider, and I believe that was stated. So you have the authority.

Under the Kula Rule there's also the authority under 16-106-08 on a waiver of modification of the Kula Rule itself. Again, by

two-thirds majority. And there's three factors for the Board to consider. Upcountry meter rule correction. And there's three factors, again, and they're similar to the factors that were stated in the other rule.

The question in my mind is that does this project fall under the Upcountry Rule, and is this subject to the 60-day application fee. But I leave that to you.

CHAIRMAN RICE: The other attorney?

MR. CRADDICK: These are just empty lots without a meter, so we have taken the position that if they paid the fee

and had an adequate line they could get a meter on the empty lot.

CHAIRMAN RICE: Okay, that's --

MR. VICTORINO: Are we ready? Boy, I almost forgot what my motion was so long ago. The ink kind of disappeared. Anyhow, I move that we accept a grandfather clause or resort to the old fee as far as this project is concerned, and give them a 60-day -- and allow them a 60-day grace period for which this \$34,547.50 that will be paid to get this project and their water meters up to the County code.

MR. STARR: I second.

CHAIRMAN RICE: Moved and seconded. Discussion?

Mr. Nakamura.

MR. NAKAMURA: Kent had a question.

CHAIRMAN RICE: Oh, I didn't see Kent, I'm sorry.

MR. NAKAMURA: Mr. Chairman, I certainly am

supportive of the portion of the motion that deals with the

extension of time. I'm supportive of the motion of having the

old fee be applicable. I'm supportive of the motion of having

a payment plan which would make it easier or easy for people to

make the payment.

I am not comfortable with the specifics of the

\$34,000, whatever it is, because I'm not sure I'm comfortable with the way the reimbursements have been calculated. And I am not comfortable with the notion that a portion of the reimbursement is federal funds, constitute federal funds, which is public money, given the fact that we are already putting in \$500,000 of public funds in addition to the federal money and the loan.

My feeling is that the appropriate action is to extend the time to impose the old fee and to establish a payment schedule, but I am not in favor of the way the reimbursement -- or I may not be in favor because I don't

understand it. And for that reason, I would not be in a position to support this motion, although I would certainly support an amended motion.

CHAIRMAN RICE: Mr. Hiranaga?

MR. HIRANAGA: Member Nakamura basically stated my concern about the fronting of the 50 percent reimbursement amount. From a practical standpoint, since the meters won't be installed until probably June or July, maybe some type of a payment schedule can be created in order for the approximately \$2400 to be paid over a period of seven or eight months. But I

would not be in favor of the current motion.

CHAIRMAN RICE: Okay.

MR. VICTORINO: May I ask a question?

CHAIRMAN RICE: Discussion.

MR. VICTORINO: Mr. Hiranaga and Mr. Nakamura, you

are most uncomfortable in the compilation of the \$34,547.

Other than that, my motion was acceptable, but the money part,

you are not acceptable to that?

MR. NAKAMURA: That's correct.

MR. VICTORINO: And what about you, Kent, what are

you not comfortable with?

MR. HIRANAGA: The fronting in advance of that  
money.

MR. VICTORINO: So your suggestion is?

MR. HIRANAGA: It's a diversion from the practical  
practice.

MR. VICTORINO: So your suggestion is that the --

MR. HIRANAGA: The old rule, but since the meter  
won't be installed for another six or seven months, that some  
type of payment plan be created.

MR. VICTORINO: And this payment plan is for the  
individual homeowners of \$300 or \$400, or whatever money,

\$2,000 divided into so many months, right?

MR. HIRANAGA: \$2,400.

MR. VICTORINO: Into the next six months or eight months or whatever.

MR. NAKAMURA: Or even a longer period, if that's acceptable.

MR. VICTORINO: I think I'm playing the devil's advocate. If I heard correctly, most of these people can't afford anything more. Secondly, the association is willing to pay the \$34,000 here and now, pay it up and get it completed so we can move on. Now, I grant you it won't be done for another

six months, eight months.

The point is these people, I don't want to hold an anvil over their head with an unknown factor of what may come out later. So I understand your point Mr. Hiranaga and Mr. Nakamura, but I'm saying these people need to have some certainty on what's going to happen, and I thought the motion kind of covered all the gamut that we had discussed all this time.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Yeah, as a sort of a compromise workable

gesture I'd like to see if Mr. Victorino would be acceptable to that, would be that an amendment be made to allow the new payment plan option that we pass along with the water development fee increase be allowable to them, which would give them the option to have a long-term payment plan, you know, just added onto their water bill. And probably when the reimbursement comes, you know, it wouldn't be that far down the line before that credit would, you know, basically stop them having to make any more payments or refund if they paid it, not too much.

MR. VICTORINO: I'm still uncomfortable with this

aspect, because I thought there was some certainty about what we had discussed to this point, and now there seems there's a lot of uncertainty which then goes right back to the homeowners that that uncertainty would fall back on their agenda. I am not certain if I want that. But I will do whatever is the will of the entire body.

CHAIRMAN RICE: Board Member Parsons?

