

County of Maui Water  
Supply

**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI**

**UPCOUNTRY AGREEMENTS WORKSHOP**

Held at the Kahului Shopping Center, Kahului, Maui,

Hawaii, commencing at 9:00 a.m. on July 10, 2003.

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

IWADO COURT REPORTERS, INC.

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CLARK S. HASHIMOTO

GINNY PARSONS

DEPUTY CORPORATION COUNSEL: EDWARD KUSHI, JR., ESQ.

DIRECTOR: GEORGE TENGAN

BOARD SECRETARY: CATHY HOWARD

CHAIRPERSON HIRANAGA: I would like to call

the meeting to order. First of all, I would like to thank the board members for installing their confidence in me by electing me as the new chairman.

I would like to go through the agenda now, which is the first matter. I note that all members are present. Corp Counsel Kushi is present and we also have Brian Miskae from the Planning Department.

I'd like to encourage Brian to attend all meetings and hopefully we'll have a representative from the Public Works Department attending also in the future.

Are there any announcements? Moving on to testimony from the public, is there anyone here that wishes to provide testimony regarding the agenda matters?

Seeing none, moving on to first item on the agenda, presentation and discussion of agreements.

Jacky, are you going to be providing us a presentation? Okay.

MS. TAKAKURA: Good morning, everyone, I'm Jacky Takakura, I'm the information specialist with the Department of Water Supply and I'm going to be

going over the Upcountry Maui Water System Agreements.

And I'm just going to be following along the agenda

items in order as we see them on your agenda.

The agreements are divided into four categories. The first one is the Upcountry Agreements. Second is specifically regarding Kulamalu and source, storage, and transmission for that project. Third is Department of Hawaiian Home Lands and these are regarding the projects that they have in Kula and Keokea. And lastly DBCP.

Getting into the first section, Section A,

Upcountry Agreements. These agreements -- there is a long series of them, if you look in your agenda. In fact, 16 different items within this. And they all start in 1961 with a Master Water Agreement. And that's by and between East Maui Irrigation Company, Ltd., Hawaiian Commercial & Sugar Company, Ltd, and the Board of Water Supply for the County of Maui. And what this agreement basically says is that the Board of Water Supply has the right to collect water in areas owned or leased by EMI and HC&S in the Waikamoi

area and the Awalau intake area. These locations include the existing Board of Water Supply aqueduct, a natural channel within Haiku-Uka, which is what we consider Waikamoi now, and the amount from that area is 5 MGD. Also, the Awalau-Opana water development tunnels, ditches, springs and water channels and Hululhulunui water development tunnel and springs, 1.5 MGD; Wailoa Ditch, 0.8 MGD, the various systems of water systems of HC&S, 0.6 MGD, and also the tunnel above the Koolau ditch between Kuhiwa and Makapipi gulches.



So that's Waikamoi area, 5 MGD; Awalau, 1.5 MGD; Wailoa ditch, 0.8; HC&S, 0.6; and this tunnel is actually what we consider our Nahiku system, which is 600,000 gallons per day.

This looks very different from the water we get now. From Waikamoi we don't get quite as much. Awalau. We don't use at all. Wailoa Ditch back then was very small, 0.8. Back then Pukalani didn't exist and most of Haiku was supplied by Awalau. So you can see it's a little bit different source of water and where the water goes back then, a little over 40 years

ago.

And what this agreement said was that the Board of Water Supply was granted easements for the existing aqueduct system and to extend, construct, operate, maintain and repair the ditches, flumes, pipelines, pumps, dams and reservoirs, and to tunnel at any suitable points within the drainage area for the conveyance of water to the Kula pipeline and/or Waikamoi pumping station, and to maintain, operate and repair the Kula pipeline.

There is no guarantees because of course we

are relying upon rain for this water supply.

Another condition was we couldn't -- water could not be used for power development if it were to reduce the flow to less than 5 MGD at the Waikamoi Main Line intake, or if it causes the Board of Water Supply to have to pump water from the 3,000 foot level when water is otherwise available at that Waikamoi Main Line intake level.

Now, if EMI or HC&S could not renew their water license or if the water supply is reduced

because of that, then they have the right to use the water for their own purposes after giving the Board of Water Supply one year's written notice. Those are the state licenses.

Also within this agreement, the board had the right to construct dams, pipelines, plants, flumes, ditches and other facilities so that we could collect and store water and it must be at least 20 percent leakproof -- as leakproof as possible.

Now, this agreement went from 1962 to 1986 and it was only for supplying the Kula pipeline and the

Olinda lateral above the Awalau-Makawao supply line,  
except in emergency and even then you'd have to get  
written permission.

Now, if rainfall was extremely low, if the  
total flows available for HC&S was 15 percent of  
normal capacity, which is 370 MGD, the board shall  
restrict use of water to essential purposes only.

You'll see this number later because 15 percent of 370  
is 55 MGD, so you'll see that number in some of the  
future agreements, too.

Now, this agreement can be extended and the

rates for the water taken that the board pays shall be adjusted every five years. Okay. So that was 1971.

The next agreement came in 1973. This is number 2 on the agenda under A. Memorandum of Understanding, dated December 31, 1973, by and between the Board of Water Supply, the County of Maui, East Maui Irrigation Company, Ltd., and Hawaiian Commercial & Sugar Company, a division of Alexander & Baldwin.

Now, what this one said was that we would continue to collect that 6,000 gallons per day from Nahiku. Waikamoi-Awalau -- within the area in which

EMI has been appointed exclusive manager to collect and deliver water, they shall operate, maintain and report the collection and conveying facilities, operation of storage and pumping facilities, and collect at the highest possible elevation the maximum quantity of water economically feasible. Any replacements to the existing collection facilities or any additional collection facilities installed by EMI shall belong to the Board of Water Supply upon completion of construction of each item. The

agreement also cancelled any inconsistency that there may have been with the previous agreement.

Now, regarding Wailoa Ditch, remember in the 1961 agreement the allotment was 0.8 MGD. Now the board can take up to 12 MGD with an additional 4 MGD available if we give them one year's written notice.

Now, if EMI loses the license or otherwise cannot deliver the water, with the Board of Water Supply's approval by two-thirds vote of the members present, the amount of water delivered to the board will be reduced proportionately. And the charge for



this water was 6 cents per thousand gallons from all the areas. In the 1961 agreement the rates were different depending on the area. Now it's across the board 6 cents per thousand gallons. That was 1973. I believe now in 2003 the rate is still the same. This 1973 agreement was for 20 years, to 1993. So that's the second agreement.

And this is the area that the agreement is specifically concerned with. The larger red area is the Waikamoi area. You can see the flume there. You can see the dam. There is two -- you can't really see

these circles, but there is two 15 million gallon reservoirs there and there is an arched dam which holds about 10.5 million gallons.

Down here is where Olinda water treatment facility is now located. And here is where the Piiholo plant is. And the smaller red area is the Awalau tunnel area.

And I think you have this map in your packet except that it's black and white so it's not as easy to see. And this shows the different areas of responsibility. The areas in red are EMI's

operational jurisdiction and these longer lines in  
blue like up here and down here and then also over  
here to Piiholo, that's the Department of Water  
Supply's operational jurisdiction. Here's the 250  
million gallon reservoirs and there is the arched dam.

MR. TENGAN: [Inaudible].

MS. TAKAKURA: And Kahakapao reservoirs, which  
were built in 1994, are right here at the end of this  
red line and those hold a hundred million gallons. So  
that's the Waikamoi reservoirs, total of 30 million

gallons. And they're just about full now because of the rains we've been having. They were empty last week. Those were built in 1961 out in the forest.

This is a picture I found in our archives from 1955.

This is the reservoir -- not the 15 million gallon ones, but from a point 500 feet upstream from the arch dam. This reservoir is 800 feet long. This was taken December 29th.

And this is the arch dam when it was built, and also a couple years ago. It holds 10.3 million gallons. That was quite a feat out where it was in

the middle of the forest to build something like that.

