

County of Maui Water
Supply

BOARD OF WATER SUPPLY

COUNTY OF MAUI

REGULAR BOARD MEETING

Taken at the Kahului Shopping Center, Kaahumanu Avenue,
Kahului, Maui, Hawaii, commencing at 9:00 a.m. on
July 24, 2003 pursuant to Notice.

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

A P P E A R A N C E S

BOARD MEMBERS: Kent Hiranaga, Chair
 Mike Victorino, Vice-Chair
 Clark Hashimoto
 Ginny Parsons
 Sally Raisbeck
 Kenneth Okamura
 Stacy Helm Crivello
 Brian Miskae, Planning

Staff present: George Tengan, Engineering
 Herb Chang, Engineering
 Ed Kushi, Corporation Counsel
 Cathy Howard, Board Secretary

TRANSCRIPT OF PROCEEDINGS

CHAIRMAN HIRANAGA: Call the meeting to order.

Today is July 24, 2003. Board members Kenneth Okamura, Sally Raisbeck, Ginny Parsons, Stacy Helm Crivello, Mike Victorino, and myself are present. The time now is 9:10. And Brian Miskae, planning department. Are there any announcements?

MS. RAISBECK: Yes, Mr. Chairman.

CHAIRMAN HIRANAGA: Yes, Sally.

MS. RAISBECK: I wanted to announce that I'm -- I've asked Kathy to pass out the opinion piece that Jonathan Starr wrote that was in Wednesday's paper and make it part of the record as the rules allow. And also he is going to be on "Opinions: Maui" tonight on channel 53 at 8 p.m. That's an AKAKU talk show. For some of you talking about the necessity for a moratorium in Central Maui.

On the next Wednesday, Wednesday next week, the water resources committee is going to be meeting with the staff of the State Water Commission about the Iao designation. The director and the chairman, cochairman, USGS, invited -- all members of the board are invited to come and observe. And Danny wanted me to tell members that they are very welcome to come in and talk with him. He would welcome people coming to just talk story.

I also want to announce that the state water code can be downloaded at the Web site which I have put on to the sheet I passed out. I won't read it because there's no need to, but it's only 27 pages, the entire state water code. Part 4, Regulation of Water Use, is eight pages. It contains the entire rules regarding designation.

There are two references to the Board of Water

Supply in those eight pages that probably we'll have -- perhaps ask the commission next Wednesday what's going to happen about those two references.

I also passed out two sheets, the tabulation -- well, a graph of recent data on Iao pumping, which I think graphical data is so much easier to understand than mere numbers. So that's why I made that. And I also, when I -- well, I'll talk about the other one, the tabulation, when we take up the director's report in 14. Thank you, Mr. Chair.

CHAIRMAN HIRANAGA: Any other announcements?

There's no minutes for approval, so I'm moving on. Is there any testimony from the public? Seeing none, the next agenda item is the director's report, County of Maui, Board of Water Supply resolution -- George?

MR. TENGAN: Mr. Chair, I asked the board to look at this because back in 1998 the board had adopted these guidelines to give the department some process and procedure by which it would go through the various stages of drought.

Then several years later, the board rescinded the resolution and abandoned its use. We have somewhat used it as a guideline, but I would like the board to consider this and give it support so that the department has some formalized process in going through the various stages of drought.

As you would notice, there's three phases that we look at: the drought watch, drought warning, and drought emergency. And just as important, it gives us the process by which to back out of it at various stages.

If you notice on page 15, there's a process that goes from a drought emergency down to a drought warning. On page 16, from a drought warning to a drought watch, and at the bottom of the page, from the drought watch and back to normal operations.

CHAIRMAN HIRANAGA: Any discussion regarding the director's report? Yes.

MR. VICTORINO: George, you feel that by having this in place, or at least as guidelines, that it's better understood by not only your department but by the general public in the ability to change from warnings to watch, from watch to warnings, you know, moving up and down depending on circumstances around us?

MR. TENGAN: Yes. Then I think it will give the public some confidence that we're not going through these various stages arbitrarily.

MR. VICTORINO: Can I ask you, what was the rational, if you remember -- or, you know, the only person I

think that was part of this group that rescinded this was Member Nobriga; unfortunately, he's not here. But what was the rationale in rescinding this originally?