MR. PARSONS: May they have the option whether their association wants to pay these fees for them or be on their bills, even a long-term pay out? What appears to me is the funds are already in an account, and if we tack it on to their

bills then they're going to be responsible for it individually rather than what's already in the fund.

CHAIRMAN RICE: Okay. It sounds to me like the comments made by Mr. Nakamura and Mr. Hiranaga relating to the 50 percent reimbursement, Howard was unsure of your calculation. I believe Kent's position is it's not appropriate. So my question, one, to try and resolve that before we get into these other suggestions, is it allowed under our rules?

MR. CRADDICK: Well, you have the option of waiving all the subdivision rules under your rules, which is how this

50 percent reimbursement comes about. But the Board has done this in a previous case. The only thing they've done is they have adjusted the early payment by the present worth of the money, rather than -- because obviously we will be collecting interest on the money over the five years that we don't pay out up front.

So we could adjust this to make it the total reimbursement it's present value, rather than its full value over five years. And the Board has made that adjustment in previous requests, and that wouldn't amount to a whole lot of

money. Probably the people off-site that have to pay the full fee would adjust that amount.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Just to clarify, I have no objection to a realistic computation of reimbursement. However, I think the Director fails to point out the fact that the traditional way of the reimbursement being applied is that this reflects amounts that the developer has expended to put in the improvements ahead of time, is that correct? And that that 50 percent, that's off-site improvements. And that 50 percent is usually applied 10 percent a year for five years, is that

right?

MR. CRADDICK: That's right.

MR. NAKAMURA: So number one, we're making an exception for the 10 percent for five years. And secondly, we are making an exception for the fact that we don't even know what this traditional off-site contribution of the developer quote, in this case the homeowners, what that really is.

MR. CRADDICK: No, we already have the job bid and you see those numbers all tallied up above there.

MR. NAKAMURA: So are you telling me that this reflects the contribution that the property owners are making

to the project, to the off-site cost of the project?

MR. CRADDICK: No. In this case here it's the federal government making most of the contribution, not the property owners. But in this case the developer is the federal government, and the federal government has said that they will allow their reimbursement to go towards reducing their fees.

MR. NAKAMURA: Well, to be very honest with you, that may be true. But if we are talking about federal dollars I would feel very uncomfortable with moving ahead with that assumption unless we have that in writing.

MR. CRADDICK: We can get that in writing. I

believe we may already have it in writing, but I'm not positive about that.

CHAIRMAN RICE: Well, would you be in favor of that, should we get that documentation, Mr. Nakamura?

MR. CRADDICK: And reducing it to its present worth, rather than the full value of the five year payment.

MR. NAKAMURA: It's kind of getting to the fringe of what I would find acceptable. But I suppose so, if we get something in writing from the federal government that basically waives their reimbursement to the credit of the property

owners.

MR. CRADDICK: Okay, we can do that.

CHAIRMAN RICE: Mr. Hiranaga, is that totally outside the realm of your acceptance at this point or are you being swayed?

MR. HIRANAGA: The difficulty I have is we are dealing with public funds and there is a hardship case with any one of the lot owners. But as the new meter rate fees are being applied to people that come to us we are going to be constantly challenged with these types of situations.

I see that they were working on the project for many

years. I don't have a problem -- I have less reservation in granting them the fee under the old rule, because it was a project that was ongoing for many years. I have difficulty in forwarding public funds to assist them in their payment beyond the application of the old rule. If the rule had not changed, if the old rule had been in place still yet they would have to pay the \$2,350, and a payment plan like Mr. Starr suggested.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Mr. Chair, I am in favor of going ahead as -- according with the motion. But I'd like to suggest, you know, let's call the question. If it passes, if not, if it

fails let's look for another solution. At least that way we  
can move it along by calling the question.

CHAIRMAN RICE: The only thing I'd ask Mr. Victorino  
subject to your motion, subject to the agreement that we get a  
letter from the federal government as requested by Mr.  
Nakamura.

MR. VICTORINO: I will amend my motion to accept  
that.

MR. CRADDICK: And present worth of the five year  
payments.

MR. VICTORINO: I'll accept that. If it's for their

betterment, yes.

MR. PARSONS: I second.

CHAIRMAN RICE: So it's amended. All right, let's

take the discussion on the amendment then. Okay, all in favor

of the amendment say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. HIRANAGA: Nay.

CHAIRMAN RICE: One nay. Let the record note.

Okay, all in favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. HIRANAGA: Nay.

CHAIRMAN RICE: One nay. Okay, one. Got it,

folks. (Applause).

CHAIRMAN RICE: Recess for the men's room and the

ladies' room.

(Whereupon a brief recess was had).

CHAIRMAN RICE: Okay, Old Business, Mr. Craddick,

Old Business, communication from John McConnell, and Ruth is

here. Go ahead, Ruth.

MS. DePONTE: My name is Ruth DePonte and I am here

because our land goes all the way back to my mother, my mother,  
and she got our land in 1918. So that brings us to have our  
land for 84 years. Now, in 1976 we subdivided the land. It  
was deeded. It possesses certain portions of the property  
boundaries exclusive to each parcel, and there were five of us,  
five of her children. One has passed away. But we didn't  
comply to the County rules, don't ask me why, you know.