Okay. Number 3 on the agenda is the letter dated January 22, 1979, from the Office of the Mayor, County of Maui, to Maui Land & Pineapple, regarding the proposal and offer to exchange real property.

Now, the purpose of this letter was to promote diversified agriculture. The letter is dated January 22nd, but it was accepted by Maui Land & Pine on March 5th, 1979. And it was basically a land exchange. The county received 326 acres of vacant unimproved land at Omaopio, and Maui Land & Pine acquired some land in

Napili for their Kapalua project. They received two areas, two road areas, 1.185 acres and 5.726 acres.

And part of the agreement was that the county will develop an irrigation water distribution system for an agricultural park. And this was for the 326 acres and it would also have the capacity to provide water to Maui Land & Pine's adjoining 725 acres.

The Department of Water Supply will send to Maui Land & Pine water sufficient for the irrigation of agricultural crops based on the water requirements for the growth of pineapple. So if they grew

something else, they would still get the allotment of what it takes to grow pineapple, not for whatever other crop it was.

Now, in terms of developing that water system, Maui Land & Pine would pay the incremental costs for expanding that water system to provide water to their adjacent land. So we would pay -- or the county would pay for the capacity for the ag park and anything beyond that, Maui Land & Pine would pay. That's incremental cost.

Now, I went and looked in our annual reports and the Department of Water Supply began working on the project in 1984. And from the annual report it says, "The water system for the first phase of the Kula Agricultural Park, including the sewer, storage and distribution water lines, were substantially completed by the end of this fiscal year" -- so that's 1984.

From the following year, 1985: "The park is in use. The project has been completed except for a few punch list items. The park consists of 31 farm



lots and the water is supplied from HC&S irrigation system." And the cost of the construction of this project was \$2.2 million.

And I just have -- oh, here's the map of where it is. This is from the TMK maps. This is Pulehu Road, just to give you a sense of where we are, going towards Kahului, Pulehu Road, and these lots are the Kula Ag Park lots. This is the adjacent 725 acres. You can see it's for various people to grow things.

This is the usage from when it first began in use in 1985 until I could get the data, 1993. And you

can see the number of meters, number of services

really increased from 16 the first year to 37. And

the amount of water that these customers used grew

also from 28 million gallons in a year to 147. The

cost did go down as we got more customers and there

was efficiencies realized. And those costs are for

the electricity and for other costs to operate the

pumps. And this is all from our annual reports.

And this is what it looks like. This is the

intake from HC&S ditch. These were taken last week.

This is the station screen box for the pumps. This is

the station pump and screen box. Reservoir B.

Another one of ponds. And you can see in the

foreground are fire prevention crew in their little

huts. This is another time, you can see it was really

dry. So that's what the Kula Ag Park looks like for

those of you that have never been there, like me.

Number 4 on the agenda is a letter dated July

27th, 1982. And this is from Alexander & Baldwin,

Inc., to the Department of Water Supply regarding the

water agreement dated December 22nd, 1961, as amended

by the Memorandum of Understanding dated December 31, 1973, Kula Agricultural Park. And this is basically regarding the draw from the Waialoa ditch. It specified where the delivery point was going to be just beyond reservoir 40 and that we would construct the delivery system and take care of it also. And we would also let HC&S know when we would be pumping, we would let them know when we're going to start pumping and when we're going to stop. And if it's within normal business hours, there would be no charge. But if it was after hours, there would be a cost involved

in that. But if the staff were already there, there is no problem, just let them know. So that was number 4.

Item number 5, letter dated December 27th, 1991 from Hawaiian Commercial & Sugar Company to the Board of Water Supply regarding the MOU dated December 31st, 1973. This was basically an extension. It brought the MOU to December 31st, 1995.

Number 6, similar, this is the amendment to MOU dated May 1st, 1992, by and amongst East Maui Irrigation Company Ltd., A&B Hawaii, Inc., Hawaiian

Commercial & Sugar Company, a division of Alexander & Baldwin, Inc., and the Board of Water Supply, County of Maui. This extended the MOU for 22 years to December 31st.

Okay. Number 7 on the agenda. This was specifically about Nahiku. Let me read the title of the amendment. Second Amendment to MOU, dated April 25, 1994, by and amongst all the same areas parties, EMI, A&B, HC&S, and the Board of Water Supply. At this time Nahiku was growing and we actually -- part of the agreement was we would get 6,000 gallons per

day and we were actually taking more in the range of 12,000 gallons per day. So what this agreement did was raise our allotment to 20,000 gallons per day because the community was growing. So that's what this was about. Okay.

Item number 8 on the agenda is the Third Amendment to the MOU and this is dated January 3, 1996. And what this one was about is we would minimize our intake from the Wailoa Ditch when the flows were low, when they were less than 55 MGD. And

we also take steps to reduce our dependency on the ditch when the flows were that low. And the other thing that this amendment did was extend it to 1996.

Item number 9, the Fourth Amendment to the MOU, dated December 31, 1996. This is regarding the flume and that was in need of repair. And so the Board of Water Supply budgeted \$60,000 to work on that. It also specified that our allotment from the Waialoa ditch would be 7 MGD and also there would be 1.5 MGD available from the Hamakua ditch for the agricultural park. So that's a total of 8.5 MGD. And



this amendment also extended the MOU another year to 1997. So that's number 9 on the agenda.

Number 10 is the Addendum to the Fourth

Amendment to the MOU and this is dated May 6, 1997. I

have a typo in there, it's supposed to be 05/06/97.

And this is regarding the flume repairs. It specified

that we would use unmilled redwood lumber for these

repairs. And I had to ask why are we going to use

unmilled lumber. And that's because that's what the

original flume was made of and if we had used milled

lumber, which is actually smaller than the unmilled,

it would have changed the dimensions of the flume and  
it would have also needed shims and it would  
have been more expensive. So that's what this  
amendment was about, so keeping with the original  
dimensions of the flume. Okay.

Number 11 on the agenda is the Fifth Amendment  
to the MOU, and this is dated January 20, 1998.  
Specifying again those repairs and also gave us an  
additional 175,000 gallons from the Waialoa ditch and,  
thirdly, it extended the term for another year to  
1998.

That's a picture of the flume. This is not back in 1998, this is when it was repaired in the year 2000. So just you can see what it looks like. It's not an easy job to repair a trestle like that in the middle of a rain forest, especially after a flood.

Item number 12 on the agenda is the Sixth Amendment to the MOU, dated December 28th, 1998, and effective as of December 31st, 1998. And this is again urging us to make the necessary repairs and maintenance of the flume. We had budgeted \$60,000 for

this. And the term extended another year to 1999.

One thing about urging the board to get the repair and maintenance done, it's in these agreements, it does specify that if something were to happen to the flume and we had not done the necessary repairs, the Board of Water Supply would not be able to make up for the lost water by taking water from a lower source. So it was really important that these repairs were getting done.

Okay. Item number 13 on the agenda is the

Seventh Amendment to the MOU. This is dated December

29, 1999, and it basically extended the MOU for two months.

Number 14 on the agenda, Eighth Amendment to the MOU, dated March 28, 2000, and effective as of February 29th, 2000, extended the MOU for two months to April 30th, 2000. And this was the last of the extensions of the agreements where we have specified an amount that we can take for the upcountry water system. We've been going by a mutual understanding since then. Okay.

Item number 15 on the agenda is the MOU

Concerning Settlement of Water and Related Issues,  
dated April 13th, 2000, by and between the Board of  
Water Supply, County of Maui, Alexander & Baldwin,  
Inc. Now, this agreement has a lot of different  
points. And these are the people that signed it. I'm  
only covering the areas as they relate to the  
upcountry area and that's specifically Wailoa Ditch  
and the Hamakuapoko wells.

For the Wailoa Ditch, it increased our  
allotment to 12 MGD with the option for an additional  
4 MGD. If flows were low, the Board of Water Supply

would get a minimum of 8.2 MGD and so would HC&S also  
get a minimum of 8.2 MGD.

