

County of Maui Water  
Supply

**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI**

**SPECIAL MEETING**

Held at the Kahului Shopping Center, Kahului, Maui,

Hawaii, commencing at 1:00 p.m. on August 11, 2003.

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

IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

CHAIRMAN:

KENT M. HIRANAGA

VICE CHAIRMAN:

MICHAEL P. VICTORINO

BOARD MEMBERS:

STACY HELM CRIVELLO

KENNETH M. OKAMURA

DOROTHY R. PYLE

SALLY RAISBECK

GINNY PARSONS

MIKE NOBRIGA

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

DIRECTOR: GEORGE TENGAN

BOARD SECRETARY: CATHY HOWARD

IWADO COURT REPORTERS, INC.

CHAIRPERSON HIRANAGA: I would like to call

the meeting to order, please. Thank you. There are a

couple of people we're waiting for at the moment, so

we're going to go into a recess until those couple of people show up and I just wanted to call the meeting to order. Thank you.

(Brief recess.)

CHAIRPERSON HIRANAGA: I would like to call the meeting back to order. Let the record note Ken Okamura, Sally Raisbeck, Clark Hashimoto, Stacy Crivello, Ginny Parsons, Mike Nobriga, and myself are in attendance. And we have some requests for public testimony. We'll start with Ron Sturtz.

MR. STURTZ: Board members, my name is Ron

Sturtz and I'm here today sitting as the president of Maui Tomorrow Foundation. And our goal is we're involved in land use planning and community design, responsible growth, and preservation of groundwater supplies.

I see myself today as a resource to you. I'm not proffering any specific recommendation to a plan of action, but simply to fill you in since many of you were not here during some of the events that have transpired in the last several years impacting on this situation.

There is some information that I've provided to you. One thing that came to my attention was under Old Business, Item B, Central Maui Joint Venture. One of the things that you need to be determining is not only where the water comes from but how it gets distributed and when and whether there are priorities in distribution. And one of the things which keeps coming up is reference to the old joint venture agreement, the Central Maui Source Development that has taken in July 1975 and what water rights may or may not stem from that agreement. Because that has a

rather large impact on our water needs and so I think  
it's important for you to know and make a  
determination and have your counsel advise you as to  
what the impact of that agreement is.

You may or may not be aware that that  
agreement was the subject of litigation a couple years  
ago and [inaudible] by the board at that time to do a  
subsequent --

THE REPORTER: Something is wrong with the  
microphone.

[Adjustments made to microphone.]

MR. STURTZ: The Central Maui Source Agreement

has been the subject of litigation before this board

and before the courts and there is some question is

there any moral responsibility that rises from that

agreement or legal responsibility.

I would like to point out what I consider to

be the most relevant section, which is paragraph 10 of

that agreement on page three which says that the

agreement expires on the earlier of two events and one

of those is December 31, 1999. The bottom line, very



simply, is that that agreement seems to have expired  
by its own terms several years ago, four years ago.

That's paragraph number 10. Almost four years ago.

The question comes then what do we do now to  
impact our water supplies for the entire central  
corridor. It's more than a South Maui issue; it's  
Kahului, Wailuku, Paia, Wailea, Makena, Kihei,  
Maalaea, and where do we find additional water sources  
to the Iao Aquifer. It's very clear that between the  
North Waihee wells and the Iao Aquifer itself wells,  
that we appear to be exceeding our allowable capacity

and that seems to have been the trigger for the state  
to step in.

I would like to encourage the board to look at  
other water sources rather than try and delve further  
into the Iao Aquifer wells, and also to look very  
carefully and to ask your counsel to give you a proper  
legal interpretation of the Central Maui Source  
Development Agreement so that it doesn't detour your  
evaluation in inappropriate directions. Thank you  
very much.

CHAIRPERSON HIRANAGA: Thank you. Questions

for Mr. Sturtz? Yes, Ginny.

MS. PARSONS: Ron, do you recognize the Memorandum of Understanding concerning the settlement of water and related issues in -- I guess it was dated in 2000. It's in memorandum to the paragraph 5, Central Maui Source Joint Venture. It's on the website, on the Department of Water Supply website.

MR. STURTZ: What's the date of that, please?

MS. PARSONS: I believe it's in 2000.

MR. STURTZ: There's a March 12, 2001

memorandum, in effort to settle the water rights. Is that the one you're referring to?

MS. PARSONS: I don't see the dates of the signatures. 2000. April 13th, 2000.

MR. STURTZ: I don't have that document in front of me.

MS. PARSONS: It's on the website. It basically states that the Board of Water Supply acknowledges that there is unmet obligations in the Central Maui Source Joint Venture and they are going to continue negotiations on the settlement.

MR. STURTZ: That was the agreement with

Alexander & Baldwin, A&B?

MS. PARSONS: Uh-huh. And the board.

MR. STURTZ: There was some -- in what way

would you like me to respond to that? I'm aware that

it exists. But there is some -- as I say, we're

dealing in an area of law and I would regard heartily

recommend that you consult with your legal counsel on

this point because it is not a clear case that this

document is the appropriate interpretation of what the

law is and whether it's legal or binding. So that's

all I'm suggesting. And you do have counsel sitting at the table and I think it's important that you consult with them. And I know this is slated for executive session, but I wanted to alert you to raise these questions when you're in executive session.

MS. PARSONS: I just wanted to see if you were aware of this document because you didn't bring that up.

MR. STURTZ: As you may have noticed, I haven't reviewed it.

MS. PARSONS: Okay.

CHAIRPERSON HIRANAGA: Any other questions for

Mr. Sturtz? Thank you.