And now that my mom has passed away and we decided  
that we wanted to get, each member get their land, we found  
that we have to come to the County and we are without water

meters. We have one water meter and there's four that's needed, and I am on your list.

And I know that you are saying for me to complete the subdivision. I have been dragged into court and a lot of money I've spent. I know you're saying go through with the subdivision and water will follow, but when is this water going to follow? Right presently I work a full-time job. I have four acres of protea, 4,000 plants, and I yield about 1,400, 1,800 right now. The season is on.

And I just thought even though we're saying subdivide without a water meter, it creates a difficulty, like

who is going to get that water meter. And if the water is going to be available for us maybe four years from now, I was just hoping that this Board would see that I could get my water meters with my subdivision. And you know it would really help the difficulty that I'm going to be confronted with.

I want to tell you that the papers that we found are papers in Corporate Counsel, they had been there a year and ten months maybe. But once we found all the paperwork, David Craddick and Kathy Howard and Herb Chang have helped me. They have been so nice. They've made calls to me, and they have

been really great. You know, they do a good job. They really showed me courtesy. I'm so nervous.

CHAIRMAN RICE: Are you finished, Ruth?

MS. DePONTE: Yes.

CHAIRMAN RICE: Questions for Ruth? Mr. Starr.

MR. STARR: I'm a little bit confused because we have a document in front of us that says that your request is to be allowed to subdivide without getting the water meters, and yet I'm hearing your verbal request that you want the water meters.

MS. DePONTE: Yes, the original request was with the

water meters. The original from Judge McConnell, who is our mediator after our court hearing, because we had to go to court, it is with water meters. But now I can't get water meters because of the ruling, so that's written in there.

CHAIRMAN RICE: Your request, Mr. Craddick, or recommendation?

MR. CRADDICK: Our recommendation is to allow the subdivision to go forward without the meters and no building.

And as far as being able to get meters, again, the Pookela

Well, we will be testing it next week. We expect to know what

the yield will be from that well within say two weeks. It may

even be able to be on-line within 30 days if we are able to get the chemical analysis of that water and we are able to get approval from the health department.

So there's a good possibility we can go much further into that list than the 300,000 gallons. So it may not be a very long time before they have to wait for meters, but I would not recommend moving them up on the priority list in order to get meters now.

CHAIRMAN RICE: I was going to ask, Ruth, do you know where you are on the list?

MS. DePONTE: 293.

CHAIRMAN RICE: I don't know how this Board could agree to move you ahead of other people on the list. Anyway, that's for the Board to decide. Any other questions for Ruth before we go further? Do you have questions?

MR. STARR: Yeah, would you want the Board to look to approve the subdivision without the meters, since I think that a number of us might feel that we couldn't really move you ahead of other people on the list. So the option would be to get the subdivision without the meters.

MS. DePONTE: I came in today because I have nothing

to lose. I'm asking. If you say I can't have my water meters,  
I can't do anything about it. You know, the subdivision has to  
go through.

CHAIRMAN RICE: The answer is "yes", I think. Board

Member Parsons?

MR. PARSONS: Would it be acceptable for the  
Director to issue a letter that says that you are number -- is  
it 2 --

MS. DePONTE: 293.

MR. PARSONS: On the list, and that as the meters  
become available as water becomes available, with the caveat

that as water becomes available the meters will be issued.

Would that be acceptable or is that an acceptable solution?

MS. DePONTE: It would. It's been a long wait and I

just, you know --

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: The basic question I have for you is

at this point you have heard we are probably not going to be

able to move you up on the list, even though you have had the

land since 1918. And I feel for you folks in that respect, but

we have that challenge. If the Pookela Well goes through and

we have water, hopefully you will get water in the very near

future.

So I guess the question is, you have answered yes, but the recommendation made by the Director is to go ahead and allow you to build the subdivision -- to start the subdivision with no new water meter. You are acceptable with that with the fact that --

MS. DePONTE: I have no choice.

MR. VICTORINO: You are okay with that? I just want to make sure. It's a hard question to answer, right?

MS. DePONTE: Yeah, right.

MR. VICTORINO: Okay.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Actually, David, there's also the possibility if she's 293 on the list she may even be able to get a meter even without the Pookela Well, is that correct?

MR. CRADDICK: I wouldn't bet on that, not with the 300,000 gallons. I don't believe we'd make it down that far on the list.

CHAIRMAN RICE: Okay, any other questions for Ruth?

Okay, thank you, Ruth. Okay, Board Members. Mr. Hiranaga?

MR. HIRANAGA: So the department is recommending

that the Applicant build the required infrastructure?

MR. CRADDICK: The infrastructure is -- there's an 8-inch line adjacent to the property, so there would be very minimal. I just don't know how they're going to lay out the subdivision. There may be some on-site improvements necessary, but in the road adjacent to the property there's an adequate line.

MR. HIRANAGA: Apparently they would have to put in a fire hydrant and service laterals.

MR. CRADDICK: Maybe, yes.

MR. HIRANAGA: But they would just basically go

through the normal subdivision process except for the fact that they do not have water meters for the property?

