

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

SPECIAL MEETING

Wednesday, December 4, 2002

9:00 a.m.

Kahului Shopping Center

Kaahumanu Avenue

Kahului, Maui, Hawaii

Reported by: Katherine Eismann, RDR, CRR, CSR #439

APPEARANCES

Vice Chairman:	MICHAEL NOBRIGA
Board Members:	KENT HIRANAGA
	GINNY PARSONS
	MICHAEL VICTORINO
	CLARK HASHIMOTO
	ADOLPH HELM
Corp Counsel:	EDWARD KUSHI
Director:	DAVID CRADDICK
Deputy Director:	GEORGE TENGAN
Board Secretary:	CATHY HOWARD
Engineering:	HERBERT KOGASAKA
Staff:	HOLLY PERDIDO

(Wednesday, December 4, 2002, 9:00 a.m.)

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VICE-CHAIRMAN NOBRIGA: Okay. Special meeting of the Board of Water Supply will come to order. It's now 9:00 a.m. We are at the Wailuku Shopping Center at 65 West Kaahumanu Avenue, Unit 29.

In attendance for the Board of Water Supply, Kent Hiranaga, Clark Hashimoto, Adolph Helm, Virginia Parsons, Mike Victorino, and Mike Nobriga sitting in as for chair. Also in attendance is Director David Craddick, Deputy George Tengan, honorable and esteemed counsel, Mr. Ed Kushi, Board Secretary Cathy Howard, and members of the delightful public.

We will open up the floor for testimony from the

public. No minutes to be approved. First person signing up to testify is Mr. Charles Villalon of Na Kupuna O Maui concerning item old business 4B. Mr. Villalon?

MR. VILLALON: Villalon, yeah.

VICE-CHAIRMAN NOBRIGA: Villalon. Thank you.

MR. VILLALON: Thank you, Chairman and Board. I wear several hats here, but I was asked by Na Kupuna O Maui and by Patty Nishiyama to voice concern about land ownership before any acquisition or designations made on acquisition of the properties, clear land ownership should be determined, along with the -- you know, the water rights are very unique,

and it's a very hot topic issue.

As you guys know, you guys fully know about the new charter. They feel that monies at an excess about 20 million -- 20 plus million dollars should be spent on upgrading and servicing of the present system instead of purchasing something that -- you know, you looking into the future, but there's no certainty. There is no surety. The only surety is for the special interests.

We need to assure that the land ownership -- we want to go on record -- Na Kupuna wants to go on record that

they are voicing concern about clear land ownership to

easements and surrounding properties of the well. That's it.

VICE-CHAIRMAN NOBRIGA: Thank you.

MR. VILLALON: Thank you.

VICE-CHAIRMAN NOBRIGA: Members, any questions for
the testifier?

MR. CRADDICK: What well?

VICE-CHAIRMAN NOBRIGA: What?

MR. CRADDICK: What well is he talking about?

MR. VILLALON: We are talking about the Iao well.

MR. CRADDICK: Which one is that?

MR. VILLALON: The one we are going to -- propose
to acquire by the county acquisition of \$20 million.

MR. CRADDICK: We are not --

MR. VILLALON: I am not a water man. I know
there's several, but the one in particular that I am speaking
of, any adjoining properties.

MR. CRADDICK: We are not --

MS. PARSONS: I think he's talking about the
watershed. Are you talking about the watershed?

MR. VILLALON: Yeah, the watershed. Isn't there a
pump?

MR. CRADDICK: No, there's no pumps. No wells.

MR. VICTORINO: It's the watershed.

MR. VILLALON: The watershed. So, we are
intending to pump the water from the watershed?

MR. VICTORINO: No.

MR. CRADDICK: No.

MR. VILLALON: How are we going to get the water?

I will be very honest. We just got word, you know. This is
really hard, in the middle of the week, 9:00 o'clock. I mean,
there is a big cloud over this whole thing. I am coming here
as a representative. And I have been told certain things

that's been cleared up right now.

So, if we are going -- if we are looking at water resource, obviously, we are going to take the water resource to habitable areas. We are going to have to irrigate it, pump it. We are going to have to get it to the habitable sources. Whatever area that is, watershed, well, pump, assure that all easements and surrounding properties have clear title. That's all I am saying.

VICE-CHAIRMAN NOBRIGA: Thank you.

MR. VILLALON: Thank you.

VICE-CHAIRMAN NOBRIGA: Next testifier this

morning will be Kahu Charles K. Maxwell, Senior, concerning

the same item on our agenda. Mr. Maxwell. Welcome.

MR. MAXWELL: Thank you.

VICE-CHAIRMAN NOBRIGA: Thank you, sir.

Mr. Maxwell has also provided written testimony to the Board.

MR. MAXWELL: I hope there's enough.

Mr. Chairman, members of this commission. Thank
you for giving me the opportunity to express my views on this
subject.

I am Kahu Charles Kualuwehi Maxwell born and

raised on Maui. Waikapu is my ku'uone hanau or my ancestral place of birth, and my mo'oku'auhau, my genealogy, can be traced a thousand years back to Waikapu.

My ancestral grandmother, Keali'iwahinehololio was, a high chiefess who controlled all of the lands from Waikapu to Maalaea. Land ownership to our people were -- was foreign, because, in their mind, the land or aina -- aina is the mystical food -- were children of Papa and Wakea, the earth mother and the sky father.