The board would do a number of things  
including initiating a stream flow monitoring program,  
pursuing groundwater, keeping the reservoirs at 80  
percent, pursuing additional raw water storage for  
Lower Kula. And in exchange for the increased  
allotment, A&B would get an appropriate allocation of  
domestic water. And you can read the entire  
agreement, it's actually on our website, too,

Mauiwater.org. And we would also be pursuing  
groundwater.

That's the ditch actually when it's very dry,  
the flow is very low.

The other portion of the agreement that I'm  
covering together is regarding the Hamakuapoko wells.

And you can see the GAC filters that we have there for  
the wells. We would -- at this time we had just

started using it, we began using it in 1999. We would  
complete the reports and approvals required for well

usage and that would include things like Department of



Health. Alexander & Baldwin would convey the land and the easements. And when the East Maui Water Development Plan is completed, A&B will consider participating in construction of pipelines from the wells to Paia in exchange for water allocation and again A&B would receive appropriate allocation for domestic water for conveying the land and the easements. And this is page 118 in your handout or page 3 of the agreement. Okay.

Number 16 on the agenda. And this is the last of Part A of the upcountry agreements. This one is

regarding the Kula Agricultural Park Water Reservoir Agreement and this is dated December 30th, 2002, by and among the County of Maui, East Maui Irrigation Company, Ltd., and Alexander & Baldwin, Inc., through its division Hawaiian Commercial & Sugar Company. And this one basically says that we would upgrade the pumps at Reservoir 40. We would be able to take 1.5 MGD there for the agricultural park and also for the adjacent property which would also be used as an agricultural park. And during times of drought, we would require our water users to limit consumption.

So those are the 16 parts of the Upcountry Agreements. The next part is the Kulamalu agreement, source, storage and transmission. And under this one, there are four agreements.

CHAIRPERSON HIRANAGA: Excuse me, Jacky.

Would it be appropriate to open up for questions on the Upcountry first? Mike, do you have a question?

MR. VICTORINO: You have stated that most of these agreements have expired and now we go by mutual understanding and I have a difficult time with that

word "mutual understanding." Specifically give me what mutual understanding exists between us, the Department of Water Supply, HC&S, East Maui Irrigation, because that's very arbitrary when you say mutual understanding. So I would like you to get a little bit more specific in that area.

MS. TAKAKURA: Well, we're simply still taking water and still paying for the delivery of that water in accordance with the agreements.

MR. VICTORINO: So that's how this mutual understanding continues, basically predicated on these

agreements that have been set forth.

MS. TAKAKURA: That's my understanding. I don't know if the director wants to add anything to that.

MR. TENGAN: If you would refer to page 116 of the Memorandum of Understanding Concerning Settlement of Water and Related Issues, basically outlines what has been done previous to this time with regard to the Waialoa ditch, the Iao-Waikapu ditch, Hamakuapoko wells, Central Maui Joint Venture, and the East Maui Water Development Plan. And since most of these

agreements or a lot of these agreements have expired  
by that time, the board if you notice that on the last  
page, the board entered into an agreement with  
Alexander & Baldwin to continue the terms of the old  
agreement. And we've been operating as such since  
then. I imagine that we do need to come to develop  
agreements to address the issues covering this  
document.

MS. PARSONS: Can you tell me, have we met all  
the terms of these agreements that we were expected  
to? And if not, how many --

MR. TENGAN: As much as we could, I guess. If there were any major issues that came up during the time, we worked it out with EMI and HC&S.

MS. PARSONS: But that's not my answer, as much as we could. What is outstanding in these agreements that we have not undertaken?

MR. TENGAN: Well, first of all, we haven't developed the [inaudible] we haven't entered into an agreement on the Wailoa Ditch. We're only operating under this Memorandum of Understanding which is dated

the 13th of [inaudible]. I guess it's difficult to say because conditions change and as an example it makes reference to low flows, reservoir levels. So, you know, as conditions change, we would try to abide by the terms of the agreement.

One example I can point out today is that for the past several weeks the Kahakapao reservoirs have been way below 80 percent, but as best as possible, you know, we've tried to reduce or maintain the lowest level of output from those reservoirs in providing water to the upcountry area. Every day we pump about



a half million gallons of water from the lower system  
to the upper system. That's the best we can do.

MS. PARSONS: Have we like, on K on page 117,  
have we developed and implemented a stream flow  
monitoring program to provide the current baseline  
data?

MR. TENGAN: I think this is part of the  
program we're working with USGS on.

MS. PARSONS: And have we pursued the  
implementation of additional raw water storage in the  
Lower Kula system?

MR. TENGAN: We're working -- we have engaged a consultant to do the preliminary engineering and the preliminary studies and I believe he's going to be addressing the environmental assessment issue also. So we do have an existing contract on that.

CHAIRPERSON HIRANAGA: Yes, Clark, do you have a question?

MR. HASHIMOTO: Yeah, I have a question on the Kula Ag Park agreement, 123. I guess the agreement says that it will take effect when the Board of Water Supply upgrades the pump at Reservoir 40. So what's

the progress on that upgrading?

MR. TENGAN: The last discussions we had was kind of addressing the issue as to whether we should pump directly out of the reservoir or pump as we're pumping right now because there may be some problems, some engineering problems and operational problems in pumping directly out of the reservoir. There could also be problems with the design of the actual pump stations. So the engineers are looking at that.

MR. HASHIMOTO: So then they are going to

change the agreement you don't pump out of the  
reservoir -- what does that mean?

MR. TENGAN: I guess it would mean that if it  
becomes impractical to pump directly out of the  
reservoir, then we would have to give back to A&B and  
EMI and look at coming to some kind of other  
agreement.

MR. HASHIMOTO: Because I think I guess  
Haleakala ranch wants to lease out some land to at  
least one of the co-ops for additional lands for  
farming. So I guess without the agreement, they won't

be able to get water?

MR. TENGAN: I would rather not answer that question right now.

CHAIRPERSON HIRANAGA: Yes, Kenneth.

MR. OKAMURA: Is there a difference between a Memorandum of Understanding and an agreement? And what would that be -- what would be the legal standing of each and what's the difference?

MR. TENGAN: I'll pass this on to our attorney here. I'm not an attorney.

MR. KUSHI: Mr. Chair, board members, not

being around when these things were done, I really can't fully tell you the intent. There is a couple of people here that were.

But in terms of the legal differences, you know, a full-on agreement has about 10 or 20 pages, it has provisions for breaches, defaults, et cetera, et cetera. Memorandum of agreements usually are statements of intent, statements of future agreements. However, you can interpret it either way. I think you have to look at each document as it's written. But the legal difference in our minds is that -- and

agreements usually -- full on 9-year agreements are recorded. They encumber the land. Any subsequent purchaser or anybody interested in the property knows that this agreement encumbers the land. Memorandums of agreements are usually done between parties who in the future tend to agree or get into something. But again, you have to look at every document by itself.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: You know, I'm very glad Ken asked that question because on the agreement -- the

memorandum of understanding -- oh, let me back up a minute.

Do I understand from the director that all of the agreements up to that April 2000 agreement are now expired? Is that what you're saying here? The agreements up to April of 2000, those are now expired. I heard that twice.

MR. KUSHI: With the director's permission, let me respond to that. In the agreement itself, the Memorandum of Understanding dated April 13th, 2000, on your page 117, subparagraph G, it says extend the



term of the MOU for 25 years. Now, what does that mean? The original agreement was dated 1961. You add 25 years on that, it's 1989. The key agreement is 1973. You add 25 years to that, it's 1998. But this thing was done in the year 2000. So again, the question is what was the intent of the parties. Is it 25 years from the year 2000, or is it 25 years from what year?

I would suggest you ask board member Hashimoto and Nobriga. They signed this agreement. What is their understanding? I can take it 25 years from the

year 2000.

MS. RAISBECK: Yeah, I'm not talking about that one, though.

MR. KUSHI: I'm responding to your question.

MS. RAISBECK: I know. What I asked was all of the previous ones I heard Jacky say and I heard maybe it was the director say that those previous agreements had expired. Did I mishear? Did I hear wrong?

No, the previous agreements, now, do any of the provisions in those agreements that are not in the

April 2000 settlement thing, are those still legally effective or did they expire?