Because I felt, you know, when I read this over I felt like this is good guidelines or a good system to have in place so everyone knows what to expect. What was the rationale, or do you remember --

MR. TENGAN: I can't remember exactly why it was rescinded. I do know that one issue was that these guidelines applied to everybody. And the drought -- I mean, the board at that time was concerned about providing water to our agricultural activities. So when these guidelines were abandoned, agricultural users were exempted from the drought restrictions that would be placed on the community.

MR. VICTORINO: With these guidelines, insert -- I'm glad you brought that up because that was my next question. In the area of agriculture, is there some mechanism that we could exempt them?

Because, again, farmers cannot -- in a middle of a crop growing season, if I'm correct, Mr. Okamura, say, okay, we're going to stop water or cut it in half, and they expect the crops to grow in the same mannerism. Is there some methodology of inserting something like that in these

guidelines, since they are guidelines?

MR. TENGAN: Yes. I guess in supporting these guidelines here, the board could make a statement that ag would be exempted from mandatory restrictions.

CHAIRMAN HIRANAGA: Yes, Kenneth?

MR. OKAMURA: I was going to ask the same question that Mike asked about the reason for rescinding; but, you know, I think Mike brought up a good point in -- let's say a farmer, active growing farmer, if you cut back 10 percent, the effect is more than that because the weather is drier, he needs more water, but he has to cut back.

So it seems like 10 percent is not too bad, but it really has a large effect on the production level. That's sort of his income too. Thank you.

MS. RAISBECK: Mr. Chair, when I received the packet, I had trouble comparing the figures in the data sheet that was sent along with these guidelines, and for my own purposes, I had to make up a little table, and I thought it might be useful for other members, too, to look at that. Of course, I've -- now I can't find my copy. Excuse me while I look for it.

What I did on this sheet called Tabulation of

Upcountry Drought Guideline Triggers versus Current Data, I took the drought guideline triggers, and they are all on the left-hand side, and if you look at line 2 where it says -- or lower Kula, those three numbers in parenthesis there are the three values at which the drought watch, drought warning, and drought emergency are declared.

So there's a guideline that's applicable in all three cases. In the case of watch, it's 27 million gallons; in the case of warning, it's 20 million gallons; in the case of emergency, it would be less than 13.5 million gallons.

And it took me a little help from Jacqui to find out that the comparable thing is the Piiholo reservoir, and our current value is 49.6. So that's what I tried to do, was lay it all out on one sheet as well as I could figure it out.

The determination I made from that was that we certainly -- we're about -- we're nowhere near a drought even watch, on the figures of the reservoirs given these guidelines. And I wondered if the board would feel that these numbers ought to be changed. Because if the drought doesn't even start until the reservoirs are at the level in the guidelines, then we're certainly not in a drought.

And, you know, so I would question adopting these guidelines until at least the other members are more sure that

the values in them are appropriate, because certainly we have a feeling we're in a drought now, but the numbers say we aren't.

Also my question was, are we pumping up into the ditches right now? Is that why the reservoirs filled up again or was it totally rain? Are we pumping into the ditches?

MR. TENGAN: We don't pump into the ditches. The only ditch we use is the Wailoa ditch and that's under total control of EMI. The pumping we do to boost our supplies when we can and we work with EMI, we pump water from Kamole treatment plant all the way up to the Piiholo Road water reservoir.

But the problem with this is that the water we pump into the reservoir is -- we'll be treating it twice, because it has to be treated and then pumped up the hill to the Piiholo reservoir, then from the Piiholo reservoir it gets treated again and then put back into the system.

MS. RAISBECK: But we're not doing any pumping now?

MR. TENGAN: Nothing to the ditches, but we are pumping when we need to. Right now we're not doing any pumping because of the levels of the reservoirs; but when we need to supplement or boost our supplies, especially up in Piiholo, then whenever the system allows and whenever EMI can release

the water to us, then we'll pump up to the Piiholo reservoir.

MS. RAISBECK: I have another problem with our approving or even recommending some other person, the department or the mayor or the council, to approve guidelines. And that is because, according to talks I've had with Mr. Kushi, there are certain sections of this that are valid now, but any section referring to the board -- the board is a powerful agency -- is invalid.

Now, the whole business of declaring drought emergency in these rules involves the board and we don't yet have replacement rules that give that authority to somebody else. I know that when -- the reason the rules exist is to protect the public from arbitrary decisions and there's a -- the state prescribes a whole rule process. So if we have -- we have not gone through that process to get new rules.