MR. STURTZ: Thank you very much.

CHAIRPERSON HIRANAGA: Jim Smith.

MR. SMITH: Chairperson, members of the Board of Water Supply, my name is Jim Smith. I'm a resident of Haiku. And I'm sensitive to what I'll describe as the integrity of our political system and what I see is occurring is a destruction of that integrity. And what I see this board as being, I think this board is

being victimized by a lack of understanding of how important a role you play in preserving public integrity.

The Haleakala Times published a commentary and in that commentary a political activist claimed that the mayor could not see certain things and then admonished the mayor and then told the mayor that he should enact a moratorium on the reservation of water for Iao. The mayor publicly declared a moratorium that the administration would not be issuing reservations.



Where is the official act by this board

advising the mayor of this course of action -- of any  
course of action? I've seen none. It says to me this  
is a campaign gesture. It says to me there is no  
public duty, no public or official act involved. It's  
an exhibition of power that does not exist in our  
system that corrupts and that's what's occurring.

You have before you a letter dated October 5th  
which says nothing about a moratorium. It says  
nothing about a person being denied access to water.

Subsequent to that proclamation, another

proclamation was made that somebody else who had a large subdivision would be getting water. Now, if I had a piece of land and I got a building permit and by your rules I am required to pay a fee for a water meter and you told me no and then I read the proclamation that somebody else is going to get, then I am losing confidence in government, and trust, because my trust is in its integrity, not the zeal of a leader.

Now, you have before you a complicated issue and you have recommendations. It would seem to me

that there has been action without your advice by the  
mayor's office. So what would advice do now to the  
mayor's office? Validate? I don't think that's  
appropriate. So I think any advice that you make  
should be to the council because if there is no power  
in the executive branch for that, and this board has  
lost its power to make rules, then the charter  
provides that it is the council that assigns power  
when no power is identifiable. That's the way  
integrity is preserved. So I would ask you to take

this matter very seriously.

The Iao rule, the management rule, it would seem, has been trumped by the declaration. I mean, you have one thing you can do now that there is a declaration and that is to reach an independent judgment of its merit and whether or not there should be declared a caution or whatever. But all of that has been negated by this wonderful exposition pleasing a certain segment of a political spectrum, to the damaging of everyone else.

So I would ask you to investigate this matter,

to produce any request for advice that you received prior to the proclamation, and to -- don't fall into the trap of the 1992 board who when I sued them argued that it only was a public release and not a rule except for the fact that there were exemptions to this proclamation which made it a rule. In addition, it applies generally governmental power that affects citizens and that's either got to be in our political system a rule or a statute or a charter provision, and none of those are present in this circumstance. Thank you very much.

CHAIRPERSON HIRANAGA: Questions for Jim.

Yes, Sally.

MS. RAISBECK: Jim, I have the greatest respect for your dedication to the Sunshine Law, for your dedication to proper process. And the reason we have the Sunshine Law, the reason we have proper process is for the protection of the public.

We are in an extreme situation here. Since the charter change, the board is in a strange unknown position. The council and the mayor are also -- have not clarified who has the power to act. It's simply

that this board has felt by the charter we did not have power to act. And some members of the board have even felt we didn't have the power to even give advice unless we were asked. And generally people have been too busy to ask us. Generally we have not come forward with advice or considered important issues that ought to be considered about water.

You reference a letter October 5th --

MR. SMITH: August 5th. It's the one listed on your agenda from the director.

MS. RAISBECK: Oh, the director's report.

Okay.

MR. SMITH: What is your question?

MS. RAISBECK: My question is this: Would you be willing to write a letter to the board, not just complaining about action without rules but rather specifying what you see as the proper route by which this board can get proper rules? We've had an opinion from our corp counsel that first the council has to pass an enabling ordinance and then some body who is given rule-making authority can make some rules.



Until that happens, all the important parts of our rules are in limbo because they reference the board's power which we know we don't have anymore.

MR. SMITH: That may be simple. That may not need a letter. It may just need a reading of the charter that says specifically "perform such other duties and functions as shall be prescribed by law."

Now, your rules were adopted by the board and they were approved by the mayor and they were approved by the council. Those rules have the force and effect of law. No one has nullified those rules. Those

rules are in effect until they are replaced. You cannot have a void protecting the public interest by rule and allow someone to rule by their stomach or their intent. That creates courtesy, but it doesn't create equality.

So you have in this charter -- now, from my perspective, the majesty of this document has to be respected and that respect must be demonstrated by all quarters. That means the mayor must err on the side of seeking advice, not on the side of performing for a political elite. That's what it means. It also means

that this board is not governed by a corporation  
counsel or by some ambivalence that is created by  
unclear thinking. It has a specific duty and it has  
protection -- I mean, it has a function to protect  
integrity. And that is the function that was missing  
in '92 and abused throughout and caused great  
suspicion upcountry and now is spreading out to the  
rest of the island.

Now, this board needs to be tough and  
committed to the notion that no quarter will be lost

in defending its authority and duty which is to  
  
advise.

MS. RAISBECK: Can I ask you to write a letter  
  
with specifically your views as to the route we can  
  
follow to have rules that recognize the advisory  
  
capacity of the board and redistribute the power to  
  
other bodies. Can I ask you for a letter like that?

MR. SMITH: Member Raisbeck, I'm flattered by  
  
your request. And if I have time --

MS. RAISBECK: Thank you.

MR. SMITH: -- I'll give it some thought.

MS. RAISBECK: Thanks very much.

CHAIRPERSON HIRANAGA: Any other questions for

Jim? Thank you.

Because we have a number of people signed up to provide public testimony, I would like to request that each testifier try to limit their comments to five minutes.