MR. CRADDICK: That's right.

MR. HIRANAGA: And you would have some type of a no-build restriction placed in their deeds?

MR. CRADDICK: Right.

MR. HIRANAGA: Until water meters are granted.

MR. CRADDICK: Correct.

MR. HIRANAGA: How does that differ from that family rule?

MR. CRADDICK: That's what would allow it to go

forward, except that it's obviously more than a three-lot subdivision.

MR. HIRANAGA: So the family rule was for three-lot subdivisions?

MR. CRADDICK: Yes. But they're not getting water for the three-lot subdivision, they're getting water off of the priority list when their name comes up.

CHAIRMAN RICE: This is to complete probate, I assume. This is the reason you want this subdivision done is to complete probate, right?

MR. KUSHI: Partition.

CHAIRMAN RICE: Is that what it's called? Excuse

me. Okay, what's your pleasure?

MR. VICTORINO: Move to approve.

CHAIRMAN RICE: Move to approve. Is there a second?

MR. PARSONS: Second.

CHAIRMAN RICE: Moved and seconded. Discussion?

Mr. Starr.

MR. STARR: I would just want to be sure that it's

clear that by doing this we're not saying that we're approving

a development until meters are in place, and any other required

fire or other protections are taken care of in accordance with  
the rules.

MR. CRADDICK: That's understood.

MR. HIRANAGA: I just wanted a clear understanding  
of what the motion is.

CHAIRMAN RICE: I believe the motion is to approve  
the Directors's recommendation. Is that's correct?

MR. VICTORINO: That is correct.

CHAIRMAN RICE: Mr. Hiranaga? Okay? Okay, all in  
favor of the motion say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried, it's unanimous. Thank you,

Ruth.

Okay, Communications Section VII, Mr. Davidge's

request. I don't see Mr. Davidge here. Anyone here

representing Greg Davidge?

MR. CRADDICK: He had said that he wasn't notified I

think in enough time, and I guess he'd like it to be deferred,

I guess. I read that in his letter. But he had some

off-island business to attend to.

CHAIRMAN RICE: Okay, move to defer.

MR. VICTORINO: I move to defer.

MR. PARSONS: Second.

CHAIRMAN RICE: Moved and seconded to defer. All in

favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried, deferred.

Okay, Communication 02-39. I see Mr. Pierce is

here. And why don't we go ahead, Mr. Pierce, you can start.

Mr. Kushi will join in.

MR. PIERCE: Good afternoon, Mr. Chair and members of the Board. I'm not going -- what's before you today is -- and I am not going to use this unless you can't hear me.

CHAIRMAN RICE: No, use it.

MR. PIERCE: Okay. All right. I'm here today on behalf of Roger Crouse and Melani Palmer. You have seen me before on this matter. What's before you today is our amended appeal, which is the communication. The amended appeal that has been filed, you have the written appeal so I am not going to get into the details, except to mention that what we are

continuing to request are permanent water meters, one for Melani Palmer and one for Roger Crouse. We are also requesting temporary relief in the form of temporary water meters while these issues are worked out.

Yesterday -- and just to remind you where this is in terms of what's been happening on the property and what's been happening here, the original appeal was filed in February after the Director issued a decision in January stating that the water meter in his belief, the permanent water meter that they had been enjoying up to that point in time, in his belief they were not entitled to it and it should run with the land

adjacent to it.

And as you know, the Kingdom of Hawaii through the Majesty Akahi has come in and requested that water meter, and it has been changed as a result of the last, the last time that this was before the Board, which I believe was back in August.

At that point in time there was discussion of the issue, and immediately after that the Director did change it and changed the water service into the name of Emil Tedeschi and the Kingdom of Hawaii, so that part has been done.

What I want to inform the Board about is that as of

yesterday -- well, since that point in time we have continued to try to work out this matter as much as possible with the department. And as of yesterday, we did receive an offer of settlement from the water department through Ed Kushi, and we have a few -- in general, we think it's something that will work. This is an offer to take care of the temporary concerns.

So as you remember when I talked about this before, there's two requests before the Board. One is the permanent water meters; one is the temporary water meters. This settlement discussion would take care of our temporary concerns

and provide water. Again, at this point in time there is no water service to either the Crouse property or to the Palmer property. Neither one of them have water.

So with that said, we believe -- we are asking you today to consider our additional requests which Ed Kushi has, and which I think he will be discussing with you. We are asking you to give those serious thought because we think it will resolve the temporary matters and keep you from having to have a full-blown hearing on this matter.

With respect to the permanent meters, I and Ed Kushi see some -- we are in agreement on several matters, and we'd

like to continue to try to work out the permanent water meter situation. So one of the terms of the settlement is that we would withdraw our appeal for the time being. We would have the right to refile it at some point if the department and my clients can't resolve their differences, but our goal here is to limit the amount of time.

What I would be asking, and I may come back before you this afternoon, what I would be asking if we can't get the temporary issue resolved right now, because this has been going on for almost a year now, is I would ask the Board to go ahead and set a hearing date for some time in January so that at

least my clients can look at some point in time when they would be able to have the hearing on this matter that we originally requested last February.