So I think that mandatory restrictions amount to rule making, and we don't have the authority to put any kind of -- I don't think George has any authority to put on any mandatory restrictions. We don't have any authority to put on mandatory restrictions until we get our new rules.

That would be my interpretation of discussions I've had with Mr. Kushi; but I would stand corrected if he says we do have -- or somebody has the authority to put mandatory

restrictions Upcountry when we still haven't fixed the effects of these rules.

CHAIRMAN HIRANAGA: Sally, that applies to the entire island, not just Upcountry.

MS. RAISBECK: Rule 4 applies to the entire islands. There's no restriction to Upcountry, and it gives the board power -- you know, the seven references to the board in half a page of rules. But we have not fixed it yet.

CHAIRMAN HIRANAGA: Yes, Kenneth?

MR. OKAMURA: You know, I think there's a vacuum now and if we think it's a good idea, I think it would be -- maybe we could look at it in terms of developing guidelines. I think we are the body that would have the most -- we can really concentrate on the water issue; so if we were to develop guidelines for drought warning or drought watch, I think the other entities like the mayor, they would listen to what we say or what we -- they value our opinion.

The other question I would have is I think the existing rules, as long as it doesn't give us, you know -- well, I think the existing powers, if any, of this board still exists -- I think the rule making power has changed; but the rules that are in place, and if it gives us any power, still,

you know, would be in effect? That's a question I have for Mr. Kushi.

CHAIRMAN HIRANAGA: Yes.

MR. KUSHI: Mr. Chair, Board Member Okamura, as of today, our opinion would be that your rules exist -- your existing rules are current -- the current existing rules are in place unless this conflict with the charter provisions -- the charter provisions, as you know, set limits on authority of the board.

So if your current existing rules say that the board shall do this, the board shall overrule the director, those sections of the rules, our opinion is they are not enforceable. Aside from that, everything else is in place.

With respect to this specific rule, the drought, I think it's rule section 4-1, it says, The board shall issue a proclamation of drought. I believe the board did it back in November, December, when I believe you had the authority to do it.

It goes on further, it says, The director with the approval of the board is authorized to restrict the use, etc., etc. Again, the statement that the director with the approval of the board, we would interpret it that the director can. It doesn't need the approval of the board.

It goes on further, it says, The director with the approval of the board may prohibit use etc., etc. Our interpretation is that the director can do it without your approval. I believe the intent of the director this morning is to tell you or show you what guidelines he will like to use.

I wasn't here in 1998 when this resolution was passed and I wasn't here when it was rescinded; but I'm assuming that the intent of this resolution -- in essence, you call it guidelines, I would interpret it to be rules. Rules are defined as any policy that affects people outside of this room; any policy that affects the general public.

Again, the reason for rescision, I don't know. I would suggest that when the issue of rule making authority and amendment to your existing rules have cleared the floor and the table is set to do rules, you adopt a set of rules like this. Whoever may be able to do it.

I believe the director today is saying why don't you look at what we have before and advise us what you want in the future. And be it the director, council, or mayor, whoever is going to do the new rules can then look at your suggestions.

CHAIRMAN HIRANAGA: Yes, Sally?

MS. RAISBECK: So am I interpreting this that

because the board had authority to declare a drought, we are in a drought condition, would George -- and George would have the authority to either declare a drought or declare not a drought, would George follow these guidelines and say that right now we're not in a drought and, you know, rescind the drought? If we recommend these guidelines, would you follow them, basically?

MR. OKAMURA: Mr. Chairman?

CHAIRMAN HIRANAGA: Yes, Kenneth.

MR. OKAMURA: I think we seem to agree that the guidelines as they are written -- I would agree that the guidelines as they are written are not -- needs to be worked on. And I think we -- if it's the wish of this board, we could develop guidelines and make them as recommendations to the director.

At least we'll have a say in what is -- what the guidelines are as opposed to leaving it up to the director or the mayor or the council. And I would like to try to do that, because if -- anyway, I think I need to look at this some more, but to at least be a little more proactive in the situation.

Thank you.

CHAIRMAN HIRANAGA: I have a question for George.

Looking at Sally's work sheet and your July 15, 2003 -- on page

11, the total capacity of -- the combined capacity of the Piiholo water treatment facility, the Waikamoe reservoirs, and Kahakapao reservoir, is that total capacity of approximately 180 million gallons? I'm just trying to interpret your percentage and the amount of gallons represented.