According to the mo'olelo, the stories that were passed down from our family, foreign laws were introduced to

get the lands away from the use of our people, especially the

adverse possession law.

This law was used without the knowledge of the

Hawaiian people. My family lost numerous acres of land in

Waikapu because of this law. The majority of the land in this

area has clouded title. It really is a sin that we, as

descendants of a great and loving people, who thought that

when they shared the land with everyone that came here, their

descendants of today would at least have some land of their

own.

The water and land are one of the same. For

Hawaiian's, both mean life and sustenance. An old Hawaiian

chant speaks about water rights and says:

"One question I ask of you:

Where flows the water of Kane?

Deep in the ground, in the gushing spring.

In the duct of Kane and Loa.

A well-spring of water, to gush.

The water of magic power.

The water of live! Life! Oh give us life."

Water has always been essential to Hawaiians

throughout -- in thought and ritual, as much mystical as essential. Hawaiians revered water, protected it, preserved it. Strict rules regulated its use and Kapu prevented its abuse.

Each ahupua'a had its own system of auwai that diverted water from the streams to the fields and clearings. The Konohiki laid out the path of the auwai and diggers worked from the destination points upward towards the stream. Each Ali'i provided men according to the number of cultivators on each land. Water was distributed according to the number of men who built and worked on the auwai.

No auwai was permitted to take more water than continued to flow downstream below the dam. It was usually less, for their were those living below the stream drawing water from it. Their rights have to be regarded.

The flow of the water was controlled by the dams made of loose rocks and clods. The height of the dam controlled the flow. If a dam drew too much water, water right holders downstream were permitted to knock it down. If it was subsequently rebuilt downstream, delegates were required to be present to see a due proportion of the water was left in the stream.

Water rights were primarily for lo'i. That is for the taro culture. Potato patches, bananas or sugar cane had no recognized claim on a water right. The cultivation of these, regarded as dry land crops, was invariably during the rainy season, except in the Ko'olau on wet districts.

In ancient times, problems with the supply of water and its fair distribution were rare. Land was held in trust for all who were willing to work for it. Water was available for all who worked to get it. Water problems arose only after individuals could own land, and with the private ownership came the notion of private water rights.

The most ambitious irrigation project was at the Waiahole ditch. It is safe to say that ancient Hawaiians did not have the means to dig the tunnel. But, if they had, they certainly would have done a better job of allocating the water.

This is some historical information, "Hawaiian Water Rights," by Emma Metcalf Nakuina, in the Hawaiian Annual in 1894.

Also, the word kuleana means water rights, and the kuleana followed the land. If you sell the lands, the water

rights went the land.

In an e-mail I received yesterday on this agenda item from Mr. Bill Meyer, who stated, without seeing the actual area to be purchased, it's hard to reply. But if the area encompasses the collection, diversion, and distribution system of water agribusiness -- of Wailuku Agribusiness, in West Maui, the purchase could be significant and desirable.

This could be a lot of surface water, and Maui's future could be, at least in part, tied to it. It is going to be harder to obtain additional groundwater supplies. Also, there should be an opportunity to identify and protect the

stream flow requirements for purchase if the purchase is made.

This would be something to argue in this meeting.

My question, Mr. Chairman, is why the county would purchase this land if the title is clouded. Even if Title Guaranty guarantees the purchase and say, in the future, something happens to them, and they go out of business, what then?

Also, without conducting due diligence, how will the county know that Wailuku Sugar has clear title to the land. By accepting the land, would the county be liable for future litigation from its original owners?

Would it not be more simple to condemn the land for public use? Then the true owners of hui land could come forth and settle their claim, instead of given Wailuku Sugar the public money across the table for land that they might not have clear title to.

As you stated, Mr. -- on the phone, Mr. Craddick, if the county could purchase the land, Hawaiians could open the taro patches, and the Water Board would probably help them clear the land. It's a great idea. Include that as one of the stipulations of the sale. Mahalo.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Maxwell.

Is there any questions from the Board of the testifier at this time?

MS. PARSONS: Maybe for later.

MR. VICTORINO: Maybe for later.

VICE-CHAIRMAN NOBRIGA: Thank you. Would you please stay around in case we think of questions later?

Are there any other persons in the room who offer oral testimony at this time? There are some new faces that came in. No? Thank you.

Is there any written testimony? None.

Move on to old business. Item four, item A,

discussion and possible action on Upcountry drought

declaration to allow use of the H. Poko wells, the Hamakuapoko

wells. Mr. Craddick.

MR. CRADDICK: On this item here, I think we have got it noticed correctly here today that we are not using it for general purposes. It is for drought purposes.

The numbers that have changed here now. We have the ditch was at 55 -- well, it says it dropped below 55 million. It is still below 55 million. But, at the beginning there, we say it's less than 25 million. It's

actually 36 million right now, the ditch, and the reservoir levels have not changed substantially.

So, in light of this, by the Board's agreement, it requires going into a drought situation, so that we can use all available pumping. I will tell you that one of the wells is not functioning now, because it's been sitting, not being used. So, in reality, we will only be able to use one well if the Board sees fit to allow us to go ahead. But we will make every effort to try and get the other pump operational.

But, we are asking basically to declare a drought, and so that we can use these wells to supplement the water

system and be able to backwash the filters.