MR. KUSHI: Well, it's the department's position that all agreements -- all agreements previous to April of 2000 are still in existence.

MS. RAISBECK: Are still in effect.

MR. KUSHI: Otherwise, I mean, there would be litigation by now. So we're taking the position we still have a relationship with them and we're entitled to take water.

MS. RAISBECK: And those are legally

enforceable --

MR. KUSHI: That's our position.

MS. RAISBECK: That's your position. Okay.

The April 2000 memorandum -- hold on. Yeah. The one that was passed -- Memorandum of Understanding Concerning Settlement of Water Related Issues. That starts out they hereby agree to cooperate on certain matters being discussed by the parties relating to six topics. Actually, it's not -- it's the Waiialoa ditch, and the Hamakuapoko wells and the East Maui Water

Development Plan. All of those were presumably to do with upcountry. And it says the implementation of this memorandum will be pursuant to one or more agreements to be negotiated and agreed upon as a package. And I know it was an attempt to have an agreement for settlement of one of the issues, the Central Maui Source Joint Venture. There was an attempt to pass an agreement about that, but it failed. And I haven't heard of any other agreements that have been presented to implement this Memorandum of Understanding. So that was a question I asked Fran

a couple of months ago, is this memorandum -- and Ken,

I'm very glad he asked the question.

This Memorandum of Understanding is extremely

-- I mean it couldn't even be enforceable because when

you're saying an appropriate amount of domestic water

and it's not defined, and this whole thing I presume

is not recorded, this can't be an agreement, right?

MS. PYLE: It's a Memorandum of Understanding,

not an agreement.

MS. RAISBECK: Yeah, it's a Memorandum of

Understanding to be implemented in agreements to be

negotiated, correct?

MR. KUSHI: Well, all I can respond is the document speaks for itself. It does say implementation will be pursuant to one or more agreements to be negotiated and agreed upon as a package.

MS. RAISBECK: And they have not yet been negotiated.

MR. KUSHI: I know of one, the Iao-Waikapu ditch, but that's not part of the agenda item.

MS. RAISBECK: The Iao-Waikapu ditch --

MR. KUSHI: Iao-Waikapu ditch surface flow  
waters.

MS. RAISBECK: Does have an agreement that has  
been negotiated and signed and --

MR. KUSHI: Right. I believe the former  
director, before he left, did enter into an agreement  
with Wailuku Ag.

MS. RAISBECK: With who?

MR. KUSHI: Wailuku Agribusiness.

MS. RAISBECK: Was that a matter considered by



the board?

MR. KUSHI: No.

MS. RAISBECK: Oh. Okay. So the department's position is that the previous agreements preceding the April 2000 agreement, Memorandum of Understanding, are still in effect, but that's a -- what word did you use earlier, that's a -- informal or -- is it mutually understandable, okay, mutually understood. Okay. And the Memorandum of Understanding in April 2000 is to be implemented in the future by negotiated agreements, correct?

MR. KUSHI: Member Raisbeck, that's what the document says. I can't speak outside of the boundaries because I'm not privy to how this thing was formulated. All I can respond to you is that the department's position, and has to be the department's position, is that we still have rights to these sources.

MS. RAISBECK: What was that?

MR. KUSHI: We still have rights to these sources based on previous agreements. Otherwise we're out of our resource, you know. And in addition to

that, if the other parties -- if their intent is that we have no agreements, per the agreement itself they're supposed to give us at least a year's notice. You know, to my knowledge we haven't had any year's notice.

MS. RAISBECK: Okay. And they haven't had a year's notice from -- well -- okay. Thank you.

CHAIRPERSON HIRANAGA: Yes, Ginny.

MS. PARSONS: My question is were any of the drafters or participants in these contracts invited to

appear today so that issues like Sally is bringing up might be addressed and cleared up as to if there is any problems pending, because that's what it sounds like we're looking for. And if they weren't invited, could we recess for about 5 or 10 minutes and see if we can't get a representative from A&B to walk across the street and we can call Mr. Dowling's office and see if Don might be able to join us when we start talking about Kulamalu?

CHAIRPERSON HIRANAGA: I think the purpose of

this meeting was an informational meeting and I think

if there is need for clarification, we can request the director to further research and to get back to us at a mutual date. But at this point I'm not going to agree to the request to invite officials from these organizations, especially since they haven't been given notice as to what the meeting was for. So I think at the end of the meeting or some appropriate time during the meeting you feel you need additional information, we can ask the director to research that for us.

MS. PARSONS: Well, then let's curtail some of

the questioning to just issues that we can answer and not ones that we can't because it's taking an awful lot of time beating a dead horse when you don't have the other side, the other party over here to answer the question as to whether or not this is a viable contract.

CHAIRPERSON HIRANAGA: I'm sorry, Ginny, I

just don't see us wasting time at this point. I think all the questions so far have been relevant. But I'll take that into consideration.

MS. PARSONS: Thanks.

CHAIRPERSON HIRANAGA: Yes, Dorothy.

MS. PYLE: I guess I had a question kind of along the same line. Since there is now a change in what the board's responsibilities are and they're an advisory board and no longer a decision-making board, I really am interested in trying to get a grip on who would be the responsible party -- whether it's the council, the mayor's office, the Department of Water Supply, or the private controllers of water systems on Maui, who or which groups are the responsible parties

to begin these negotiations to truly establish an agreement that goes beyond this Memorandum of Understanding.

It seems to me that in listening to this, we are all in a state -- a great state of denial about how water on this island is used, who is responsible for it, and so on.

It does seem also that around the world, not just in the United States as well but in many places around the world, there are large, very aggressive private corporations going around buying water



resources up. And I really feel that this is a very serious situation that we need to get our ducks in a row where we really do know who is responsible and have binding agreements that someone can't come in and break into and really put us in a very bad situation.

So this is a question that I really would like an answer, a seriously clear answer at the next meeting. Thank you.

CHAIRPERSON HIRANAGA: I guess, Dorothy, you directed that question to the director?

MS. PYLE: And to the corporation counsel.

CHAIRPERSON HIRANAGA: I don't know if he  
would be able to provide that answer in that type of a  
time frame because --

MS. PYLE: Who's responsible?

CHAIRPERSON HIRANAGA: Like you said, there is  
a lot of confusion because of the charter amendment  
and I don't know if it's the director's responsibility  
to determine that, who is responsible.

MS. PYLE: Somebody has got to.

CHAIRPERSON HIRANAGA: I agree with you  
somebody has to. We just have to first identify who

that person is. But if the director wishes to respond to that at a later date.

MR. TENGAN: I guess we're having a little problem here because we really don't know what the intent of this charter amendment was and I don't know that any thought was given in this area when the charter amendment was developed. And so we have to and corp counsel has to do the best it can as far as interpreting the laws, the related laws within the state as it relates to the charter amendment. And

this is where we're having I guess some difficulty.

MS. PYLE: Thank you.

CHAIRPERSON HIRANAGA: Yes, Ken.

MR. OKAMURA: I wanted to speak to this last point was that I think the board still has, you know, some power. I think it's a vacuum. But maybe we need to, you know, show a little bit of more initiative in that. I don't know if we can, but instead of saying there is no, you know, we're just advisory, we can't do anything --

MS. PYLE: I'm not saying that.

MR. OKAMURA: I think we need to move forward and try to set some agenda, you know, create a positive outcome.

CHAIRPERSON HIRANAGA: I would like to urge the board to try to focus their questions on the agenda items and not go off on other tangents so that we can move this meeting along in an efficient manner.

Do you have a question, Sally?

MS. RAISBECK: Yeah, Mr. Chair. As far as Item 16 on the agenda, that Kula Ag Park agreement, which was signed by the mayor -- I automatically

question things that were done the last two days of the previous mayor's terms because there were a number of things done that turned out not to be the best choices. And I really wonder who was consulted, if anyone, besides the outgoing water director and the outgoing mayor, about that agreement. And that would make me want to look at it more carefully at some date.

CHAIRPERSON HIRANAGA: I'm sorry, was there a question?