MR. TENGAN: You mean item 2, 3, and 4?

CHAIRMAN HIRANAGA: Item 3, 4 and 5, total capacity.

MR. TENGAN: That would be 49.6 plus.

CHAIRMAN HIRANAGA: You are saying 99.2 percent full, so I'm assuming that 100 percent capacity is like 50?

MR. TENGAN: Right.

CHAIRMAN HIRANAGA: You are saying Waikamoe at 9.9 million is 66 percent full, so for -- the capacity is 15 million?

MR. TENGAN: Waikamoe is, I believe, 13 million, and Kahakapao, the two reservoirs total over a hundred million. The total capacity is 150 plus 163.

CHAIRMAN HIRANAGA: Waikamoe reservoir, is it more like 180 or 178? About 180?

MR. TENGAN: About 180.

CHAIRMAN HIRANAGA: So then the first trigger, which is 101 million gallons, that's about 60 percent of the total

capacity, 60 percent of 180 million gallons?

MR. TENGAN: Whatever the numbers are --

CHAIRMAN HIRANAGA: And your goal is to keep the reservoirs at approximately 80 percent capacity?

MR. TENGAN: Yes. I guess we would use some levels of -- one of the things that we can do during an emergency is to pump the Hamakuapoko well, and I guess when we get down to the level, that's one of the things that we can do to do something with our storage.

CHAIRMAN HIRANAGA: Right now you are above 90 percent capacity and you are comfortable with 80 percent capacity?

MR. TENGAN: Right.

CHAIRMAN HIRANAGA: So for the drought watch to occur, it would have to drop to approximately 60 percent capacity?

MR. TENGAN: I would qualify that a little; I would be looking at the weather conditions during that time period.

CHAIRMAN HIRANAGA: But at one point, you could start up the H'poko wells to provide additional source?

MR. TENGAN: Right. I would come to the board and -- let's say there was no emergency declared at the time, I would come to the board and recommend that the board consider

it to be a state of emergency and declare drought so we can go ahead and use the Hamakuapoko wells in accordance with the court order.

CHAIRMAN HIRANAGA: I guess my point is, you know, being a layperson, if the department's goal is to maintain 80 percent capacity of the combined reservoirs, how detrimental is 60 percent?

Some of the discussions say we have to raise this higher so that we go into a drought watch at 75 percent, 70 percent; but then it starts to impact how people's lives are being conducted. So I don't know if there's a magic number, 60 percent, 70, 75, because you have the ability to start pumping H'poko. I'm not saying I have the answer, but I'm looking at the percentages in, I guess, practical application.

MR. TENGAN: I think this is the reason why it's important for the board to look at it, because people's lives and livelihoods are affected; it's a decision that I don't feel that the director himself should be calling.

Because depending on the director, one might be willing to take more risks, and so it's that level of risk that we really need to look at when you are talking about at what levels do we feel comfortable with our reservoirs.

As a case in point, when the board abandoned or rescinded this resolution here, the instructions to the department was to keep the reservoirs full. In my personal opinion, that is not a necessary step to take to keep the reservoirs full, because that's why you have reservoirs, to take care of times when you don't have any water coming into your reservoirs. So the level will drop.

And based upon experience in the weather conditions, the engineers have taken that into consideration in designing the size of the reservoirs; that's to accommodate dry weather conditions.

CHAIRMAN HIRANAGA: There is additional cost involved in pumping --

MR. TENGAN: Exactly.

CHAIRMAN HIRANAGA: We're not looking for 100 percent reliability; we're looking for an acceptable level of reliability.

MR. TENGAN: Some comfortable level of reliability, correct.

CHAIRMAN HIRANAGA: Yes, Mike?

MR. VICTORINO: Maybe I would like to propose -- I guess this would be a future agenda item, but we need to have all the necessary information. And like Mr. Okamura said and

Ms. Raisbeck, there is conflicting numbers.

I think we need to have a real good cross-section of people involved, whether it's EMI, all these other parties that are involved with water, to make these kinds of provisions, guidelines or rules, like Mr. Kushi has said, so that, as you mentioned it, Mr. Tengan, that the general public has confidence when we declare a drought warning, watch or whatever it may be, that it's not arbitrary and capricious, but it's realistically set by guidelines that we have worked on.