The other item that I brought up last meeting, the Pookela well, the -- my understanding is the pump was finished being -- or it will be finished being set today. We expect to start pumping water out of the well on Friday and beginning the test through the weekend, testing the well. And I don't have any results on that at this time for you, but it's close to being to a point where we will know what the test results are.

VICE-CHAIRMAN NOBRIGA: Thank you. Question,

Mr. Victorino.

MR. VICTORINO: Mr. Craddick, it is my

understanding that we have some rainfall in the Upcountry area over the past week. How has that sustained the percentage of the ditch flow?

MR. CRADDICK: It's come up from 22 million to 36 million.

MR. VICTORINO: Okay. But how far off are we from what would be considered an adequate flow? I mean, we hear the term 55 million all the time, right?

MR. CRADDICK: Yes.

MR. VICTORINO: So, we are 19 million short of

what we consider adequate flow?

MR. CRADDICK: Yes, and our reservoirs are well

below 80 percent.

MR. VICTORINO: When you say well below, how far?

Because I know what it says here, but I want to know what you

have to say.

MR. CRADDICK: We are, right now, I believe, about

55 percent on the storage.

MR. VICTORINO: That's as of what, Monday?

MR. CRADDICK: That was the last time I looked,

Monday. Today, we don't have the numbers for today.

MR. VICTORINO: You don't have today's numbers.

Okay.

MR. CRADDICK: Which would be actually yesterday's numbers.

VICE-CHAIRMAN NOBRIGA: Mr. Helm.

MR. HELM: I guess, David, can you enlighten me and, I guess, maybe some of the fellow board members, on what other impacts or conditions are going to be set? If we do declare a drought, are there any other conditions that will impact the customers? Could you kind of give --

MR. CRADDICK: I am not asking for any at this
time.

MR. HELM: Okay.

MR. CRADDICK: Just if you note, we say in there,
should the storage reach 40 percent, then we would ask that
the 10 percent voluntary cutback be put in place. But we
think with running this well, we might be able to avoid that.

MR. HELM: Okay.

MR. HASHIMOTO: Where is that Pookela -- where is
the water going to from the Pookela well?

MR. CRADDICK: It won't go anyplace, when we are

testing it. It will just be dumped.

MR. HASHIMOTO: But after it's up and running.

MR. CRADDICK: It would be able to go into the water system once we get a permanent pump and piping and things in place.

MR. HASHIMOTO: And how far off is that?

MR. CRADDICK: To get a permanent pump and piping in place, probably a year, year and a half. But like I said before, you know, if the board wanted to talk with the contractor to leave the existing pump in the hole for a while,

until we on could get the contract out, that's a possibility to do that also.

And right now, what we are trying to do is we are going to try and get samples of the water to get an engineered report through the Health Department, so that if we need to use this water, we would be able to do that. And when I say be able to do that, I am talking about in the next 30 days.

VICE-CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: I guess the last question I have for you, if we declare a drought in the Upcountry area, or -- let me rephrase my question.

If we do not, what would be the impact? If we do not do anything today and wait to see, because we are in our prime rainy season, et cetera, what would be the impact if we didn't do that?

MR. CRADDICK: You are going to continue to have two pumps that have sat for over a year not operating, and we right now have only one pump not operating. We will probably -- you know, if we try and go another year, we will probably have two pumps that don't operate when we need them to operate.

So, mainly what you are doing right now is getting

it to where we can get the equipment to operate again. That's what you are doing, and it's, you know, something you need to do, regardless, at least once a year, you know, running the thing, so that we know it works when we need to have it work.

MR. VICTORINO: Is there any possibility of test operating these pumps for a period of time, maybe like in this kind of area where there's shortage? Not really running them, but running them as a test to make sure they are operational. Is that possible?

MR. CRADDICK: The EA didn't cover that type of thing, you know, need of operating them on a regular basis

just to keep them from seizing up in the well. It didn't cover that.

MR. VICTORINO: Because my biggest concern is I don't want to send fear to the Upcountry area saying there's a drought when, really, the conditions are not in existence. And for the purpose of just running equipment, just to see if it works, I don't feel that correlates.

MR. CRADDICK: Well, I would have to leave it to Corp Counsel. You know, they basically have been saying, and I think the Board's basically been saying, for whatever

reasons, they don't want those things to operate unless they say so. If that condition wasn't on us, we would run them to make sure they ran when we needed them to run.

MR. VICTORINO: Okay.

MR. CRADDICK: But that, to me, is the most important thing right now, is being able to run them legally. And we know, if a drought is declared, we can legally run them. So, that's probably the biggest thing right now, is making sure they do, in fact, work, in the event we do have a drought situation.

And I will tell you that the long-term forecast is

for less rain because of the forming El Nino. So, the long -- longer term forecast, January, February, March, is for low rain not a normal winter rain. And that's -- again, that's a report put out by -- that's the El Nino Southern Oscillation Report put out by the University of Hawaii.

VICE-CHAIRMAN NOBRIGA: Question, Mr. Craddick.

By activating Hamakuapoko wells, do we also activate pumping up to Kahakapao reservoir?

MR. CRADDICK: We do that on a daily basis right now.

VICE-CHAIRMAN NOBRIGA: Follow-up question. Would

it provide us greater resource in filling up Kahakapao and the other reservoirs by activating Hamakuapoko?