The next person shall be Douglas Ing.

MR. ING: Good afternoon, Mr. Chairman and members of the board. My name is Douglas Ing and I'm here to speak to the board on behalf of the Central

Maui Joint Venture group and I'm authorized to represent them here today in connection with Item VI(B) on your agenda this afternoon.

The joint venture was formed many years ago in 1975 to develop water source which was then dedicated to the county. They spent approximately I'm told \$2.8 million developing a water source and subsequently dedicating those wells and facility to the county.

In exchange, the county was to set aside and provide upon request a fractional portion of the water

developed to the members of the joint venture and as

I'm sure you're aware, those fractional portions are set forth in the joint venture agreement.

It is clearly our position that while the document as referred to by this gentleman here that paragraph 10 does say that the joint venture ends on December 31st, 1999, the obligations that flow from the agreement do not end. And in fact, even since December 1999, the joint venture has continued to operate simply because it has not received the

benefits of the bargain as it related to the  
  
development of the water many, many years ago.

So it is our position that the joint venture  
  
has a legal right to the water and the allotment and  
  
upon request that water should be available to them.

I'm not sure whether there will be any action  
  
taken today. I just note that it is noted on the  
  
agenda, we weren't certain, and below that there is a  
  
reference to executive session. But I think the joint  
  
venture wanted to present this testimony to the board  
  
so that the board was aware of the position of the



joint venture as it related to the agreement, joint venture agreement, and the county's obligations under the agreement. Thank you very much. I'll be happy to respond to questions.

CHAIRPERSON HIRANAGA: Questions for Mr. Ing?

Yes, Ginny.

MS. PARSONS: Since the designation, Mr. Ing, have you had any conversations with the administration regarding the credits that may be owed or due, including the department itself?

MR. ING: I have not personally had

conversations with the department. I am, however, familiar with the MOU that it refers to earlier and I have seen that and read that. I was aware that it was being negotiated at the time.

Ever since and even prior to December 1999, the joint venture members, through their executive committee which is now chaired by Mr. Roy Figueroa, have worked and are trying to work with the county to resolve a few outstanding issues, namely the entitlement, if you will, of the amount of water that should be available to them pursuant to this

agreement. So there have been many discussions I know between members of the joint venture executive committee and the administration and prior administrations.

MS. PARSONS: Do you have a list or can a list be provided of the amount of credits that you've used around the different developments -- the joint venture has used in different developments and how they have been credited and do we have -- have you discussed the amount of credits that you think are due with your

books to their books or to the department's books so

that we can see where we are as far as owed credits?

I mean, it's obvious to me from the last

meetings that we had with the director that there are

credits out there. We probably -- that would be an

agreement we would all make that there are credits out

there, but how many and how are they derived as what's

left.

MR. ING: I don't know whether I can provide

you that information -- I know I can't do it today.

But as far as the credits are concerned, I know there

were enormous efforts during the time Mr. Craddick was here to determine the amount of water that was being drawn down by the various members of the joint venture from time to time.

And from the joint venture side, I don't believe they have meters that could calculate, but that the county had the meters and that there indeed were readings taken from time to time that would be able to educate us on exactly what was drawn down.

There were various discussions which led up to that MOU talking about the amount of water that should

be available or the total amount of credit that should  
be given to the joint venture. And that ranged  
somewhere in the eight to nine to ten million dollar  
-- 10 million gallon per day figure.

But as far as credits, other than that, I am  
personally not aware of it, but members of the joint  
venture executive committee may be and I'll be happy  
to get that information.

MS. PARSONS: Would you check with them --  
maybe what we should do is have an open meeting, a  
public open meeting that everybody could see what

development has used what, so we can see how the credits started and how they moved and how they have moved down and to where we are today and make this an open meeting instead of these closed door committee negotiations. Would you be willing to take that back and ask them if that's a possibility?

MR. ING: I could, but without discussing that with them, I could not respond to that because I don't know how they would choose to respond.

MS. PARSONS: That would seem to me like the

very best thing to do for the public to see what credits have used. And then we could find out from the department what they're using to evaluate the credits with, too, as well, because it seems to be the question that's up in the air.

MR. ING: Generally these kinds of records are subject to the Public Information Records Act so it would be -- it should be available to the public.

MS. PARSONS: Okay.

CHAIRPERSON HIRANAGA: Any other questions for

Mr. Ing?



MS. RAISBECK: Yes, thank you. Mr. Ing,

Jonathan Starr was a member of this board for a number of years and I believe he participated as a member of the committee or the team that conducted negotiations. And are you aware that he has said that no credits are owed the joint venture; in fact, they have half a million gallons more than they would be owed and there are unmet -- some members of the venture got more than their share and others got less. So are you aware of his position on this? He's certainly made it many times.

MR. ING: I'm sorry, I'm not aware of that -0-

his position on those issues. I did not directly participate in those negotiations.

MS. RAISBECK: He just came in. Yeah, if I could, I know there were extensive negotiations in executive sessions of committees that were not even posted, both before that April 13th, 2000 Memorandum of Understanding and afterwards. And in fact, there was one -- there is minutes on the Board of Water Supply website for one meeting of the negotiation committee held in September 2000, I believe, that

refers to two previous meetings on July 9th, I think,  
or June 9th or July 9th, and another one later, the  
24th.

Could we also get a list from the joint  
venture of all the meetings with the board -- any  
members of the board, and I believe Dorvin Leis was on  
the negotiating committee even when he wasn't a member  
of the board, of all the meetings that took place both  
before and after that attempted to settle this. And I  
believe there was also an attorney hired by the board

to conduct a meeting -- not to conduct a mediation, to present the board's side of an official mediation.