MS. RAISBECK: Well, I'm just saying that I

would like to look at that one in detail at sometime  
solely because it seems to me that it has not received  
sufficient scrutiny from the board or any other --

CHAIRPERSON HIRANAGA: Thank you. If no  
further questions, we'll take a short recess and  
reconvene at 10:05.

(Brief recess.)

CHAIRPERSON HIRANAGA: Call the meeting back  
to order. Jacky, do you want to proceed with  
Kulamalu?

I'm sorry, we have a request from the public  
to provide testimony regarding the upcountry  
agreement.

MR. MAYER: Thank you very much, Kent. My  
name is Dick Mayer and I'm speaking for the Kula  
Community Association. I'm their vice president. Our  
president is out of state today.

The association this week adopted a letter. I  
would like to pass this on to you.

As we all know, there has been a long history  
of water restrictions in the Upcountry region. The



water shortage problem has often been severe enough to force the Water Board to place a moratorium on the issuance of new meters and even to ask existing residents to reduce their water usage.

Last year the water board adopted a new rule permitting several thousand new meters from the waiting list. However, new water supplies are not yet available. New meters may mean limitations on the ability of Maui's agricultural community to raise food and earn their livelihood and further restrictions on the ability of existing residents to use water.

Consequently, the board of the Kula Community Association requests the County Administration, Water Department and Water Board to please review the recently adopted rule to determine the compatibility of issuing new meters while others are being asked to reduce their water usage.

The board and the Kula Community Association looks forward to your examination of this matter.

And particularly as you're reviewing these agreements, that you keep in mind the long-standing shortage and looking at both the ag park as well as

the EMI agreements over the years, that we still do not have adequate water and that this rule that was adopted may interact with the various agreements and how it does. We urge you to examine that. Thank you very much.

CHAIRPERSON HIRANAGA: Thank you. Any questions?

MS. RAISBECK: Yes, I have a question. Thank you, Dick. What do you think is the most important about the rule that was adopted giving out new meters,

what is the biggest disadvantage of that?

MR. MAYER: The major problem is that meters are being issued out irrespective of the amount of water that an individual will be using. I have a neighbor who's apparently got a meter, he's building a house right now with a huge swimming pool and seven acres of landscaped grounds. So one meter is totally irrespective of how much water is actually being consumed, and yet we're asking residents during this drought situation to cut back. And this is one household, but there are dozens and dozens of houses

now being built all over Kula and the water meter list will add on to that and we don't know what the impact will be. There may be a need at some point, the board hasn't done it yet, to say to farmers we're going to have to ask you to cut back on your water usage because there literally will not be adequate supplies.

MS. PARSONS: Would you be in favor of restrictions on domestic use that would not allow extensive landscaping as opposed to agriculture?

MR. MAYER: I don't think the association per se -- we want you to examine that interaction between

-- I recognize this is only tangential to the main subject matter of the meeting today, the agreements and such. But I do wish that you would at least keep that in mind as you look at this agreements and the impact, rather than trying to play wordsmith what the rule should be.

MS. RAISBECK: Thank you.

CHAIRPERSON HIRANAGA: Okay. I would like to proceed on with the agenda.

MS. TAKAKURA: Okay, so what we just went over was the agreements basically concerning our water

source, where we get our water for upcountry customers.

The next is the second of the four agreements and this is regarding Kulamalu, source, storage and transmissions. Under this category, Item B, is four separate agreements. The first one is the agreement regarding the 1973 MOU, repairs to the Waikamoi water system, construction of reservoir at Kamole Weir, dated March 21st, 1996, by and among A&B Hawaii, Inc., through its division HC&S, the Board of Water Supply,

the County of Maui, East Maui Irrigation, and  
Kulamalu, Inc.

What this agreement basically states is that  
the Board of Water Supply is limited to 8 MGD from the  
Kamole Weir and the board shall not take any water  
from the Kamole Weir when the ditch flow is less than  
11 MGD. Just as an aside here, in my five years here  
I think I've seen the ditch go to that level maybe  
once or twice. And actually operationally we need a  
higher flow so that there is enough head for the water  
to come through the water treatment facility.



Anyways, when the ditch flow is that low, we shall not take any water.

The limitations on withdrawal take effect when Kulamalu starts to draw water from the system.

Another thing that the Board of Water Supply will do is repair the Waikamoi Upper Flume as soon as possible. We will also seek funding sources for a reservoir at Kamole Weir and Kulamalu was to provide some money for the design of that and we would proceed with this as soon as possible.

One of the questions that had come up recently

were things that have not been consummated in some of these agreements and here is an example. As you all know, we do not have a reservoir, raw water reservoir at the Kamole water treatment facility. That is probably something that will not happen in the near future. And that's for various reasons; one of them is that that land there is prime income-producing agricultural land and also it is a slope, it's on a slope, it makes it very difficult to find a flat spot for a water reservoir. So that's an example of something that we haven't worked on in the agreements.

Okay.

Part 2 of the Kulamalu agreements. And this is the agreement concerning the construction of a storage tank, transmission line, and appurtenances, and also development of a well. And this agreement is dated March 21st, 1996. This one is a little bit longer agreement. And it basically states that Kulamalu and the Board of Water Supply will participate together, work together in developing a storage tank and a 12-inch transmission line.

Kulamalu is a project coming on line that would take up about 305 acres and it was determined that the current Department of Water Supply system would not be able to adequately provide for the water needs of this project. And that need was estimated at a little bit over 0.5 MGD.

So Kulamalu and the board will work together in developing the tank and the transmission line for the project and also coming up with a source which involved development and dedication of a well. The details are in the handout.

There is actually five parcels that Kulamalu was going to develop. The first part of this was, as I had mentioned, the construction of a storage tank. And Kulamalu had two choices; either they could pay money to the board and the board construct it and that amount was about \$1.9 million, or they could do it themselves, construct the tank and the pipeline and then turn it over to us and then part of the upgrades that we were planning on doing anyway, we would reimburse them for. They chose to go with the second option, they did it themselves. Of that tank, at

least 350,000 gallons would be reserved for them and that's in gallons, that's their credit. With this transmission line, the credit is in dollars and that was approximately \$814,000. And they already had the storage credits of 91,000 gallons, according to the agreement.

Also, in addition to the tank and the line, they would drill a well within three years and that would be to county standards. And once the Department of Water Supply determined that everything was up to county standard and the water was of -- met all the

Department of Health's tests, then we would accept the ownership. And the source credits for the developer would be 0.45 times the installed pump capacity, which is the standard calculation that they use. And here from the agreement on page 142 of your packet on page 8 of the agreement, the amount of source credit shall be the amount of expressed in gallons equal to 0.45 times the installed pump capacity. And the minimum would be 290,000 gallons, which is the average daily use.

Now, the storage and the transmission credits would only be for Kulamalu parcels. However, if the well, the source, if there was excess credits for that, that could be used by other Upcountry or Haiku water systems and be in excess of what they needed. All of this must be used within 15 years, so there was a time limit here.

Okay. So that's the second agreement which has a lot of detail about the project -- the tank, the pipeline, and the well. And as you probably know, it was a very good well. Our Kaupakalua well, which is



now in service, provides about 700,000 gallons per day.

Continuing with the agreements, the third one was on September 9th, 1999. Let me read you the title of it. It's simply dated September 9, 1999, by and between the Board of Water Supply and Kulamalu Limited Partnership. And what this basically is about is that they withdrew their request to use capacity in excess of 738,000 GPD. And the Board of Water Supply would be able to use this excess capacity above this amount, above this 738,000 GPD for the public benefit to meet

the needs of farmers and others as well as drought management. And I'm just reading from page 176 in your packet.

Also, Kulamalu may not assign unused source allocations or credits for land use that's not permitted by the general plan or the community plan. That makes sense. They must use their allocations by the year 2021 -- 25 years -- and the well must be complete by April of 2000.

And that's the well to the left when it was under construction. That's the well pump. What you

see there, this is where the well is and that's what you see now. And that's a one million gallon tank which we've been using since August of 2000. Very good source of water. Okay.