So with that said, I will take any questions if there are any. And I know that Ed Kushi will discuss the terms of the settlement with you, and I will be available as long as needed. And my client Melani Palmer would like to say something. Roger Crouse was here, but he had to leave to go back to work. Any questions before I pass the mike?

CHAIRMAN RICE: Is there any questions?

MR. VICTORINO: I guess a question and a statement.

You know, you are referring to an opportunity to come back in

January before us, possibly to appeal or some other matter.

Unfortunately, if you understand what's happening, come January

you may not even have us to appeal to. So just so that you're

clear on that matter. I don't want you thinking that we are

going to say yes to something and it may change. In fact, our

duties and responsibilities will change in January, so I hope

you understand that.

MR. PIERCE: I understand we are going to have some

interesting procedural issues to look forward to in the new

year.

MR. VICTORINO: That's correct.

CHAIRMAN RICE: Yes, Mr. Starr?

MR. STARR: In the event that a settlement is made to issue temporary meters, is it possible to extend, get a pipeline down to where this water can be used by Crouse and Palmer?

MR. PIERCE: The answer is "yes". The short answer is "yes". At this point there already is -- the private line that has been used for I think over 10 years, 10 or 15 years, is still available, still has easements in place. With respect

to Melani Palmer's property, her intent is to go ahead and put the private line in place for that one as well.

CHAIRMAN RICE: Any other questions for Mr. Pierce?

Are we going to have a statement from Melani Palmer?

MR. PIERCE: Yes, she would like to make a short statement before the Board. Thank you.

MS. PALMER: Just I -- you have all heard my story, and I am amazed that you have to understand so many complicated things on everybody's issues and really deeply understand them, and I think you understand my situation. I just want to thank you for being here, and I hope that the temporary situation can

work out. And I know you have been supportive, and we have met on the site of the water meter. And I just hope that things can continue to progress, because I have a family and I am living there now, I have been living there. It's been my family's -- in my family for 42 years. And anyway, thank you. I wouldn't want that job, what you have to understand. That's all I have to say. He can talk better than I can.

CHAIRMAN RICE: Any questions for Melani Palmer,

Board Members? None? Okay, thank you.

MR. PIERCE: Thank you.

CHAIRMAN RICE: Mr. Kushi, please.

MR. KUSHI: Yes, Mr. Chair, Board Members. For the record, I confirm what Attorney Pierce has said in terms of the history of this case, in terms of our previous discussions, and especially in light of our previous recent discussions as of yesterday.

I would suggest at this point, Mr. Chair, that the Board go into executive session pursuant to HRS 92-5, I guess specifically A(4), in terms of consulting with the Board's attorneys, and specifically concerning this matter in terms of a settlement. I know it's not on the agenda, however the Board

by two-thirds majority still has the authority to go into executive session.

MR. VICTORINO: Move we go into executive session and discuss this matter.

CHAIRMAN RICE: Is there a second?

MR. HASHIMOTO: Second.

CHAIRMAN RICE: Okay.

MR. VICTORINO: Mr. Chair, I will note that it wasn't put on the agenda so that's clear with everybody in the room.

CHAIRMAN RICE: The thing that's not on the agenda

is the notice to go into the executive session, but the issue is on the agenda. Mr. Starr?

MR. STARR: Yeah, I'd just like to ask for some clarification about that, because it's something that I have never seen or participated in before, about going into executive session without having it on the agenda with the two-thirds.

MR. KUSHI: Well, Mr. Chair, Board Member Starr. It's been our understanding from the OIP, Office of Information Practices, that where an item to be listed on the agenda is known in advance at the time the agenda is posted that they may

go into executive session, the agency should notify, should

post it. That is they should post it.

Our position has always been if something comes up

after the posting of the agenda, that still doesn't preclude an

agency from going into executive session if the matter so

requires. Our discussions on settlement happened after this

agenda was posted on this matter. But I feel strongly that I

would not discuss this matter in open session with you because

it may involve litigation. That's why I wanted to go into

executive session.

MR. STARR: Just one more question. Is this

something that's been done in other commissions or the Council

in the past?

MR. KUSHI: In terms of the executive session?

MR. STARR: Yes, well, going into executive session

without it being posted?

MR. KUSHI: Yes, I believe there was an issue with

the Council. I'm not sure what committee or what agenda. And

I believe we got that response, which I relayed over to you.

If the matter is known or anticipated well in advance that it

should be posted.

CHAIRMAN RICE: That was in a recent OIP bulletin.

MR. STARR: Can I ask if there's anyone --

CHAIRMAN RICE: If the Applicant has any objection?

MR. PIERCE: The Applicant has no objection.

MR. VICTORINO: Call for the question.

CHAIRMAN RICE: Okay, all in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. STARR: Nay.

CHAIRMAN RICE: Okay, executive session.

MR. KUSHI: Six to one.

(Whereupon the Board went into executive session)

REGULAR SESSION RESUMED

CHAIRMAN RICE: Okay, we're back in order.

MR. VICTORINO: Mr. Chair.

CHAIRMAN RICE: Mr. Victorino?