And I don't remember the name of the mediator. But we would also like to have the meetings -- when meetings took place about mediation and what the result of that mediation effort was. Could we get a list of meetings?

MR. ING: I will try. I do know that there was a mediator involved and typically the mediator would meet with one group and then with the other group. And whether that was the process that was

utilized for purposes of this negotiation, I'm not sure. I do know that there was a mediator involved, however, so there may be meetings that we were not aware of between the mediator and the county Board of Water Supply.

MS. RAISBECK: I think it would be very helpful to know the history of the negotiations which I believe were extremely extensive and expensive at the time.

MR. ING: I'll try to get that for you.

MS. RAISBECK: Thank you.

CHAIRPERSON HIRANAGA: Any other questions for

Mr. Ing? Thank you.

MAYOR ARAKAWA: I would just like to ask that

-- I get to be a member of the board -- of all the boards, as mayor. But I would just like to ask for clarification for everybody else, would like you to explain that this administration has not negotiated the joint venture issues at all since we've been in office. So please clarify that.

MR. ING: I'm not aware that this

administration has negotiated with the joint venture

with respect to what do you call it the allotment of  
the total credits.

I do know that there has been ongoing  
communication with the members of the Department of  
Water Supply on that issue.

MAYOR ARAKAWA: Thank you.

CHAIRPERSON HIRANAGA: Thank you, Mr. Ing.

Next testifier is Councilman Wayne Nishiki.

MR. NISHIKI: Before I start my testimony, I  
would just like to alert you that I've got two

testimonies. I think you have a July 28th legal memo directed to the Honorable Danny Mateo from your legal advisor, Ed Kushi. The cover letter is July 28th.

I'm also passing you out the Department of Water Supply, the new charter amendments. And then I want to testify on two items, the joint venture and also the Iao Aquifer.

I just feel that, number one, the area of the joint venture -- I'm just going to read from one document and maybe you can ask your legal attorney to give you some interpretation if after speaking to



Mr. McDougal -- Doug McDougal -- that was involved in the negotiation, if this condition was germane. And where I'm going to quote now is Condition 10, which says, "The term of this joint venture shall be until the joint venture has water sources adding to 19 million gallons additional water to the Board of Water Supply system in the Central Maui located in the study area and the Board of Water Supply has accepted the dedication of the water sources on or before December 31, 1999, whichever date occurs earlier." And then my understanding is once that date comes, then bang, it's

pau.

"Thank you for the opportunity to testify on  
the following item listed on today's meeting agenda:  
Central Maui Joint Venture - Legal Issues Regarding  
Joint Venture Agreement.

"I offer this testimony in my capacity as an  
individual Council member. As Chair of the Council's  
Planning and Land Use Committee, I have a particular  
interest in County water issues because of their  
relevance to the Council's deliberation on land use  
matters.

"May I request your consideration of the following. The Board of Water Supply is a critically important body. But it is important for everyone in county government to remember that the board's new role, pursuant to the Charter amendment approved by the electorate last fall, is advisory. Charter Section 8-11.2 states in part: "The Board of Water Supply shall act as advisor to the director of the Department of Water Supply, the mayor and the council. In all matters concerning the county's water system."

The Board no longer has the power to initiate legally effective rules establishing policy for the Department of Water Supply. The Department of Water Supply, like most county agencies, is now subject to the Council's legislative oversight.

"Because the Board of Water Supply lacks the authority to take any legally effective action on this agenda item today, I question the need to convene in executive session. Please note that the Sunshine Law mandates that executive session be strictly limited to deliberations that must occur in private, and that the

body seeking to convene in executive session shall  
make a finding in open session of the specific need  
for privacy. The usual presumption is that government  
business shall be conducted in the open. The  
justification for privacy in this instance is unclear.

"The Council has been repeatedly advised that  
the Central Maui Joint Venture agreement has expired.

If the Administration seeks to reconstitute the  
agreement, it must do so pursuant to Council policy."

And I'm glad to hear the mayor say today that  
he has not in any way dealt with the Central Maui

Joint Venture.

"May I respectfully seek the board's consideration in asking the Administration why this item has been placed on the meeting agenda today.

"Sincerely, Wayne Nishiki."

I want to ask you to turn to the July 28th legal opinion by Ed Kushi, Jr., if you have it in front of you. I can wait a while. And ask you to turn to page six. And the question asked of Mr. Kushi -- and unfortunately, or fortunately, the opinion is before you. And the question asked was, "Clarify

whether the council already has the authority to enact ordinances that would establish Department of Water Supply policy, or whether it must grant itself rule-making authority." And the answer that your legal and my legal advisor gives, "As the county's legislative body, the council has the authority and the power to enact ordinances "deemed necessary to protect health, life, and property and to preserve the order and security of the county and its inhabitants on any subject or matter."

"As of December 5, 2002, such legislative authority and power extends to matters relating to the management, control, operation, preservation and protection of the county water works and the establishment and adjustment of rates and charges for furnishing water."

And then he gives, for example, the council could amend the Maui County Code by adopting a new chapter or chapters relating to this management, control, operation, preservation, or protection of the county water works. This we have not done yet, as



Sally has stated.

I'm going to move on to the other subject matter that I have some concern with and it has to do with testimony regarding possible action regarding the designation of the Iao Aquifer.

"Thank you for the opportunity to testify on the following item listed on today's meeting agenda:  
  
Discussion and possible action regarding the designation of the Iao Aquifer.

"I offer this testimony again as an individual Council member. As Chair of the Council's Planning

and Land Use Committee, I have a particular interest in the County water issues because of their relevance to the Council's deliberations on land use matters.