And the last portion of the Kulamalu agreements is Number 4, Agreement for Purchase and Sale of Water Source Capacity and Credit. So what happened here was the Board of Water Supply purchased the source credits. And this is from page 178 in your packet. The Board of Water Supply purchased the

source credits from Kulamalu at \$8 per gallon, and that's for 100,000 gallons, so the purchase price for the purchased gallons or source credits is \$8 per gallon for a total purchase price of \$800,000. So we received the right to this water and they also released the compensation right for water used by the board in excess of that pump amount of 738,000 per day. So that's the fourth and final agreement that we have with Kulamalu.

And the next part of this presentation --

we're going to take a break now and answer questions

about this?

CHAIRPERSON HIRANAGA: Yeah, why don't we do

that. Yes, Ginny.

MS. PARSONS: It was my understanding at least

a couple weeks ago that the county had not taken

dedication yet of this well. Is there a reason why it

hasn't been -- taken the dedication?

MR. CHANG: We just haven't followed through

with the formal dedication of the well.

MS. PARSONS: Is it our responsibility?

MR. CHANG: Yes.

MS. PARSONS: It is our --

MR. CHANG: Yes.

MS. PARSONS: So how long will it take for us  
to take the dedication and get it finalized?

MR. CHANG: We could do it by the end of  
summer.

MS. PARSONS: Thank you.

MS. RAISBECK: I'm sorry, I didn't get the  
answer.

MS. PARSONS: By the end of summer he said he  
could get it done.

CHAIRPERSON HIRANAGA: Yes, Kenneth.

MR. OKAMURA: I wanted to ask, Mr. Chairman, I wanted to ask, how does the credit thing work? What is that? Is there a definition for credit?

MR. TENGAN: The credits that are referred to in Jacky's presentation makes reference to the water system development fee. The water system development fee is broken down into three components: Storage, source, and transmission. Now, when the developer puts in improvements, offset improvements to the

system to service his subdivision, then he may be entitled to be credited for the improvements that he puts in place such as the storage tank or well or the transmission line to his project. So that's what the credits are going to.

MR. OKAMURA: So this -- what they meant was that we gave the -- Kulamalu got \$800,000 in credit towards whatever they owed or something like that, is that what it meant?

MR. CHANG: I think that's --

CHAIRPERSON HIRANAGA: Herb, could you come



forward and use the mike?

MR. CHANG: Well, like George was saying, there is three credits: Storage, source, transmission. As far as the source transmission, I believe the number was 730,000 gallons because they developed the well and the agreement says they get -- I believe that 70,000 gallons is what they got as far as the source credits.

MR. OKAMURA: So all that means is that if they owed then money, they would pay the \$800,000 less -- they would be credited \$800,000.

MR. CHANG: The situation was -- I'll try to answer your question. We didn't have source for their development, so they said -- they came to the board and asked what if we develop this well and whatever new waters that we get, we get like a bank account as the source credits. And so they did this and this is how much they got.

MR. OKAMURA: And how do they get it back?

Like how do they get it back, in what form?

MR. CHANG: When they develop their portion of that project that they gave us the well for, as they

come in for water meters, we would deduct their allocation.

MS. RAISBECK: Mr. Chair?

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Could we at the next board meeting have on paper for those of us who are less familiar with the relationships of actual gallons of water and source credits and if we could just have a sort of accounting, for example, with this subdivision, how much they spent for the well, how

much -- all of the different financial factors involved and what they were credited for. Because I found it almost impossible to follow when it's presented, you know, sort of little bit by little bit verbally. So if we could have it spread out on paper so that we could look at it and understand what they would have been charged or what they were charged and what they're contributing and what the county is getting out of this, I would really appreciate it if we could have a more detailed written presentation so that I could understand things more clearly. Thank

you.

MR. NOBRIGA: Mr. Chair, I believe all that information is included in the pink book.

MS. RAISBECK: In what big book?

MR. NOBRIGA: The pink book.

MS. RAISBECK: Where is the pink book?

MR. NOBRIGA: Who brought the pink book?

MR. VICTORINO: I have the yellow one.

MR. NOBRIGA: I stand corrected.

MS. RAISBECK: I'm sorry, I don't --

CHAIRPERSON HIRANAGA: It's the Rules and

Regulations of the Board of Water Supply.

MS. RAISBECK: But that doesn't have an actual  
accounting --

CHAIRPERSON HIRANAGA: It provides you the  
formula for determining the credits.

MS. RAISBECK: But I'm talking about actual  
numbers of dollars.

CHAIRPERSON HIRANAGA: For specific projects?  
Or Kulamalu?

MS. RAISBECK: Well, this one at the moment.

CHAIRPERSON HIRANAGA: I'll discuss it with

the director, your request.

MS. RAISBECK: Thank you.

CHAIRPERSON HIRANAGA: Any further questions?

Jacky, you want to proceed with DHHL?

MS. TAKAKURA: Okay. So Kulamalu, those

agreements, were regarding providing water for the new project.

Section C is similar because it's regarding providing water for a new project and this is for Hawaiian Home Lands, Department of Hawaiian Home

Lands. And there is actually only one here -- or two, excuse me, so it's not so long. And I'm only covering agreements that we have regarding Kula and Keokea. We may have agreements with them for other areas, but that's not going to be covered here.

The first one is the MOU dated December 8th, 1997, by and between the State of Hawaii, Department of Hawaiian Home Lands, Department of Water Supply, the County of Maui, and the County of Maui. And this came about because people that had the lands and they were starting to -- homeowners were starting to occupy



these properties. And so the county agreed to issue bonds for \$1.5 million for the Department of Water Supply to use in the Lower Kula booster pump station and storage tank. And the county would receive dollar for dollar credit and the Board of Water Supply would construct the tank and the pump station, it's a 2 million gallon tank, using the county appropriation, and also the Board's own money, and that's what we would do.

And the Department of Hawaiian Home Lands would do the following. They put in a new 18-inch

transmission line from Naalae Road in Kula to the home sites, put in two new booster pumps near Kula Kai tank, three new reservoirs with two pumps, and all improvements would be to standard. For their contributions, they would receive water system development fee credits. And notice this is what they're doing are blinds and reservoirs. So when we talk about the credits here, that would be for the storage and the transmission.

Source, the Department of Hawaiian Home Lands would pay. They would pay the source portion of the

water system development fee for the installation of meters. And we would provide a half a million gallons per day except during drought. And unlike some of the previous agreements, this one would not have a time limitation.

Here's the Lower Kula booster tank and pump station in its construction phases. We're putting up the walls and the roof. And what it looks like now. It's on Olinda Road. And it holds 2 million gallons of water.

Okay. The second agreement that we have with Hawaiian Home Lands is regarding water credits. This is the water credits agreement, dated December 9th, 1997, by and between the State of Hawaii, Department of Hawaiian Home Lands, the County of Maui, Department of Water Supply. Again it says we would commit a half million gallons per day for the home sites except during drought. No expiration date. And they would have credits for their contribution for construction. And like I said, no source credits. Okay.

So when people would come in for their

5/8-inch water meter, this transmission and storage credits are there, so no payments would be required for that, just for the source up to half a million gallons per day. And also there would be \$1,561,000 in additional credits because they increased the transmission and storage capacity beyond current and future needs. Okay. So they got credit for doing that. Okay.

So those are the two agreements with Hawaiian Home Lands. Okay. Water to new customers. And finally, our last category is the DBCP settlement

agreement. This is a long title. DBCP Settlement Agreement and Release of All Claims, signatures completed on December 2nd, 1999, entered into by plaintiff, Board of Water Supply of the County of Maui on the one hand, and the Dow Chemical Company, Occidental Chemical Corporation, successor-in-interest to Occidental Chemical company, Occidental Petroleum Corporation, Shell Oil Company, individually and DBA Shell Chemical Company, AMVAC Chemical Corporation, American Vanguard Corporation, Brewer Environmental Industries LLC, limited liability corporation; Maui

Pineapple Company, Ltd., and Maui Land and Pineapple Company, Inc. These are collectively termed the defendants on the other hand.