MR. CRADDICK: We do pump back to Kahakapao. It just relieves the draw down on Piiholo basically. So, yes, it will assist in getting our resource levels up a little higher.

VICE-CHAIRMAN NOBRIGA: A follow-up question. There was a five point or seven point stratification of conditions in Upcountry drought declaration that we had followed previously. Where are those?

MR. CRADDICK: We -- I -- I didn't bring that here with me, Mike, because the Board hasn't been following those

since -- since 1999. So, I haven't -- I didn't bring it in with me.

VICE-CHAIRMAN NOBRIGA: So, follow-up question.

So, currently, the reason why we are asking for a drought declaration, one is because Waiahole Ditch has fallen below threshold of 50 million gallons a day, and second, the depletion of our reservoir system. Is there a third reason?

MR. CRADDICK: Well, like I said, the operational reason. We have been sitting -- all the equipment has been sitting a year. We know right now one pump doesn't work. So,

that -- we need to do something to try and get it to work, and it may require pulling the pump out. I don't know what is going to have to happen. But, it's not good to have equipment sitting around not running.

VICE-CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: I guess to tack on to

Mr. Nobriga's questioning is with that forecast, was one of the seven points forecast projected rainfall?

MR. CRADDICK: Yes.

VICE-CHAIRMAN NOBRIGA: It was.

MR. VICTORINO: So, that would be another bullet

in the seven points that we are referring to, right?

MR. CRADDICK: Yes, it is an unknown factor

however.

VICE-CHAIRMAN NOBRIGA: Mr. Hashimoto, you have

something further?

MR. HASHIMOTO: There must be a way to run those

pumps periodically just so that they don't freeze up or isn't

there a way? You said there is no way you could set up the

pumps unless a drought is declared.

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

understanding of the EA that has currently been approved for

the use of those when water goes Upcountry.

MR. HASHIMOTO: Can we ask Mr. Kushi?

MR. CRADDICK: The EIS that we have approved is for the water to go to the Central Maui system. So, if it was going to the Central Maui system, I wouldn't have to come in here and ask your permission to run them. But, for some reason, when we run it Upcountry, a drought has to be declared.

So, and we are -- we do meet -- you know, we have reduced reservoir capacity. We have got reduced ditch capacity. One thing that is helpful, in our side, there has

been Kona weather, so demand is a little bit lower than it normally is during a drought situation, and that's how we have been able to make it this far, is because demand has also been relatively low.

VICE-CHAIRMAN NOBRIGA: Mr. Kushi, do you know enough of the situation at Hamakuapoko to provide us some advice pursuant to Mr. Craddick's statements and Mr. Hashimoto's questioning?

CORPORATION COUNSEL KUSHI: Mr. Chair, I am not totally familiar with the litigation, but there was -- from my

understanding, there was a court order on this Hamakuapoko

well. And from my review of the documents -- limited review.

Again, I wasn't involved in the litigation.

But to use that well, there must be a declaration

of drought, and it's not involved in the East Maui plan. And

the director's correct in that there must be a declaration

before that well can be used.

The question -- our concern is that there may be

other ways of testing the equipment, your equipment, aside

from declaration. However, I would imagine you would have to

go back to court or get a settlement -- some kind of agreement

with the plaintiffs to use that well.

In any event, if you do declare a drought, and the well is used, I will strongly advise the board to monitor, you know, the use and the draw from that well to make sure, and monitor the whole drought situation. Not use this declaration just to use that equipment.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Kushi. Any further questions? Mr. Victorino.

MR. VICTORINO: If there's no more further questions, I will make a motion, but I will defer my motion until all questions are made.

MR. HELM: One more question.

VICE-CHAIRMAN NOBRIGA: Mr. Helm.

MR. HELM: Yeah. David, again, I guess we haven't gone to this issue for a while, and, again, I just need to be enlighten a little bit more. You basically were saying that we are going to require customers to have a 10 percent voluntary cutback on water use.

When does the meter issuance go into effect? Do we stop issuing meters when we declare a drought?

MR. CRADDICK: We are not asking for any mandatory cutback here. It's just voluntary conservation. Until the

reservoirs get to 40 percent, we are not asking for -- well,
we are not asking for any specific amount of voluntary cutback
if the Board declares a drought.

We are asking for a voluntary amount, 10 percent,
if the reservoirs hit 40 percent.

MR. HELM: Okay. So, what you are saying is when
we do declare a mandatory cutback, that's when we do not issue
meters Upcountry.

MR. CRADDICK: I believes that would be
appropriate if we came to that stage.

MR. VICTORINO: Okay.

VICE-CHAIRMAN NOBRIGA: Mr. Hashimoto.

MR. HASHIMOTO: On yesterday's report, the ditch was running 83 million, and I am kind of confused on this.

The reservoirs -- it looks like it's almost down to 40 percent. Is that correct or --

MR. CRADDICK: Almost, and what we are trying to do is to get this water into the system to prevent it from going down that low.

VICE-CHAIRMAN NOBRIGA: Further questions?

Mr. Victorino.