MR. VICTORINO: I move that we accept the -- or we go back and negotiate with the discussion that we had in the executive session for this situation on the Crouse -- and what is the other one? Palmer. The Crouse and Palmer meter situation.

MR. PARSONS: Second.

CHAIRMAN RICE: Okay, moved and seconded.

Discussion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

The motion is carried.

Mr. Pierce, you can talk with Mr. Kushi. Thank you,

Mr. Pierce.

Okay, Other Business. We have a Council resolution

urging us to expedite the completion of the Water Use and

Development Plan. Shall we respond in the affirmative?

MR. VICTORINO: I move that we accept it.

MR. PARSONS: I second.

CHAIRMAN RICE: It's moved and seconded to accept

the recommendation of the Council resolution. Okay,, everybody

in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

(None).

Thank you, what a cooperative group.

Okay. Yes, Mr. Starr?

MR. STARR: Mr. Chair, could I ask Mr. Friedman a question regarding this?

CHAIRMAN RICE: Sure.

MR. STARR: What would be involved in expediting this from your perspective, Mr. Friedman?

MR. FRIEDMAN: Hello, my name is Carl Friedman. I'll introduce myself because I don't know if some of the members of the Board have heard me before. My name is Carl Friedman, I'm a consultant with the water department to do some of the technical aspects of the Water Use and Development Plan. And I don't know what it means to expedite the Water Use

and Development Plan, that wasn't exactly clear. I didn't look the word up, but I mean I think that the resolution, especially reading the tone of all the "where as's" was at least a little bit political, coming a few days before the election.

And I understand the frustration that people have about not having Water Use and Development Plans up to date, as well as the frustrations with the general plans and community plans. So I didn't know how to interpret what the resolution meant by expedite, except as a statement perhaps of some frustration.

MR. STARR: I assume that what was being stated --

and I wasn't at any of the Council deliberations on this -- but I assume what they're saying is that the published schedule for the IRP process goes out several years. And knowing a bit about the IRP process, I was at some of the meetings on Oahu where it was discussed, it's a very complicated process. Is this something that can be sped up by throwing more money at it or is it not realistic?

MR. FRIEDMAN: Well, the process is not a fast one because we are going to be doing it for the different parts of the island and it will be done sequentially. And it involves

-- it's a public process, so there's a lot of public input and it is somewhat time-consuming. I think it would be possible to expedite some of the information that would be generated. And I've already offered to the Board at least once before to help with that, if it would be helpful.

I think when requests come from the Council for information about how much water is available that it is important to get a good, quick, understandable response because the Council is faced with decisions and they need to know about water availability.

It's my perspective that the answer to those

questions can be complex in terms of the context of long-range planning. But I think what might be helpful is to do like the second one there, which would be to give a presentation to the Council on the status. That can be done immediately, and I think the department a long time ago has offered to do that.

And the response from Council was well, maybe in January, but we're ready to go on a moment's notice. I think that in terms of expediting the plan, we will just continue to be as diligent as possible in making it move.

My part hasn't started yet. Lanai is not within my contract, and we have been doing a lot to make this thing ready

to go. It's not like we have been doing nothing. And so I think the process is going to move along. But unless there's something more specific about it, it's hard to expedite something that needs to meet a rather rigorous set of standards. If you cut the corners you are not going to get there any faster.

CHAIRMAN RICE: Well, I think what the department focused on is that Mr. Craddick can notify the Council that we are available to update them, and then we can probably find more information on it at that point.

MR. FRIEDMAN: Right. And I think I'm sure the

department -- for my part I'm willing to help in whatever way to get information to whoever needs it as efficiently as possible.

CHAIRMAN RICE: Thank you. Okay, we're moving on.

The next item on the agenda is the discussion and possible action regarding authorizing additional expenditures for legal advice on the purchase of watershed property. We spoke with representatives from Alston Hunt, Mr. Jim Tam, at a previous meeting, and we asked them to prepare some proposals for the use of experts, and we have that information. I think it's

attorney/client privileged information, so Mr. Kushi is going to talk to us in executive session, if that's your wish. And you --

MR. KUSHI: Yes, that's correct, Mr. Chair.

MR. VICTORINO: Well, Mr. Chair, before we go into executive session, with the change around the corner -- and I keep harping on this -- but again, we may be discussing a moot point, because when the administration comes in they may have a totally different perspective, and they may have to look at all of this and make their decision accordingly. I don't know if we're even at that point.

CHAIRMAN RICE: We are not in the -- I'm sorry for not being clear. It is not for approval.

MR. VICTORINO: You said possible action regarding it.

CHAIRMAN RICE: The action would be to defer it to the Council because it needs to be deferred to the Council.

MR. VICTORINO: That may be changed in that respect. I can see sitting here and discussing -- no offense to Junior and all the work he's done -- this is something that I think the new administration needs to take a look at.

CHAIRMAN RICE: Fine, that's up to you guys.

MR. STARR: My belief is that we should proceed on this item and, you know, if the new administration wants to go in a different way, they will have plenty of opportunity. But my own feeling is we should look at it, and then if we can get into an agreement, pass it along to the Council. And the new administration can certainly talk to them about whether it gets approved or not. So I'd like to look at it. In fact, I'll move to go into executive session based on the pertinent rules and regulations.