The purpose of this agreement was to resolve with finality the past, pending, and potential, continuing, and future DBCP claims and to avoid the expense of further litigation.

What this is all about is this chemical, 1-2-dibromo-3-chloropropane, has been found in certain groundwater supplies. It is a nematocide which was

used on pineapple crops to kill the root worm that was attacking the crops. It's been found that the harmful effect -- the main harmful effect of the chemical is to the male reproductive organs and it can also cause kidney damage. And the EPA has determined that it's a probable human carcinogen and they have a maximum contaminate level which that can be found in water which is 200 parts per trillion.

Use of DBCP began in the mid 1950s and it stopped in 1979 on the Mainland, although it was used in Hawaii until 1985. DBCP does not break down. It



migrates in the soil and that's how it would travel from the surface of the soil down to the roots and then eventually down into where the water is. And half-life in water is 141 years. And it has been found in West Maui at Napili A, which we don't use, Honokahua A, Haiku, and Hamakuapoko wells.

And the Board of Water Supply pursued this because the reasoning was that they did not want to pass the cost of removing this to the future rate payers and so they took this to court but reached a settlement in which the defendants paid \$3 million and

that was to cover the capital cost for the granular activated carbon treatment facilities that we built at Napili A, Lahaina, for the granular activated carbon that we installed at Hamakuapoko wells, and other related costs. They will also pay for the cost of removing DBCP for up to 40 years and all capital costs to install GAC filters for these four places. And they cover all ongoing maintenance and operation of those filters for 40 years.

Now, if we go out and drill more wells for

future wells that may be acquired or drilled, that

amount would be 90 percent for both capital costs and

the ongoing maintenance and operations for 40 years.

This agreement, this settlement, excuse me, expires in

the year 2039 and it is limited to 50 wells.

Now, I had mentioned that they will cover all

costs for the present wells. In terms of future

wells, if we want to drill a well, we must provide the

defendants with information on the presence of DBCP,

historic land use information and also the

hydrogeologic characteristics of that site. And they

have three weeks to notify us of either they don't object to our site choice, we need to go do a pilot test well, or that we shouldn't drill and should look at another place.

Now, if the DBCP levels drop below the maximum contaminant level, we may -- they can stop paying, the responsibility to pay the operations and maintenance is terminated. And that's only if the DBCP goes beyond below the maximum contaminant level. And we would have to first request permission from the Hawaii State Department of Health to remove the granular

activated carbon filter. And if we got the okay from the Department of Health and we didn't need the filtration, then their responsibility would be terminated.

So that's the basic tenants of that DBCP settlement. That one is in its entirety on the website, too, if you wanted to read it in more detail.

And in summary, those are the four agreements regarding Upcountry water, agreements with EMI and HC&S regarding our collecting water from their areas, working with developers and other agencies to provide

water for new customers, and resolving DBCP claims and avoiding further litigation.

Now, by working together with these other organizations, we can continue with this mission to provide clean water efficiently by ensuring, first, the source of water for our customers so that when they turn on the tap, there is the water. Adequate water for new customers like Kulamalu and Hawaiian Homes, without detriment to customers that are already on the system, and also protection of water quality for our future customers.

So those are the agreements in a nut shell and

I'll take any more questions.

CHAIRPERSON HIRANAGA: Thank you, Jacky.

Any further questions from the board? Yes,

Ginny.

MS. PARSONS: Does the DBCP affect any of our

reservoirs or just the wells?

MS. TAKAKURA: Just the wells.

CHAIRPERSON HIRANAGA: Can you speak up so the

rest of the attendees can hear you, please.

MS. TAKAKURA: The DBCP does not affect the surface water; it's only found in the groundwater sources. And that makes sense. If you think about like Waikamoi, Piiholo, that's the native rain forest so it wouldn't be there.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: So if I understand this clearly, any time we want to drill a well in an area that is either where they grow pineapple or close to that, then we have to worry about DBCP; but they can say no, you can't drill a well there or if we do drill



a well there, they will pay for the activated carbon.

Is that correct?

MR. TENGAN: That's correct.

MS. RAISBECK: And do we have any plans at all in future to drill wells adjacent to pineapple growing areas?

MR. TENGAN: The East Maui plant is supposed to drill waters in the Haiku area and, you know, these proposed wells might have been -- potentially would be affected by DBCP.

MS. RAISBECK: Okay. So they can stop us from

drilling them if they wanted to.

MR. TENGAN: I'm not sure what you mean by

"they."

MS. RAISBECK: Well, the defendants in this suit. But also isn't there some kind of court order that we can't use the H-Poko wells because of the DBCP unless there is a drought? What is that --

MR. TENGAN: I don't think the court order has any reference to DBCP. If it's related to the East Maui issue.

MS. RAISBECK: What is the court order about

-- about the H-Poko wells, why is it that we are  
limited in our ability to use those?

MR. TENGAN: My understanding is that the  
court order states that upon the declaration of an  
emergency by the board, the department can pump water  
from the well into the Upcountry system.

MS. RAISBECK: Yeah, but how come -- how come  
the court said that? How come we can't use --

MR. TENGAN: I don't know. I'm not the court.

CHAIRPERSON HIRANAGA: Sally, correct me if I

am wrong, but I think it relates to the lawsuit

relating to the East Maui water plant as far as use.

MS. RAISBECK: But what's the lawsuit -- what grounds?

CHAIRPERSON HIRANAGA: It's still pending.

MS. RAISBECK: No, no, I'm saying why was that limitation put on the use of the water?

CHAIRPERSON HIRANAGA: Well, there is two issues. One is DBCP which is separate from the use of the wells. One is quality water and one is use of the water.

MS. PYLE: It's the aquifer, perhaps the whole  
concept of taking water from this area --

CHAIRPERSON HIRANAGA: Which is part of the  
East Maui water plan.

MS. PYLE: It's not that the water is  
contaminated.

MS. RAISBECK: From H-Poko wells.

CHAIRPERSON HIRANAGA: There's two issues.  
What is DBCP and one is drawing from the well for --

MS. RAISBECK: I'm sorry.

CHAIRPERSON HIRANAGA: If I'm not mistaken,

it's two separate issues.

MR. TENGAN: Yes, the Hamakuapoko wells involved [inaudible] one is with the East Maui plan and the other is with the DBCP. And we're discussing the DBCP today in today's meeting.

MS. RAISBECK: Okay. I must have confused two things because I thought one of the reasons that we weren't allowed to draw water from those wells was that they were contaminated, but you're saying that's not true.

CHAIRPERSON HIRANAGA: Well, they have

installed the GAC scrubbers.

MS. RAISBECK: They what?

CHAIRPERSON HIRANAGA: They installed those

GAC scrubbers to clean the water. So the water is  
potable, yeah.

MS. RAISBECK: Oh, okay. I misunderstood.

Thank you.

MR. TENGAN: Yes, Mr. Chair, we do have DOH

approval to use the water into the systems.

MS. RAISBECK: Thank you.

MR. VICTORINO: Mr. Chair. Just for some clarification. If you read this very carefully, Sally, just for clarification, it does not restrict us from using it; it says either there will be no objection and/or a pilot test well will be needed, or an alternate site should be considered. So there is not saying you cannot use it; it is saying that you must be -- within 21 days they would give back a notice to us saying what they want from us. Okay. So it's not that we cannot drill new wells, but if we were to drill new wells, they would be entered into



this process because they also would be contributing expense or cost to do these new wells up to 90 percent as it was shown to operate and as well as drill the new wells. So just so that we get that clarified that we're not going to be stopped.

MS. RAISBECK: So you're saying they don't have veto power, but they are able to ask us to consider carefully some other site.

MR. VICTORINO: Yeah, they have 1 to 3 on the last page of the outline that Jacky presented to us.

MS. RAISBECK: Thank you.

MR. VICTORINO: Furthermore, I'd like to --

okay, I'm sorry, George. Go ahead, George, let's

dispose of this subject.

MR. TENGAN: I just wanted to add that if we

-- if we are asked to go to an alternative site, then

the defendants would have to participate in the cost

of that alternative site.