It's been a long time since we looked at them and they were rescinded, so it's kind of like been floating in the air. So I propose maybe have a meeting agenda that this would be worked on and that that would be brought in from the various organizations that are contributory to this and go from there.

But when we make these guidelines, that they are knowledgeable and that they have been studied and are complete and that we won't be doing this in five years or ten years. Again, maybe things change in our system so they may have to do some changes, but whatever we come up with, it will be an intelligent, well-thought-out policy rule, guidelines, whatever they want to call it, so that all of us, including the general public, will be confident in this.

I mean, we can sit here all day and talk about it; but I think we need to really put some effort into this because this is really crucial, these guidelines that we promote to the mayor, to the council, to whomever the rules body will be in the future, it makes no difference because we were the ones that were in charge and giving these to the public to be.

So I think it's important right now that we do some real honest research, bring all the parties in, make sure that agriculture is included, everybody that is part of this is included so that when we make these final rules, guidelines, whatever we come up with, everybody will be confident, including the general public, that these were done in a proper manner, and that it's the welfare of the people that's first and foremost when we did this.

CHAIRMAN HIRANAGA: Yes, Brian?

MR. MISKAE: Mr. Chairman, when this resolution was passed, I had to have been on the board. It was important at that point to establish some form of analysis the administration of the board could use to declare these various levels up and down.

And for the convenience of the board members, the previous director used to prepare something similar to what Sally did to show us if three triggers had been declared, why.

So he would actually boldface the triggers that were declared. If there was three or more, then it went to that level.

But he used to prepare reports based on this resolution for everyone's convenience. And that might be something you might consider asking the director and his staff to do if you proceed into this process again. It is difficult to try and read this resolution, and then try to apply and add Piiholo, Waikamoi, that sort of thing. And then trying to look at the ditch flows.

So to simplify it to say the previous director used to provide reports. And I don't know why it was rescinded; I didn't know that it was. But I knew why it was passed and it was passed for good reasons, so that everybody knew where we were. Thank you.

CHAIRMAN HIRANAGA: Brian, do you recall how these guidelines were established?

MR. MISKAE: I think there was logic involved with this thing. The board really looked at this thing seriously to try and establish where comfortable triggers would be. Obviously, some of these numbers are maybe -- do not totally support engineering-wise, but I think they are more comfort levels more than anything.

CHAIRMAN HIRANAGA: Thank you. George, the capacity, have they increased since these guidelines were established, the reservoir capacities?

MR. TENGAN: No, they never changed.

CHAIRMAN HIRANAGA: Thank you. Any other discussion?

MS. RAISBECK: Thank you, Mr. Chair. Perhaps it would be possible either from the report itself or from the -- I don't know if this is going through -- through the table I prepared to simply look at each of them and just looked at the numbers for drought watch and compare them, and I tried to do that, but it's perhaps not the best.

But, for example, average daily in flow less than system demands have triggered in all three levels. And the director said that basically you judge that from whether the reservoir level was going up or down.

The raw water reservoir levels watch would be less than 101, we're at 165. Or if lower Kula is less than 27, we're at 50. Or if upper Kula is less than 74, we're at 115. EMI ditch flow at Wailoa less than 107, that's 143.

Kamole demand and lower Kula demand are both below -- aren't as great as to trigger any of the levels. And Kahakapao water inventory, there's a trigger for the third

level, and that's when it goes below 40. But we're almost more than double that.

So I think my question is, will these guidelines be useful if we have to get down to those levels before even a watch is declared?

CHAIRMAN HIRANAGA: Yes, Kenneth?

MR. OKAMURA: Mr. Chairman, would it be possible to sort of revise the present guidelines and make them as recommendations from this body? Accepting what is there, possibly, you know, and maybe the way Mike said, try to get more deeply involved. I don't know how we can do it.

But I think the point that you brought up much earlier was if you follow these guidelines, there would be no drought warning or no drought watch now as it is, and I think that's a good point you brought out. I think the guidelines the way they are is not sufficient or doesn't seem to work.

CHAIRMAN HIRANAGA: Personally, I prefer to rely on the experts. My opinion, the Department of Water is the expert. If the department feels these guidelines need to be revised, then I would suggest that they provide us or identify the areas that need to be changed.

But if the department's satisfied with these

guidelines, then, and they say so for the record, I don't know where we go to try to modify these guidelines. We have to have a basis. We can't be pulling out percentage numbers just for the sake of it.