"May I request your consideration of the following. The Board of Water Supply is a critically important body. But it is important for everyone in County government to remember that the board's new role pursuant to Charter amendment approved by the electorate last fall is advisory. Charter Section 8-11.2 starts in part, "The Board of Water Supply shall act as advisor to the director of the Department

of Water Supply, the mayor, and the council in all matters concerning the county water system." The board no longer has the power to initiate legally effective rules establishing policy for the Department of Water Supply. The Department of Water Supply, like most county agencies, is now subject to the Council's legislative oversight.

"The Director of Water Supply has the clear authority under the charter to manage the Department of Water Supply and the county's water system. But

his management authority -- like that of all  
government managers -- must be exercised in  
furtherance of duly enacted policy. However  
meritorious a particular management decision might  
otherwise be, if it is not in the furtherance of  
established policy, it is not proper or appropriate.  
The Council now has legislative policy-making  
authority over the Department of Water Supply. The  
Director's decisions must be consistent with  
Council-established policy.

"Effective July 21, 2003, the Commission on

Water Resources Management designated Iao Aquifer a state groundwater management area. In response, on July 29, 2003, the County of Maui Public Information Office issued a press release in which the Mayor announced that the Department of Water Supply had ceased issuing water meter reservations. There may be merit to this action. But there are serious questions as to whether appropriate procedures have been followed.

"Other than the press release" -- which I have put in the back of this release -- "there is

apparently no documentation of the director's action.

Therefore, it is unclear what action has actually taken place. Furthermore, there is no indication of the legal authority for the action. There has also been no communication to the Council. The press release pointedly avoided any reference to the Council, while contending that the county strategy would be developed in concert with the Board of Water Supply. Please also note that the Director's correspondence dated August 5, 2003, to the Board of Water Supply, does not acknowledge the action

referenced in the July 29th press release.

"Page 4 of the Director's August 5th

correspondence lists "Actions for Consideration."

There appears to be an assumption that the Board of

Water Supply still retains the authority to take

legally effective action. See, for example, the third

listed item, C, entitled, "Establish an Interim

Availability Policy and Allocation Pending Completion

of the Water Use and Development Plan." Any such

policies should actually be proposed to the Council"

-- and you should ask Mr. Kushi for this advice.

"I am concerned that the administration may be under the false impression that it can make water decisions without reference to any specific legal authority for those decisions. In apparent contradiction of the policy announced on July 29th press release, according to the Maui News article anyway, the Mayor has promised water to a developer. I am not aware of the supposed authority for such an action.

"My primary concern is that the county's water



system, an obviously precious public trust, be effectively managed. For that to happen, the Council's legislative prerogatives must be respected.

If the Director of Water Supply and the Mayor believe that certain action is necessary for which clear legal authority is lacking, may I respectfully suggest that they simply request the Council to enact an ordinance providing the necessary authority. I'm certain that other Council members" -- but you need to ask them -- "would join me in being swiftly willing to take prompt action to ensure that necessary policies are

considered and enacted."

Thank you for this time. And I will only answer questions that I feel I can understand and have any expertise in. I will not pretend to play your legal counsel. Any questions?

CHAIRPERSON HIRANAGA: Questions for Councilman Nishiki? Yes, Ginny.

MS. PARSONS: Thank you, because I agree with you, with exactly what you said.

CHAIRPERSON HIRANAGA: Can you speak up, please.

MS. PARSONS: I agree with what you said.

Thank you very much. I have one question for you, going back to the joint venture, that was something you were passionate about. And I know everybody keeps reading this December 1999 end date. And when I've read over this agreement, and I've read it over numerous times, I can't find where it ends the amounts due.

For instance, if I write a contract with my business with someone and I've installed their sun

room, they still owe me the balance of the amount when

I'm finished the completion, the installing of their

sun room, they still owe me the balance due. The

contract's over at that point because I've done my job

and I've installed it and they have their product, but

there are always -- there is always 10 percent at the

end of the contract that's due upon completion. Now,

that's kind of what I look at, and I can't find in

here anywhere -- and if you've seen it -- where it

says that the credits don't continue on. I can

understand, you know, some of the issues in here might

be over at a certain point, but we've carried on negotiations for some reason and it seems to me it must have something to do with the credits.

MR. NISHIKI: As I stated, you need to look at this contract. You need to ask Mr. Kushi or Mr. McDougal. And it was mentioned earlier in testimony from Sally that one of your ex-board members was involved in those negotiations via Mr. McDougal. And so I cannot give you that expertise, that legal authority.

The only thing that I can read from, and I ask

you to go read from Condition 10. And I think it is pretty clear here that it says, you know, when December 1st, 1999 comes about, that is the cut-off date and you know what, it's all over and let's move on.

So, I'm sure that being that the big boy from Sable today, Mr. Ing, is here and Roy Figueroa is here, they want to try to move you people into, you know, opening up this. And I would ask that you ask Mr. Kushi there, and again I think Alan will have a big part, and this Council, you know, you want to

raise the casket again and that's fine, but, you know, I don't work for them, so thank God that, you know, I can say what I say today to you. I hope that you people also work for, you know, whatever has come out. And sometimes people don't want to accept that. And I can understand, you know. Because whatever was told to them by the administration, I have no idea. But obviously it's not acceptable. That's all I can say.

Any other questions?

CHAIRPERSON HIRANAGA: Any other questions?

Sally.

MS. RAISBECK: Wayne, I understand your concern about there has not yet been a clear definition acceptable to all parties of what now under the new system is the prerogative of the mayor, what now is the prerogative of the Council. And certainly this board is not going to be the one to decide that.