CHAIRMAN RICE: Second?

MR. PARSONS: Second.

CHAIRMAN RICE: Second, okay. Moved to go into executive session. And all in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. VICTORINO: Nay.

CHAIRMAN RICE: Okay, motion is carried. Sorry,

folks.

(Whereupon the Board went into executive session).

REGULAR SESSION RESUMED

CHAIRMAN RICE: Back in order. Item B under Old

Business, discussion and possible action regarding the  
authorization of additional expenditures.

MR. VICTORINO: Move to defer this action to the new  
administration.

CHAIRMAN RICE: Is there a second?

MR. PARSONS: I second.

CHAIRMAN RICE: Moved and seconded to defer.

Ready? Discussion? All in favor say "aye."

(A chorus of ayes).

Opposed say "nay."

MR. STARR: Nay.

CHAIRMAN RICE: One nay. Motion carries.

MR. STARR: Roll call.

CHAIRMAN RICE: Motion carries. Okay, item C,

discussion/possible action regarding startup of Hamakuapoko

Wells.

MR. CRADDICK: Okay, I believe a letter has been

passed around to you there, and the reason it wasn't passed

around before is that the ditch levels are constantly

changing. And although it just blankly says startup of

Hamakuapoko, it's within the --

MR. STARR: Do they know they can come in?

(Brief pause in proceedings).

MR. CRADDICK: The purpose of this request is for

the Board basically to declare a drought situation so that we

can use the wells. And for the past two weeks Wailoa Ditch has

been running less than 50 million gallons a day. Since

November 18th the level has dropped to less than 30 million

gallons a day. This morning the ditch is running at 22 million

gallons a day. Even though it says 25 there, this morning it

was 22. The weather forecast does not anticipate any rainfall

in the immediate future.

Since November 18th we have had increased production at the Kamole treatment plant to relieve demand on Piiholo.

The Piiholo Reservoir was emptied and cleaned in the middle of October and has recovered, and recovered as of November 24th to approximately 23 million gallons, or 47 percent. Daily inflows are at minimal levels.

Relief is also needed at the Kamole treatment plant, as the high levels of production places a need to clean the filters more frequently. Using water from the Hamakuapoko Wells will provide some relief on the filters. As I said, they

need to be cleaned.

The Seventh Amendment to Memorandum of Understanding with A&B says that, the Board of Water Supply agrees to use its best efforts to minimize its intake of water from Wailoa Ditch System, and to utilize, to maximum extent practical, all groundwater sources now or hereafter connected or reasonably capable of being connected to the system, whenever the total flow drops below 55 million gallons per 24-hour period, and to move forward on a timely basis with necessary steps, including installation and utilization of surface water storage of peak flows, so that the Board is able to reduce its dependency on

Wailoa Ditch.

And our recommendation is that since the flows in the Wailoa Ditch have dropped below 55 million, reservoir levels have dropped. With no immediate relief anticipated, it is recommended that the Board -- I don't know if you have to declare a state of emergency, but you have to declare certainly a state of drought to authorize the pumping of the Hamakuapoko Wells, and place consumers on voluntary conservation notice at this time.

And then should reservoir levels further drop, I

guess we'd have to look at that in the future if reservoir levels further drop. But it says there if they drop to below 40 percent that consumers be placed on a 10 percent mandatory cutback. I don't know if I want you to decide on that one right now, but we will have to watch that, because we have the possibility maybe of getting the Pookela Well on line also within this month.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I have a question for Counsel. It's my recollection that in the past when we pumped Hamakuapoko Wells we did that under a court stipulation in relation to the

implant litigation, and that called for a Declaration of Drought emergency by the governor. And we had at one point to reach out and to have the governor declare a drought emergency. And we did that, and we operated under that basis for quite awhile.

We went -- subsequently we went out of drought emergency, and now we are talking about going back into a state of drought emergency. But it's my belief, and I think that's the basis that we got this letter from Isaac Hall, that we would need to have the drought declaration issued by the governor again. I'd like to ask Counsel's opinion on this

matter.

MR. KUSHI: Mr. Chair, Board Member Starr, I am not familiar with the drought situation. I know that there was a site order on that. I'd have to go back and look at the file. But I believe that the drought by some authority needs to be declared before they can use this well. But again, I am not sure. You may want to check with the Director.

MR. CRADDICK: What Counsel says is correct, it just needs a Declaration of Drought by this Board. That's what the EA said.

MR. STARR: Why did we have to get a drought

declaration by the governor the last time before we were able

to use Hamakuapoko Wells?

MR. CRADDICK: Because we were putting in pipelines

and putting in the pumping equipment in the Hamakuapoko Wells.

And then subsequent to that we did an EA to be able to use

these wells during a drought.

CHAIRMAN RICE: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, my recollection is that

we did authorize the use of the wells under Declaration of

Drought action taken by the Board. The action by the governor

I believe, as you said, was to have a drought emergency to bypass certain procurement requirements regarding the installation. I believe that's what happened.