MR. VICTORINO: If that's all the questions, I would like to make a motion that we declare the Upcountry area in a drought condition, for the sole purpose of, one, making sure our Hamakuapoko wells are activated, that we monitor this very closely, and that at our next meeting, make a determination, by the volume of ditch water and our reservoirs, if those drought conditions would continue from that point forward. And if I am not mistaken, I think our next meeting is December --

VICE-CHAIRMAN NOBRIGA: 22.

MS. HOWARDE: December 26.

MR. VICTORINO: Okay. December 26.

VICE-CHAIRMAN NOBRIGA: 26.

MR. VICTORINO: 26. Thank you. Thank you, Cathy.

And at our December 26 meeting, we can make a determination if drought conditions should continue.

VICE-CHAIRMAN NOBRIGA: Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved and seconded. Moved by Mr. Victorino, seconded by Mr. Hashimoto. Mr. Kushi. Miss Parsons.

MS. PARSONS: I want to make it perfectly clear

that this is only for the purpose of the testing of the equipment, and that it would not interfere with the distribution of the water meters, in the Upcountry area, that hopefully can be started to be distributed this month.

VICE-CHAIRMAN NOBRIGA: So noted, Miss Parsons.

Follow-up, Mr. Kushi?

CORPORATION COUNSEL KUSHI: Mr. Chair, I feel very uncomfortable with the motion as stated, and I will say this just to remind the Board. If the motion is to declare a drought to test the equipment, if I was a plaintiff, on the

other side in this litigation, I would have a very big problem with this.

I believe the Board's authority is to, if there's a drought, just declare it, and as a consequence of a drought, you need to test the equipment. If you are just going to declare a drought to test the equipment, there might not be a drought. So, I feel very uncomfortable with the motion -- the purpose behind the motion.

MR. VICTORINO: Mr. Chair, can I make my motion?

I apologize if the motion was taken in that respect. I just -- may I amend it?

VICE-CHAIRMAN NOBRIGA: Yes, Mr. Victorino.

MR. VICTORINO: I just want to make a motion, with conditions that exist in the Upcountry area, that a drought condition be a declared, and nothing else -- nothing else further to be added to that other than the conditions that exist in the Upcountry area.

VICE-CHAIRMAN NOBRIGA: Thank you. Second to the amended?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Discussion on the amendment. Yes, Mr. Hiranaga.

MR. HIRANAGA: I guess I am not convinced or haven't been convinced of the need to declare a drought at this point. Personally, I would believe that we should advise the Upcountry community to begin conservation measures, and then impose a 10 percent reduction in use.

I am a little concerned about the legal implications of starting up Hamakuapoko wells. I think, for me, I would like a clearer understanding and a position from either the director or corporation counsel regarding the implications of starting the well. I favor imposing water restrictions, at this time, and possibly revisiting this issue

at the next meeting.

The other question I have is if the Piiholo reservoir had not been emptied and cleaned, would we be in this situation?

MR. CRADDICK: We have had the reservoir filled up since then, so, what happened prior to it filling up, it is irrelevant.

MR. HIRANAGA: So, once the reservoir was emptied and cleaned, you were able to refill it to its maximum or desired levels, capacity?

MR. CRADDICK: Yes, yes.

MR. HIRANAGA: So, the draw down is a result of
the lack of water flow?

MR. CRADDICK: Yeah, it's just lack of rainfall.

That's all.

MR. HIRANAGA: This wasn't clear in your memo.

MR. CRADDICK: Okay. I am sorry. Could I say one
other in response to his comments there or discussion?

VICE-CHAIRMAN NOBRIGA: I don't think it's -- I
don't think it's necessary.

MR. CRADDICK: He wanted to know what the

ramifications are of using it.

VICE-CHAIRMAN NOBRIGA: Okay. Try and say that.

MR. CRADDICK: Okay. We did -- okay. First of all, we have an agreement with A&B that basically says we will use all available groundwater resources whenever the ditch hits 55 million gallons, and then also if the reservoirs hit 80 percent.

We have long since passed the 80 percent. We are well below the 55 million. To go in -- to start asking the customers to cut back when we have water, I -- I don't know as there would be any reason to do that, because that's the

purpose -- that was the purpose of us doing the EA, was so that we could use this available resource to pump the water Upcountry, to avoid having restricts, not to put the restrictions in place and then start using the resource.

So, I know you weren't here when that agreement was passed with A&B, but that's the current -- the current agreement that the Board has with A&B -- or, actually, I take that back -- HC&S, that we will use all available groundwater resources. And this is an available groundwater resource, which we have done in EA.

It's just that in the EA, it requires the Board

declaring a drought. Now, you know, should we have put in the EA what the requirements were for drought? I don't know. You know, we did have real clear drought guidelines before, that the Board has seen fit to not use, really, since 1989.

So, we are a little bit in a quandary, because what is the criteria for the Board to declare a drought now? And we are just going by that agreement with HC&S. We definitely meet those criteria. So, that's all I can say there.

VICE-CHAIRMAN NOBRIGA: Thank you. Yes,

Mr. Hiranaga.

MR. HIRANAGA: I am just wondering if corporation counsel has an opinion on the Director's statement.

CORPORATION COUNSEL KUSHI: Mr. Chair, what he just said, no, I have no comment on that. I am just concerned about the purpose of the -- the purpose and intent of the declaration. And if it's just to test the equipment, I would have a problem with that.

VICE-CHAIRMAN NOBRIGA: Yes, Miss Parsons.