I had thought before I came, before I knew there were going to be so many high powered people here today, I had thought of asking the board to -- when we give advice, we can give advice to and direct



it to the mayor, the council, the director, all at one time, and if it's advice that advances the welfare of the community, then it's up to you guys to duke it out about who has the legal authority to do things.

But the way I see it is this board has to worry about the real substantive issues about do we have enough water, where are we going to get the water, and who's going to get the limited amount of water. So if we issued advice that simply said to the mayor, the council, and the director, this is what we think ought to be done, do you think that is something

this board could do?

MR. NISHIKI: Ask Junior. He's the one that issues the legal opinion. I'm serious. You know, Junior is on the seat today -- which is good. I mean, that's your legal opinion. I don't want to inject anything that is nonsense. That's really being honest. And you know, as I said, I don't know if you should even have the ability to go into executive session today. I think ask everything in open session.

MS. RAISBECK: Thank you.

CHAIRPERSON HIRANAGA: Any further questions?

Thank you.

Mr. Dale Parsons.

MR. PARSONS: Thank you, Mr. Chair and board members. I'm here today because I maintain that the designation of the Iao Aquifer was not inevitable. I believe it came about because of mismanagement that has occurred since the turnover of the Department of Water Supply to the current administration. Soon after David Craddick left the department, measures he

initiated to properly balance the levels of water used from the aquifer were apparently ignored.

Designation is here. And there are many of us out here who believe that it's not a mere coincidence the key players in this administration have supported designation for a number of years. Now they're trying to make it look like they have the situation under control and the bottom line is they just have no plan. They have had plenty of time to come up with a plan to keep us out of designation. They knew eight months ago that there was a problem. But either through

incompetence or a pre-meditated act, they ignored the problem.

Early on, the administration told the council to keep their hands off the water department, that they were in control. But they really did nothing.

And now they want to scramble for ways to clean up the mess, like using surface water. It may sound reasonable, but all we can add to the system immediately is about a million and a half gallons a day and any more will require expensive new treatment plans that will probably need environmental impact

statements and maybe even the use of surface water may require the addition of those chemicals that we have Upcountry right now.

Another of their ideas is desalinization plants, but these are energy inefficient, costly, and many, many years in the future, if ever. Something needs to be done now.

If the administration was truly interested in supplying water for its citizens and if allowing designation was not an act of deliberate indifference to stop further development, they would already be

acting upon the numerous proposals from local  
developers.

The quickest and most efficient way to add  
water is for private developers to dig new wells  
outside of the Iao Aquifer and dedicate them to the  
county. Developers have been making or trying to make  
offers to dig these wells since early this year, but  
the proposals have fallen on deaf ears. Private wells  
approved by the state and dedicated to the county can  
quickly increase the flow of water into the central

valley and relieve the pressure on the aquifer. And

why haven't the offers been considered? Well, your

guess is as good as mine. But remember this, making

the calls are administration highers up that see our

water woes as a way to stop building on the island

and it's apparent they're ignorant of the consequences

of using water as their trump card. It's dangerous

for our economy, it's dangerous for the welfare of our

systems, and based on state law it just might be

illegal and lead to expensive and needless lawsuits

against the county.



I leave with you one final thought. If this was a private company and it lost control of one of its most valuable assets, managers at the highest level of the company would be fired. Saying "I didn't realize this was going to happen" or blaming it on the previous management are not justifiable excuses for not doing your job. Mahalo.

CHAIRPERSON HIRANAGA: Questions for

Mr. Parsons? Thank you.

Next testifier is Lucienne deNaie.

MS. DeNAIE: I too have a little background

information here.

Aloha, everyone, Chairman Hiranaga, and members of the board. This is quite a historic meeting here. It seems we're covering a lot of ground.

Well, what I'm passing around to you is the history of the Central Maui Aquifer. And I thought you might benefit. The large packet contains some excerpts from the environmental impact statement that was accepted in 1975 and it's a massive sort of thing and there weren't a lot of environmental impact

statements done in those early days, but this one was very thorough, some people put some time into it. It covered only the transmission pipeline, did not cover the wells. And what I have passed out to you are a series of comments that were offered by the University of Hawaii Environmental Center. They are the top four pages or so. And there only about five or six folks that submitted comments about this plan that had anything of any real substance to say. The Environmental Center was among them, Life of the Land,

which challenged the EIS, was among them, and the Army Corps of Engineers. But the Army Corps and the Environmental Center both made one point that was very strong, they said you know, this doesn't really talk about any of the stream sources here or the groundwater sources here or the effect on any streams -- and actually Fish and Wildlife said the same thing -- and, you know, we're wondering about that, and by the way there are a number of other things that really you should address.

One of the main points that was made by the

Environmental Center was that, gee, it appears that if you are going to need X amount of water by the year 2000, that you're really not going to reasonably have that amount of water with this plan and that maybe you should reconsider how your community plans are promising hookups to folks because that could maybe save the day.

The director of the water department at that time, a Mr. Muriyama, wrote an extremely thoughtful supply, which is also included in your packet, and really looked at all of the points that were made.

And I just feel that you folks, as dedicated members of the water board, would benefit from seeing that the questions that you're dealing with today were all raised 27 years ago. And this is one of my points. These are not new questions. We are grappling with the same sense of what do we do with our water supply.

For your information, there were moratoriums in 1979 and 1982. In 1973 until 1975, the county had to go and beg Wailuku Agribusiness for water from Shaft 33, which it now uses as a water source, because there just wasn't water available. So for those who

feel that this is something that's just, you know,  
happened on someone's watch and boy, isn't it  
terrible, I think that the more considered conclusion  
is this is a problem we've needed to really get a  
comprehensive solution to for a long time and I feel  
that we're actually stumbling in that direction right  
now, but we need more information about more sources.