Kenneth, one thing, if you increase these percentage requirements, it's going to start flipping back affecting the people's -- their practical life. So you can say let's raise it to 70 percent or 60 percent as a trigger, or 75 percent, you have to have a basis for that. Yes, Kent?

MR. OKAMURA: My main concern was for agriculture and that, for us, water is our income. If you cut back water 10 percent, you are cutting back our income 5 percent. So that's why I feel that it's a very important matter that if we call a drought warning now or restrictions it's going to affect everybody's life for sure, but it's not going to affect everybody's life as much it will for a farmer.

That's why I feel we need to have strong guidelines in place way before the fact, you know, it's getting to be real drastic. Just as like George says, to reduce the risk and to try to insure that we did all we can to provide water for agriculture. That's my main concern.

Because if we have guidelines and we have to call a 25 percent restriction across the board, most people are not

going to be losing part of their income because of it; part of their livelihood, but agriculture users will be. I just want to make that point. Thank you.

CHAIRMAN HIRANAGA: Yes, George?

MR. TENGAN: Mr. Chair, I guess I could have staff review these guidelines and see if we can come up with any recommendations for changes, and if we need to go to the rule making process, then we'll work with corp counsel on that.

I know Mr. Okamura's concern is ag consumers and that's one area that will definitely require amendment to this guidelines, because the guidelines didn't exempt ag users from the restrictions.

CHAIRMAN HIRANAGA: If no further discussion, I would like to --

MS. RAISBECK: Mr. Chair?

CHAIRMAN HIRANAGA: Yes.

MS. RAISBECK: I did have one question and not about the drought guideline triggers. But the director included in his report a copy of a memorandum of understanding from April 2000, and I wasn't quite sure why he did that; but I do have a question about that memorandum, and the question is that in this memorandum --

CHAIRMAN HIRANAGA: What area are you looking at?

MS. RAISBECK: Let me find it. Page 4 -- well, page 8, with the handwritten numbers at the bottom of page 8.

Central Maui Source Joint Venture. That this agreement, as I understood our workshop two weeks ago, was never implemented. And I heard since that workshop, that, in fact, they tried to negotiate an agreement with the Central Maui Source Joint Venture about was there any outstanding water owed to the joint venture.

And I'm told that the conclusion of that negotiation was on the contrary; they had gotten a little more water than they claimed to be owed. So I wanted to ask the director if any water has been allocated to this Central Maui Source Joint Venture that the board perhaps has not heard about.

MR. TENGAN: Mr. Chair, before we address that question, I would like to state my purpose for putting this memorandum of understanding in the packet. It was mainly to give the board reference to the items regarding Wailoa ditch and the Hamakuapoko wells. And I don't know if corp counsel have read the memorandum in its entirety subject to discussion.

CHAIRMAN HIRANAGA: Do you wish to comment, Corp Counsel?

MR. KUSHI: Mr. Chair, on the Central Maui joint

venture --

CHAIRMAN HIRANAGA: Yes.

MR. KUSHI: -- no comment. Nothing comes to mind as of now.

CHAIRMAN HIRANAGA: You said your request is to see the entire agreement?

MS. RAISBECK: No, this is the entire agreement, it's included in the director's report. We were told two weeks ago it was never implemented. That's what we were told two weeks ago. And I have since heard that the agreement as written here was subject to negotiations about implementations and the result of those negotiations was no water was owed the joint venture.

So what I'm asking the director, and I would like an answer, has any water been allocated to the joint venture?

MR. KUSHI: Mr. Chair, the director is asking, can we discuss this right now? The document is part of the agenda item. The document, in my mind, speaks for itself. If the director wants to comment on the matters stated in the memorandum, then basically state that these things would be negotiated in the future, that's up to him. If he knows.

The question was directed to me and I'm telling you

that I don't know anything about such a Maui joint venture and the status thereof. The other areas, the Wailoa ditch agreement I believe is still in the works; we're abiding by that. The Iao, Waikapu ditch, there was an agreement to draw surface water from that.

The H'poko wells I believe is covered by a court order, and I believe we're operating those wells. The power, I don't know anything about that. We have discussed the Central Maui joint venture. And all of you should know what's going on with the East Maui water development.

Aside from that, if the director wants to comment any further, I believe it's proper. But I leave that up to him.