However, I do have another question to Corp Counsel. Not wanting to be too picky, but the agenda item is discussion and possible action regarding startup of Hamakuapoko Wells, and it sounds like what the Director is really asking is for the Board to declare a state of drought. I'm wondering if those are not sufficiently, you know, distinctive that it may be a problem. Because we are already placed on notice that there are some legal issues potentially, and I would like to be

sure that we are not exposing ourselves.

MR. CRADDICK: That's what it takes to start up the wells.

MR. NAKAMURA: I addressed that to the Corporation Counsel, Mr. Craddick.

MR. KUSHI: Mr. Chair, Board Member Nakamura, it could be clarified, it could we more specifically said that the startup would have to be subsequent to a Declaration of Drought. A member of the public walking around and seeing this agenda would have no idea, unless they're intimately involved, that a drought may be declared. But to that extent I agree

with you. However, the Director is correct that any startup of these wells needs to be subsequent to a Declaration of Drought. But I tend to agree with you.

MR. VICTORINO: Mr. Chair?

CHAIRMAN RICE: Yes, Mr. Victorino.

MR. VICTORINO: I guess then what you're saying, if I understand all this correctly at this point, is before we can start up the well, a Declaration of Drought has to be declared for the Upcountry area. And I haven't been convinced that we need to. Are you telling me we need to?

MR. CRADDICK: The ditch is at 22 million gallons,

and if it keeps going, by next week we will be out of water.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: I'd like to, since there is no agenda

item regarding to declaring a drought emergency, I'd like to

recommend that if it looks like we are going to need to declare

a drought emergency that the Chair call a special meeting for

that one item, with that on the agenda, and then we do it under

that basis.

MR. VICTORINO: Is that a motion or is that a

suggestion?

MR. STARR: That's a suggestion. I don't think it

requires a motion.

MR. CRADDICK: Is everybody available on the 4th?

Clark?

MR. HASHIMOTO: So Counsel, did you say that it's

not agendaed properly so we cannot act on it?

MR. KUSHI: Well, I would just say this. That it's

not -- drought is nowhere mentioned, and unless you know the

ins and outs of the H'Poko Well, you wouldn't know that you are

even considering a drought. That is not to say that you cannot

act, because the technical situations about starting up these

wells are that a drought declaration is required first. I

don't think there's a per say violation of the Sunshine Rule.

But again, I would caution you. If you can meet before December 5th, and if this is truly what the Director says, I would suggest that and give that adequate public notice.

CHAIRMAN RICE: I think we will call a special meeting then on the 4th.

MR. HASHIMOTO: If needed, right?

CHAIRMAN RICE: Well, no, wait. We just decided we needed it. If we don't need it, we do it now.

MR. HASHIMOTO: If it rains during that time?

CHAIRMAN RICE: I don't know if it's going to rain  
that much.

MR. CRADDICK: If you notice it and it rains then  
you would just cancel the meeting.

CHAIRMAN RICE: Mr. Starr?

MR. STARR: Well, on the other hand, if we didn't  
act until the 5th, couldn't the Director just do it at that  
point?

CHAIRMAN RICE: Well, that would lead one to  
interpret the new charter amendments, which I wouldn't be

likely to do. But your point is taken.

MR. STARR: You know, I do say, you know, do feel we have a letter from the opposing counsel on the implant saying that pumping Hamakuapoko Wells would be a violation. And if we were to act to activate them without a proper agenda item regarding a drought emergency, I think we would be playing into his hands.

CHAIRMAN RICE: That's what I said, so we have a special meeting on the 4th.

MR. PARSONS: And in the meantime maybe we put some

kind of notice out to the community to please voluntarily  
conserve.

CHAIRMAN RICE: Sure.

MR. PARSONS: And we can do it, we are running some  
broadcast spots. David, we are running some radio right now.  
Maybe it would be a nice idea to change the radio spots to  
conserve up in this area on a voluntary basis.

CHAIRMAN RICE: Okay, we will do that. All right,  
everyone is in agreement? We don't need any action? Mr.  
Craddick.

MR. CRADDICK: Section 41-B of the rules, water

conservation during a period of a drought, whenever the Board declares a drought to exist in any area of the County of Maui the Director, with the approval of the Board, is authorized to restrict the use of water by such appropriate schedules and measures as may be deemed proper.

CHAIRMAN RICE: That's upon the declaration of a drought, which we haven't done that. So all we're just asking for is sending a letter asking people to conserve.

MR. PARSONS: Use your radio spots for that purpose.

CHAIRMAN RICE: Last item, division reports. They have been distributed. Questions? Anything from Mr. Starr?

MR. STARR: Not today.

CHAIRMAN RICE: Anyone else?

MR. HASHIMOTO: Are we going to discuss the future  
of this Board today?

CHAIRMAN RICE: It's not on the agenda. I need a  
motion to adjourn.

MR. HASHIMOTO: So moved.

MR. STARR: Second.

CHAIRMAN RICE: Adjourned.

(The proceedings were concluded at 1:15 p.m.)

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Department of Water Supply  
County of Maui  
P.O. Box 1109  
Wailuku, HI 96793-6109  
Telephone (808) 270-7816  
Fax (808) 270-7951

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