I heard reference on the previous speaker  
about the fastest way to get water is to work through  
private development. This could have some merit. It

does so happen that there are two private wells immediately outside the Iao Aquifer that each have a million gallon a day capacity. They belong to Maui Lani and they have been tested, they have good potable water. It is possible that we need to spread our pumping by looking at sources that are already on line and do not even have to go through the process of drilling new wells. But investigations need to be made, information needs to be out here.

One of the things I passed out to you is from this little booklet. An excellent conference was held



in 1986. This is all kind of on the theme of maybe we don't need to reinvent the wheel. Everybody on Maui who was interested in Maui participated in it. It was sponsored by the Chamber of Commerce, Maui Pacific Institute, Maui Economic Development Board, and Maui Electric. And the one page that I excerpted is from a consultant who actually helped work on this EIS. He worked -- he was supplied with a company called CH2M Hill, his name is Robert Chuck. And he had worked for the State Department of Water and Land Use before that and done extensive surveys of water in the Maui area.

And I think it will give you a little perspective to read his summary. He's talking about the area of Oahu that was eventually designated as a water management area, the first water management area in the state, and why that designation was needed. And for those who feel that designation means that we will have no more growth, I have to point out that Oahu was the first area designated and I think most of us realize it has grown quite a bit since 1987. It was first declared a Special Management Area under laws before the State Water Code in '79 and then officially

designated in '87 when the State Water Code was implemented. Obviously there has been very sufficient growth there to fuel an economy, but there has been a very different management approach. They are having water problems because they didn't take the advice that was offered by Mr. Chuck, which is conservation, conservation, conservation.

Conservation is not just encouraging people to turn off their taps. Conservation is using nonpotable water for nonpotable sources, is limiting your use of

potable water to where it's really needed, and many of those suggestions were also made in this report at the end by a very knowledgeable consultant.

At any rate, to just skip along here, I know we're all short on time, I want to make a couple of key points. One is that the amount of water that is available from a source is something that is still being studied in terms of our aquifers. I noticed in the staff report -- which was very excellent, I thought that the staff did a very good job of trying to put together some understandable facts and figures

so that the board would be prepared to make decisions and give the advice that really in all true nature is needed. We don't expect the mayor to pour over documents about water. He is, I'm sure, interested in hearing what you folks do in your research and come up with working with the staff of the Board of Water Supply.

But one of the things that we need to look at is when we assign a sustainable yield, we need to see how that is based. I notice that for the Waihee Aquifer that we're still referring to the 8 MGD

sustainable yield. Now, we do hope that some day we have a wellfield that takes advantage of that and I know the department is working towards that, but some of you were not at the meeting about a year and a half ago when Mr. John Mink stated very clearly and he states also in the EIS for the Haiku wells in the final edition, that as we are pumping right now with the wells that we currently have drilled by the Department of Water Supply, our sustainable yield should be no more than 4 MGD from Waihee. If we do expand outward past Malahia, then we will have to see

if there is a additional capacity of significant  
another 4 MGD. But there is very few wells in that  
area right now and to tell you the truth, I have had  
private discussions with private well owners there  
that say that when they pump their wells which are in  
the Malahia subdivision, they're private wells, at a  
more significant level, that they notice rising  
chlorides. So we really need the information that's  
going to come with our head and shoulders model. I  
think that that is going to be very, very valuable.

The second point I would like to make is about the Central Maui Joint Venture agreement. And I happened to be present at the meeting where the Memorandum of Understanding with A&B was signed and I and a number of other people really wanted to testify to exactly that provision and we were not allowed to testify. We were told we could testify after the agreement was signed. That being signed, that seemed a very important procedure, most of us had concerns that although there was not specific language that water was owed, there was an illusion to the fact that



it was. And this is something that does not seem imminently verifiable. I look back in the records and it seemed in 1994 the Department of Water Supply was asked to prepare a report on exactly what Board Member Parsons requested: The amount of hookups that were actually out at that time. They promised a report within six months. Well, it's almost 2004 and we're still guessing a little bit, but that does need to be resolved. At the Board of Water Supply meeting in 2001 where this was discussed, Director Craddick brought up that because of the different sizes of the

meters and no one quite knew if a 5/8ths-inch meter was reserved and maybe a 1/8th meter was given out, that it was a little hard to pinpoint.

But my point is that it appears to me in reading the contract that what these folks actually funded -- and that might be a more significant pursuit of our time -- was three wells. The little chart on the top of your packet shows the county well system. You'll see there is about 13 sources there. And the three wells that the joint venture funded are the wells that are labeled the Waihee wells, 1, 2 and 3.

My understanding was that by reading the EIS, it was recommended that a whole field of wells be stretched across the Iao Aquifer between the existing Waiehu Terrace wells and the Waihee River, which is the boundary of the aquifer area. For whatever reason, that didn't happen and instead three wells were installed very near each other. Because of that, the chlorides levels on one of those wells is very high and so only two of them are used.

So what I would like this board to consider in

its deliberations is actually this \$2 million or \$2.8 million dollars that was put forward by the joint venture partnership funded not the whole county water system. It funded these three wells. And you may need to look and see if they did expect to get the 19 million gallons out of these three wells, I don't think that that was realistic. The capacity of those wells when they went on line was expected to be 13 million gallons, and it proved to be maybe around 8.

So I think we may be looking at a situation where everyone took a gamble and it didn't pay off.