MS. PARSON: Mr. Kushi, if we need to test equipment, could -- I am sorry about that. If we need to test

equipment, could we possibly go back to court to get a new motion to get the permission from the court to allow us to test?

MR. CRADDICK: Just have to redo the EA.

CORPORATION COUNSEL KUSHI: There is a court order on this. I would first suggest steps to consult with the other parties, the plaintiff, to get some kind of agreement. If not, go to court. They might be involved in a separate EA or EIS. I am not sure. I am really not familiar with the background of that separate case.

VICE-CHAIRMAN NOBRIGA: Thank you. Any

discussion? Further discussion on the amended motion? Yes.

MR. HASHIMOTO: I think the full intent of the motion, I hope, is that for the health and safety of the Upcountry water users. I don't think we should declare a drought just to use Hamakuapoko wells.

I think we have been in drought before. I have been in drought before. And if we don't take action, and the reservoirs go down, then there's going to be mandatory cutbacks or mandatory -- yeah, like 10 percent.

I think when we had severe droughts, over the past couple of years, when I was on the Board, we did pump, and

that did prevent the residents, especially the farmers, from cutting back.

And if you are going to -- if the farmers need to cut back, you know, it's their livelihood, and they are going to be hurt. So, the declaration of drought, in my mind, is for the health and safety of the residents of Upcountry. And that's why -- that's why I want to declare a drought.

I want to prevent the water users from taking the mandatory cutback, and, you know, we haven't done that for quite some time, because we have been pumping, and we have

been taking a proactive reaction towards the drought instead of waiting until the reservoirs are empty before we take action.

So, if we take action, it's for the health and safety of the Upcountry residents, Mr. Chair.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Hashimoto.

Mr. Hiranaga.

MR. HIRANAGA: I think Clark asked this question earlier. So, why is the -- this report that was given to us this morning, why does the Waiahole Ditch show 83 mgd flowing yesterday?

MR. CRADDICK: The ditch goes up and down, on those kind of amounts, on a daily basis. That's not unusual. But it's been -- average has been well below 55 for the last month.

MR. HIRANAGA: Why does it show the Piiholo reservoir at 59 percent of capacity?

MR. CRADDICK: It -- that's this morning's report from yesterday?

MR. HIRANAGA: Right.

MS. HOWARD: He's the only one that doesn't get a fax, so he's got yesterday's report from day before.

MR. CRADDICK: Okay. So, that's from Monday or something. That reservoir may be at that level right now, but if you look at Kahakapao, it's only 40 -- what is it -- 43 or 45 percent.

MR. HIRANAGA: I don't know. I guess I'm confused.

VICE-CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: The intent of the motion, and just to clarify in everyone's mind, was the fact that a number of the seven points that we have talked about, the ditch flow, the reservoir levels, intangible factor, the predicted

rainfall for the upcoming rainy season, spring season, I should say, all below what we normally consider adequate.

And I think the Upcountry people, tacking on to Mr. Hashimoto's statement, deserve the opportunity to have their water continuous and not have an interruption or not wait until a real die-hard situation to make some changes or declare a drought condition.

So, my feeling is that this drought condition is being -- specifically using Mr. Hashimoto's words -- for the safety and well-being of the Upcountry people, and there is no

other predication and no other rationale for this motion.

And also my -- my amendment, which would correct the part about starting up the wells, it is really for the purpose of the people of the Upcountry area. So, I would hope we can call for the question, because I think the discussion has gotten to a point where most of the answers have been given, and I think we should call for the question, Mr. Chair.

VICE-CHAIRMAN NOBRIGA: Mr. Hiranaga.

MR. HIRANAGA: I am not totally convinced, by the Director, for the need to declare a drought and to start up the wells. But I am going to defer to his professional

opinion, and, with reservation, I will be voting in favor of
the motion.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Hiranaga.

The question has been called for. All those in
favor of closing discussion signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: All those in favor of the
amended motion signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries. Back to our main motion. Any further discussion? All those in favor signify by say aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries. We will take a five-minute recess at this time.

(Recess 9:42 a.m. Resumed 9:48 a.m.)

VICE-CHAIRMAN NOBRIGA: Call the meeting back to

order after recess. We are now on item B, old business.

Discussion, possible action regarding budget amendment for purchase of watershed property.

Is there any further oral testimony to be given at this time, because I notice some new faces in the audience.

MS. PARSONS: Mr. Kushi is not in yet, please.

VICE-CHAIRMAN NOBRIGA: Lucienne, would you please come forward.

MS. PARSONS: Mr. Kushi is not back yet.

VICE-CHAIRMAN NOBRIGA: Assume the seat, the chair
of ultimacy. I will note that Mr. Kushi is not in attendance,
but --

MS. de NAIE: Thank you, Mr. Nobriga. So, I
should speak into this one, yeah?

VICE-CHAIRMAN NOBRIGA: Sure.

MS. de NAIE: Okay. Well, I think it's without
saying everyone's very appreciative that the Board has worked
hard to move forward on this matter of acquiring the watershed
properties, for public use, that are adjacent to where the
county is already generating a significant portion of its

water.

This actually makes a lot of common sense to make sure that this whole watershed area is managed by one entity. It makes economic sense. It certainly makes conservation sense. And I think that there's a lot of general support that, you know, you are getting good advice in how you are moving forward.