CHAIRPERSON HIRANAGA: Yes, Jacky.

MS. TAKAKURA: I just want to point out, this

is a picture of Hamakuapoko and the GAC filters are

right there and right there. And it filters the water

from Hamakuapoko 1 and 2. And the water comes into the GAC with detectable amounts of DBCP and it leaves the GAC with non-detectable amounts. So it becomes within all Department of Health standards.

MR. VICTORINO: Thank you, Jacky. In closing,

Mr. Chair, I would like to point out that I would like to thank Jacky and the board for putting this presentation together because I think it's very extensive, it gives us at least a good understanding how we have progressed to this point. A lot of

agreements and memorandums of agreements and other

things have entered in since 1961. But Maui has grown

tremendously since 1961 and so the demographics keep

changing.

Now, I think there are board members that have

specific questions on certain areas which down the

road can be answered in other meetings, but I think

this for me especially has cleared up a lot of

questions that I had in respect to some of these

agreements. It doesn't make me an expert in it, but

it also helps me at least get a clear understanding

and I hope it does for the general public and those  
that are here that our hands sometimes can be tied  
based upon these agreements and it's nothing against  
anybody in this room or where the power may lie; it is  
really where history has taken us to this point and  
hopefully we can make a difference with our advisory  
capacity to give those powers-to-be the right  
direction we need to continue for the County of Maui.

CHAIRPERSON HIRANAGA: Yes, George.

MR. TENGAN: Mr. Chair, if you're ready to  
close, I too would like to thank Jacky. I thought she

did a bang-up job on such short notice and because she's quite busy with other things also.

And I would like to also add that not much has been said in the past about the efforts of our past director with regard to this DBCP issue. I can remember several years ago when the clock was running out, the director grabbed this issue by the tail like a pit bull and he started making phone calls and started contacting attorneys on the Mainland to pursue this lawsuit against the manufacturers. And he was very successful in this effort and so I would like the

people of Maui to know that it's because through the efforts of our past director and I think, you know, not enough credit has been given to him and I think we should do that at this time.

CHAIRPERSON HIRANAGA: Okay. Ken? Mike?

MR. NOBRIGA: Thank you, George. Also wanted to thank you for the accommodations given to Ms. Takakura and also thank Ms. Cathy Howard for xeroxing this information that can still read 'em. Outstanding. Outstanding. That's all. Kenneth.

MR. OKAMURA: Yes, I would like to say, too,

it was really good, the presentation.

The one question I had was that the reservoirs that Department of Hawaiian Homes was supposed to put in, did they put it in and what was the capacity of those reservoirs?

MR. TENGAN: I think the reservoirs you're referring to are the on-site reservoirs that were constructed in this subdivision.

MR. OKAMURA: So they have their own reservoirs, three reservoirs supposedly.



MR. TENGAN: I believe so.

MR. OKAMURA: So they already built those things?

MR. TENGAN: Yes.

MR. OKAMURA: I see.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Mr. Chair, I would like to say that if there are any members of the audience who want copies of any or all of these agreements, I am very happy to lend my copy here so that they can xerox it more cheaply than they can through the department.

Twenty-five cents a page always seems excessive to me.

If anybody wants to see in more detail these agreements, I'll be happy to lend my copy.

And the other thing, Mr. Chair, I feel that it is -- as I've said several times at previous meetings, it's very essential that we -- that we have an opportunity to give advice about changes that are needed in our rules. And I think apparently at this point there is not sufficient movement within the corporation counsel's office and I wondered if -- I would like to make a motion that this board or the

chair of this board send a letter to the mayor  
expressing how important it is that it should be  
prioritized that our rules be modified in accordance  
with the charter -- with the charter amendment.

So that would be my motion, that the Chair  
send a letter to the mayor requesting priority for  
this action by the corporation counsel's office.

MR. NOBRIGA: Mr. Chair, the letter has  
already been sent.

MS. RAISBECK: I did not receive a copy of it.

MS. PYLE: Neither did I.

CHAIRPERSON HIRANAGA: It's not an agenda item, but I will consider placing it on a future meeting's agenda --

MS. RAISBECK: Could we, with permission of the board, consider it today so that we could perhaps have some action by the next official board meeting?

CHAIRPERSON HIRANAGA: Like I said, I'll consider it for a future meeting. And I'll look into further. Mike referenced there may be a letter, so --

MS. RAISBECK: May I have a copy of that

letter?

CHAIRPERSON HIRANAGA: I'll look into it.

Thank you. Any further questions regarding the agenda

items?

MR. OKAMURA: Okay. So you're talking about

just the agenda items right now on this one?

CHAIRPERSON HIRANAGA: Right.

MR. OKAMURA: Are we going to -- okay.

MS. PYLE: May I ask, I don't know what the

actual methodology for this is. I know that the

agenda has to be publicized at least a week before --

I think it's a week previous to the meeting. Is there any traditional policies or ways in which the agenda is developed? Is this done strictly by the Chair? Is there a request for agenda items that is e-mailed around to the board members or a letter or some kind of concept like that? How do we determine what the agenda for the meetings are going to be?

CHAIRPERSON HIRANAGA: Good question since this is my first meeting as Chair and I haven't really gone through the process. But my understanding is it's the chairman's prerogative to determine what is

placed on the agenda. Corporation counsel can correct me if I am wrong.

MR. KUSHI: You're correct, sir.

CHAIRPERSON HIRANAGA: Thank you.

MR. OKAMURA: I just -- I think before the meeting adjourns, are we going to have -- I wanted to know if -- I don't know if this is the right time to bring this up, but I wanted to ask if at some future meeting, hopefully not too far in the future, you would consider putting on the agenda the issue of the

meters that Mr. Mayer talked about earlier. The particular rule. Just a request. Thank you.

CHAIRPERSON HIRANAGA: I guess -- I don't know if this is appropriate, but as a new Chair, I invite all my members to contact me, preferably e-mail, I don't know if that's appropriate, with their requests for agenda items rather than bringing it up during the formal meeting. You can contact me and say there are certain issues that you would like to see placed on the agenda and I'll determine if I agree with that request or not.



MS. RAISBECK: Mr. Chair, could there be on each agenda an item perhaps at the end in which members could make requests for additional -- for agenda items in future?

CHAIRPERSON HIRANAGA: Like I just said, you know, you can contact me and we can discuss your concerns about what you want to be placed on the agenda. But I don't believe that placing it -- making these requests in public -- in the public meeting is that good because -- but I'll talk to corporation counsel about that. You're requesting certain things

be placed on the agenda.

MS. RAISBECK: No, I'm just saying that at the end of -- for example, we have standard on the agenda we have announcements.

CHAIRPERSON HIRANAGA: Yeah.

MS. RAISBECK: And if there could be at the end of each agenda a heading that just said requests for agenda items, that would enable to people to simply list them and --

CHAIRPERSON HIRANAGA: Requests by the board members for agenda items.

MS. RAISBECK: Oh, yes, definitely by board members.

CHAIRPERSON HIRANAGA: I have no objection.

Either method, you know. You can contact me or you can present it at the --

MS. RAISBECK: Thank you.

MR. KUSHI: Mr. Chair, if I may, I need to respond to your comment that interaction with the board members outside of the board meeting by e-mail, it's no problem between you and one of the board

members. I need to caution you right now, if any of you do send e-mails, do not send to more than one board member that becomes an ex-party communication.

I've been instructed to write an opinion on this.

Hopefully it will be at your next board meeting about electronic communications between board and commission members, all the board and commission members, by e-mail outside of the board meetings. So that being the case, I just wanted to tell you in advance.

CHAIRPERSON HIRANAGA: Thank you.

MR. NOBRIGA: Mr. Chair, move for adjournment.

MR. VICTORINO: Second.

CHAIRPERSON HIRANAGA: Motion for adjournment.

Seconded by Mike. This meeting is adjourned. Thank  
you.

(The meeting was adjourned at 10:55 a.m.)

IWADO COURT REPORTERS, INC.

*"By Water All Things Find Life"*

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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