MR. TENGAN: In response to Member Raisbeck's question, no specific amount has been allocated to the joint venture. Those are in negotiations right now.

MS. RAISBECK: Negotiations with the joint venture members and the administration?

MR. TENGAN: Yes.

MS. RAISBECK: So is it on public record that the previous negotiations resulted in a decision by the board that no water was owed?

MR. TENGAN: I believe the previous agreement was

ruled invalid. There was a previous settlement that the board and its joint venture -- members -- let me go back.

There was a committee set up by the board to negotiate with the joint venturers and some settlement agreement, in my understanding, was formulated. However, when the matter was brought up to the board, the matter was declared to be illegal and so no action was taken on that. So that's where it stands right now. That's my understanding.

MS. RAISBECK: I believe at one point Jonathan Starr was chair of the committee of the executive session and did negotiate on that subject. And I believe he intends to talk about that tonight on AKAKU, just for your information.

I believe Jonathan was chair of that at one point, at least was chair of the committee that did negotiate on that subject, and I believe he is under the impression that he and Dorvin Leis and whoever else was on the committee agreed that no water was owed the joint venture. Thank you.

CHAIRMAN HIRANAGA: Yes, Ginny?

MS. PARSONS: Mr. Tengan, have you or any of your staff or deputy director seen any numbers for the joint venture, the Central Maui joint venture?

MR. TENGAN: I'm not clear as to what you mean as to

"any numbers." Is it consumption --

MS. PARSONS: Any credit figures? Any partner allocation credit figures? Have you seen any?

MR. TENGAN: Yes. But the figures I've seen were based on something that -- an allocation that was not agreed to with the joint venture members.

MS. PARSONS: So if this is an issue that we need to look at, would it be advisable maybe to put it on the agenda for a later date and invite, say, some of the joint venture members in to comment? Somebody that maybe kept the records, like Meredith Chang?

MR. TENGAN: The joint ventures have their figures and we have our figures and apparently these figures are in disagreement. So we need to work together to come to some kind of resolve on this.

However, before we can resolve that issue, it's my opinion that we need to resolve the issue of how much credit should be given to each joint venture member and this has not been resolved yet. And when I say that the administration is negotiating or working with the joint venture members in trying to resolve the issue, it's basically right now between myself and the joint venture members, and that the mayor's office is not currently involved.

MS. PARSONS: Do you have a rough figure in mind?

You are saying that there are some credits owed and that you have a rough figure in your mind what you think it should be?

MR. TENGAN: Something that I'm -- I'm working with the joint venture members right now, and I don't know if I want to reveal my position as a public record right now.

MS. PARSONS: Thank you.

MR. TENGAN: Maybe at some point in the future we can set this up as --

MR. KUSHI: Executive session.

MR. TENGAN: -- executive session.

CHAIRMAN HIRANAGA: Director, I would like your staff to take a look at the guidelines and, if possible, provide us with some recommended changes. Shall we take a short break? Let's take a recess and reconvene at 10:10.

(A recess was taken.)

CHAIRMAN HIRANAGA: I'll call the meeting back to order. Presentation and written opinion of the Sunshine Law with corp counsel.

MR. KUSHI: Mr. Chair, to you and the board members, I need to apologize, when this matter was set by the board secretary, I was hoping to have the written opinion hopefully

at that time by Monday and it just didn't happen. There's no written opinion that I have signed off on as of today.

I would request that this matter be deferred to your next meeting. It will be inappropriate, in essence, to discuss something you don't have before you.

CHAIRMAN HIRANAGA: Yes, Sally?

MS. RAISBECK: Mr. Chair, I would like to request that the board give a consensus that, in general, when we're going to have written opinions or agreements drawn up by, you know, when they are drawn up by the department, that they be ready at the time the agenda is ready.

Because I see this as a Sunshine Law issue that if the documents that are going to be presented to the board aren't ready in time for the public to look at them, then the public's right to comment on them is just totally -- or it just isn't anywhere. So if we could, even just by a little informal agreement, agree that written opinions, legal agreements presented to us shall be ready at the same time as the agenda. I would certainly feel that's a reasonable request.

CHAIRMAN HIRANAGA: Well, I hope this won't be a common occurrence, but things happen.

MS. RAISBECK: I'm just saying that there should be like a six-day thing for the agenda, the public should have a

chance to look at the thing in advance so that they can give informed testimony about things.