I just -- I have more of a question, I guess, than a comment. I am sure you are all aware that there's various agreements on who gets what from the water from this ditch system right now as it currently exists. And I wanted to

know, just as a citizen, how this is going to figure in to any kind of agreement that is going to be reached by the county.

I was looking at a report that was prepared in 1998 -- or 1988 -- excuse me -- by HC&S, detailing their water use of the surface water in the county. And I believe that this report was included in the water use and development plan that was released in 1990.

But, it notes, in this report, that HC&S, by their own calculations, is using, I think, about 24 million gallons a day out of the ditch system from this particular area. And, so, I am just curious, in your discussion, if that's been

factored into the equation, that that use is going to continue, or if the, you know, county is going to make another arrangement with HC&S or, perhaps, you know, with the passage of 12 years or 14 years, there's less demand for that water from HC&S. But just curious how that's going to be handled as part of the overall agreement. Can anyone say?

VICE-CHAIRMAN NOBRIGA: I believe it's a legal -- a legal answer that we would have to find in the course of the future of the Water Department going forward.

Our primary discussion is -- is discussion that we

have already begun with Wailuku Agribusiness concerning property that is available within the watershed area. We have not taken into consideration any surface water issues --

MS. de NAIE: Uh-huh. Okay.

VICE-CHAIRMAN NOBRIGA: -- during these discussions.

MS. de NAIE: So, it's just the land itself that's been discussed at this point.

VICE-CHAIRMAN NOBRIGA: Yes.

MS. de NAIE: Protection of the watershed area.

VICE-CHAIRMAN NOBRIGA: Yes.

MS. de NAIE: Well, good. That's great to clarify. And the other thing, it was my understanding that because the -- you know, the considerable amount of expenditure to secure these lands -- I believe it's 15,000 acres we have been talking about -- that there were going to be other partners involved.

This was something that -- that had been discussed, you know, just in a casual way, not at this Board meeting, but in other discussions that I had with Mayor Apana. And, so, is that -- is that still likely to be the scenario, that any kind of purchase would be dependent upon financial

assistance from various partners who would utilize portions of
the land?

VICE-CHAIRMAN NOBRIGA: That is under discussion
today.

MS. de NAIE: Okay. Great. Well, I guess you
have answered all my questions. Thanks for this opportunity
to come and express, you know, support for acquiring these
lands. But I would just like to, you know, say that it's
important that all these issues be clarified, so that, you
know, we really end up getting something out of it. Because
sometimes the county is enthusiastic about entering into

agreements, and when you think it through, further down the line, they set up a situation where it's hard to satisfy all the parties. Like the Central Maui Joint Venture turned out that way. It was no one's intention, but that's kind of the way it turned out. So, a little caveat. Think carefully. Choose wisely. Thank you.

VICE-CHAIRMAN NOBRIGA: Thank you, Miss de Naie.

Any questions for the testifier? Very good. Any questions for anybody else in the audience?

Because of the sensitive nature of this matter, I

recommend that we convene into executive situation.

MR. VICTORINO: So move.

MR. CRADDICK: Mike, before we do that, could we

just go over this thing that Holly passed out on the budget?

Because I know we cannot be in executive session for budget items.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Craddick.

I stand corrected.

Holly, would you provide the Board with availability of funds at our disposal in taking up the question of budget amendments.

MS. PERDIDO: On the worksheet you have in front of you, as of December --

VICE-CHAIRMAN NOBRIGA: Members, please. Can I have some decorum or whatever the word is? Holly.

MS. PERDIDO: We have 26 million. That's our unencumbered cash. The projects currently that have been -- that are proposed, that are going to be coming, or that have contracts awarded, or any that the Director feels should be coming up, amounts to about 9.4 million, which gives us about 16.64 million.

If you notice, in -- in this amount, we leave a

working capital fund still for the daily operations, and then under the unencumbered cash, there's an amount for floor purchase. And that was what the mayor had mentioned that he would offer for the county building.

So, this is just a work sheet kind of thrown together to show you what is actually available unencumbered cash as of this date.

VICE-CHAIRMAN NOBRIGA: Any questions for Holly?

For our financial director?

Okay. It's now recommended we go to executive session, pursuant to HRS Section 92-583, in order to

deliberate concerning the authority of persons designated by the Board to conduct labor negotiations or negotiate the acquisition of public property or during the conduct of such negotiations.

MR. VICTORINO: So move.

VICE-CHAIRMAN NOBRIGA: It's been moved. Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved and seconded. All those in favor of going in to executive session for that

purpose signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: All opposed, nay.

MS. PARSONS: Nay.

VICE-CHAIRMAN NOBRIGA: I will note we have one objection. We do have five votes in order to go to executive session. We will go to executive session.

MR. MAXWELL: Point of information, Mr. Chairman.

When you come back into session after, would the public be involved?

VICE-CHAIRMAN NOBRIGA: Yes. We cannot, by law,

make -- do any decision making in executive session.

MR. MAXWELL: I understand. It's got to be in
public.

VICE-CHAIRMAN NOBRIGA: Yes. Thank you.

(Special meeting recessed at 9:57 a.m.)

(Special meeting resumed at 10:44 a.m.)

VICE-CHAIRMAN NOBRIGA: Call the regular meeting
back to order regarding amending the budget amendment.

MR. VICTORINO: Mr. Chair.

VICE-CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: I move that we amend our budget

for the possible acquisition of the Wailuku Agribusiness watershed lands and associated improvements with the specific amount of \$3.14 million allocated for that.

VICE-CHAIRMAN NOBRIGA: Second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved by Mr. Victorino and seconded by Mr. Hashimoto. Any discussion? All those -- yes, Miss Parsons.

MS. PARSONS: I would like to, on the record, make a recommendation to the future mayor, and to our current mayor, and to the Council as they take over tomorrow on the

Water Board, that all due diligence be put forth on this property, and that they look very closely at clear titles, and warranty deeds, and issues that may come along with this property before they make acquisition, and that they notify the public thoroughly as to what the issues are.

VICE-CHAIRMAN NOBRIGA: Any further discussion?

All those in favor signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries.

Item C, discussion, possible action regarding budget amendment proposals of additional office space for the department.

MR. VICTORINO: Do we go into executive session for that, too?

VICE-CHAIRMAN NOBRIGA: I don't know. Do we need to go into executive session for that?

MR. VICTORINO: We have these two items, right? Combine them in one executive situation.

VICE-CHAIRMAN NOBRIGA: Mr. Kushi, do we need to

go into executive session for both items?

CORPORATION COUNSEL KUSHI: You can. I always suggest separate motions for each. However, because this is a budget amendment item, Mr. Chair, I would advise not to discuss the amendment itself in executive session. But you are entitled to discuss negotiations on both items, and that should be the stated purpose, to negotiate the acquisition and appoint whoever to negotiate it.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Kushi.

Mr. Victorino.

MR. VICTORINO: I move that we go into executive

session.

VICE-CHAIRMAN NOBRIGA: For -- read that.

MR. VICTORINO: For the -- thank you, sir. Do we want to read both or just for one?

This will be for both in the matter of convening executive session in pursuance of HRS 92-5A/3 in order to deliberate concerning the authority of the persons designated by the Board to conduct labor negotiation or negotiation in the acquisition of public land or during the conduct of such negotiations.

VICE-CHAIRMAN NOBRIGA: Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved and seconded for the acquisition of additional office space. All those in favor signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries.

Mr. Victorino, one more time.

MR. VICTORINO: I got to do it two times.

VICE-CHAIRMAN NOBRIGA: Yeah, you got to do it two times.

MR. VICTORINO: In the matter of Kaanapali water system, that the matter -- the Board may convene into executive session in pursuance of HRS 92-5/A/3 in order to deliberate concerning the authority of persons designated by the Board to conduct labor negotiations or negotiate the acquisition of public lands or during the conduct of such negotiations.

VICE-CHAIRMAN NOBRIGA: Thank you. Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved and seconded. All

those in favor signify by saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries. Go back

into executive session for matters on negotiations of C,

office, and D, Kaanapali water.

(Special meeting recessed 10:40 a.m.)

(Special meeting resumed 11:14 a.m.)

VICE-CHAIRMAN NOBRIGA: Call the meeting back to order. Mr. Hiranaga, Kent.

MR. CRADDICK: Wait, wait. I think they probably want to get their camera going.

VICE-CHAIRMAN NOBRIGA: He wasn't around. Okay. Item C of old business about a budget amendment for proposal of additional office space. Mr. Hiranaga.

MR. HIRANAGA: I propose a motion to budget approximate -- to budget \$3 million for the --

VICE-CHAIRMAN NOBRIGA: Acquisition of office space.

MR. HIRANAGA: Possible acquisition or leasing of additional office space for the department.

VICE-CHAIRMAN NOBRIGA: Thank you. Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Thank you, Mr. Hashimoto.

MR. VICTORINO: Mr. Chairman.

VICE-CHAIRMAN NOBRIGA: Mr. Victorino.

MR. VICTORINO: I think Mr. Hiranaga's motion had leasing. I don't think that was the intent. I think the

intent was to purchase.

MR. HIRANAGA: I said possible purchase or
leasing.

MR. VICTORINO: Okay.

MR. HIRANAGA: Because some of the proposals were
leasing.

MR. VICTORINO: Okay. I just wanted to make sure.

VICE-CHAIRMAN NOBRIGA: All those in favor signify
by say aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries. Item D, possible action regarding budget amendment for purchase of Kaanapali Water System. Mr. Victorino.

MR. VICTORINO: Mr. Chair, I move that we proceed with amending -- amend the budget to -- for the possible acquisition of the Kaanapali water system for 8.5 million.

VICE-CHAIRMAN NOBRIGA: Is there a second?

MR. HASHIMOTO: Second.

VICE-CHAIRMAN NOBRIGA: Moved and seconded from Mr. Hashimoto. Any discussion? All those in favor signify by

saying aye.

(Chorus of ayes.)

VICE-CHAIRMAN NOBRIGA: Opposed nay.

(Silence.)

VICE-CHAIRMAN NOBRIGA: Motion carries.

I wish everybody a Merry Christmas and hope to see you on the flip side next year. I would like to thank Cathy and --

MR. CRADDICK: Mike, can the executive session materials that were passed out -- can they be turned back in to Cathy?

VICE-CHAIRMAN NOBRIGA: Very good. Meeting is

adjourned.

(Recess, 11:17 a.m.)

"By Water All Things Find Life"

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