CHAIRMAN HIRANAGA: You are saying if an agenda item is not ready prior to the filing of the agenda, it should be withdrawn from the agenda item -- from the agenda?

MS. RAISBECK: I specifically feel this applies to the more -- I wouldn't necessarily make a general rule; but if the backup information is ready at the time the agenda is ready. But certainly important issues and certainly written legal opinions are important and they take time. They take time to read and to understand.

You can't have it presented to you at the start of a meeting or, even worse, at the time the agenda item is taken up and have any kind of informed opinion. The public, the Sunshine Law -- the public has no opportunity to comment.

CHAIRMAN HIRANAGA: I think I understand what you are saying. I agree. I prefer to have whatever materials that's going to be discussed on the agenda to be available -- at least would -- would be included in the mailing, in the hope that the department will make every effort to do that. I think it's a case-by-case situation.

Any other comment? Next agenda item is receipt of

board members' request for agenda items to be placed on future agendas.

MS. PARSONS: The request is for a C-9 update in the Upcountry water system after last week's meeting, and request for Lorrin Pang to be in attendance and review the blind study of the -- provided for the public at the Eddie Tam meeting, please.

CHAIRMAN HIRANAGA: Yes, Sally?

MS. RAISBECK: Thank you. I sort of had a battle of requests, so I decided to put them all here, and obviously they can't all be done on the next agenda.

But for future agenda items, I would like to see designation of the Iao aquifer on the next one, if possible. Plans for how we're going to deal with new requests for water. The question of a moratorium, and an update from the department on the negotiations about Central Maui surface water. Can we use surface water as a source to better advantage. I would like to see a time table on costs for new source -- from any source at all for Central Maui.

I will repeat my request that the rules and regulations of the Board of Water Supply, that the board establish a committee to expedite the process of making -- of giving us rules that are actually in effect rather than just a

partial set of rules.

I think it would be well if this passed -- a resolution that supports continuing the contract with USGS for a numerical model of Iao aquifer. I would very much like to know progress to date on the water use and development plan. Is a draft available?

So it seems to me that all of those are important. I would like to see all of those considered as soon as possible. Thank you, Mr. Chair.

CHAIRMAN HIRANAGA: Thank you, Sally. Any other requests by the board members? Seeing none, let's move on to the next agenda item which is the division reports. Any discussion regarding the division reports?

MS. RAISBECK: Mr. Chair, back in April, I requested that we get regular updates on the Iao designation triggers, and I myself feel I fell down on the job by not checking more carefully. There included in the vast number of division of numbers in the division report.

Could we each month have on -- have a graph showing trends of all, not just Iao pumping, Waihe'e pumping, West Maui pumping, graphs of ditch water flow. Pictorial information is so much easier to understand and you can see trends. And just

tables of information are not that helpful. Thank you.

CHAIRMAN HIRANAGA: Is that something you would consider providing us? Is that something that's relatively easy to do, George?

MR. TENGAN: I would think it's something we can accomplish. But it would really help us, the staff, to know exactly what the board wants as a group so that we won't have to be addressing individual needs. It's possible that we could meet to prepare one report in nine different formats depending on each board members' needs.

So it would be very helpful to us if the board can decide as to how they want certain reports prepared and presented to them. It would be a time saver. The staff does spend a lot of time in preparing for board meetings.

CHAIRMAN HIRANAGA: I'll get together with board member Raisbeck and try to define exactly what she wants and get together with you and see if we can come up with something. Any other comments regarding the division reports?

MR. TENGAN: Mr. Chair?

CHAIRMAN HIRANAGA: Yes.

MR. TENGAN: I would like to apologize for not keeping the board updated as far as the Iao aquifer designation issue is concerned. I have no excuse for not getting to the

board members and giving them advanced notice that Iao was going to be designated, but I do want to apologize to the board at this time.

Further, I would like to update the board on what's going on as far as that issue is concerned. The administration, along with other departments involved in the county, are going over this issue and trying to see what they can do to resolve the matter of water availability. There are some alternatives we're looking at and certainly surface water is one of them.

But we are addressing that and we're also addressing how much water we have committed in terms of meter reservations. In the meantime, the administration has decided to go on with business as usual, keeping in mind that we have to deal with the issue of designation.

CHAIRMAN HIRANAGA: Thank you. If there's no other items, then this meeting is adjourned.

(The proceedings were concluded at 10:20 a.m.)

"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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