And whether or not anyone is owed --

CHAIRPERSON HIRANAGA: Ms. DeNaie, could you  
please wrap up?

MS. DeNAIE: I'm wrapping up. Depends on  
whether or not that gamble is seen to be guaranteed or  
not. I did not know that the language in the contract  
that guaranteed a specific amount. And so I would  
advise your attorney to consider that. Thank you very  
much.

CHAIRPERSON HIRANAGA: Questions for  
Ms. DeNaie? Yes, Sally.

MS. RAISBECK: Lucienne, you're doing a report on a study that former Mayor Apana commissioned, I believe, you're doing a study of all the [inaudible] in all aquifers; is that correct?

MS. DeNAIE: Yes, there is a report being prepared which just collates information from a wide variety, about 30 different documents, about water that is being used out of different aquifers, water that was historically used, water that -- estimates of water availability from a variety of sources, information like that.

Q. Are you aware of any amounts from the -- that are being pumped from the private wells in the part of the North Waihee aquifer that the county has not -- does not have any -- I mean the Mendes well and the Kent Smith wells, do you have any numbers on what is being pumped from them?

A. I do. I have exact numbers. Mendes does not report, but the folks at the Malahia subdivision do. It's very likely they pump about 20 thousand gallons a day. And there are also some wells along the river

mouth there, the Moreno wells, and Mr. Moreno has applied for some new wells.

CHAIRPERSON HIRANAGA: Excuse me. Ginny?

We'll lose quorum if you walk out.

MS. DeNAIE: There is a small amount of pumping that is going on in that section, but it's not heavy pumping, in answer to your question.

CHAIRPERSON HIRANAGA: Any other questions?

Thank you.

Next testifier is John Varel.

MR. VAREL: Thank you. My name is John Varel.



Thank you, board, chairperson, mayor. My reason for being here is as a private citizen, I bought a thousand acres behind Waihee, a large parcel of the macadamia nut farm that Wailuku Ag used to farm. I and my neighbor have about 1550 acres there under agricultural production and we would like to keep it that way. We can't and have not been granted any water and don't feel appropriate to ask the county for ag water, although we have under the circumstances sitting on top of the Waihee aquifer, we know what the repercussions might be, whether it's a large amount or

a small amount.

However, in the acquisition, I was told by the president of Wailuku Ag that water was not a problem for the county nor for ourselves as individual farmers, we have a mere 50 million gallons crossing my property daily that should be no problem for future expansion and development as well as agricultural need. However, I don't see any of that going into the aquifers except those two ditches that I've witnessed it running right into the ocean, excess water.

I have a kuleana ditch that borders my

property that takes care of the dear taro farmers, but God forbid any other farmer tap into that line, even though it's on my land.

The Spreckels ditch and Waihee ditch continue to flow water, continue to erode, and none of that water is going back into the aquifers down below. And so I believe that surface water is a major issue here or is going to be because if there is 50 million gallons being channeled through those two ditches, I can only assume it's coming from the surface, not from

the aquifer below. God forbid it's being pumped up to  
be surface and then run through those ditches. We are  
wasting a lot of water on this island. I still do  
believe we are.

Having said that, those two ditches are I  
think an endless source of water that need to be  
addressed and the forest reserve on which my property  
borders and the back end of Waihee Valley, the river  
running there, is water source that I have on my  
property.

If we're going to have surface water as -- and

I believe as an old farmer, now a businessman with four successful businesses on the Mainland, there has to be a balance between all of this. One aquifer is not separated from another by some mysterious hidden wall under the ground, and nor does the surface water, the 50 million purported gallons that cross my property, if they were allowed to be back in to the streams of which they have been deferred for many, many years, I would think that common sense would tell us that some of that, if not all of that, would, one, either help the agricultural needs, and number two, go

into the aquifers to replenish those. At this point,  
  
none of it is, to my knowledge.

As an agricultural farmer trying to -- I have  
  
no source of water at that point, no means by which to  
  
feed the 1500 acres that I am now managing and  
  
operating and picking mac nuts on.

I would encourage the board to remember that  
  
we're not all developers on this island and that we do  
  
need some of that water for agricultural purposes,  
  
riparian or a channelling of the ditch water already  
  
that's been channeled by somebody else. So I would

encourage the board to remember those of us.

Every other parcel in Waihee is either in escrow or has been sold to a developer. If you want -- I would like to see personally that more of our land stay in the agricultural, the beauty and the reason that people come to this fine island, and that we not have it all one subdivision backed up to another one, so that there has to be some balance, remembering the farmer, remembering the needs that we so adroitly need and care for, as well as the balance

of what the citizens of Maui need. And I think both  
  
of them can be gotten from surface water in  
  
combination with what we need to do in drilling.

Thank you. Questions?

CHAIRPERSON HIRANAGA: Questions for

Mr. Varel?

MR. HASHIMOTO: You have no available water  
  
for the 1500 acres that you bought?

MR. VAREL: No, sir.

MR. HASHIMOTO: Is that what you're saying?

MR. VAREL: We can go into negotiation with



Wailuku Ag, but we have chosen not to. And we have,  
but the pricing would have been better for us to buy  
through the county. So we've elected not to at this  
point.

CHAIRPERSON HIRANAGA: Ginny.

MS. PARSONS: So when you brought your  
property, was the water withheld from you by Wailuku  
Ag?

MR. VAREL: No water was sold with the land.

MS. PARSONS: Well, they can't withhold. I  
mean, if you read McBryde and Lapoone, that can't

happen.

MR. VAREL: We understand and we're taking action -- we are moving forward on several steps, including a well site that I sold to the Central Maui group and now -- I didn't realize that the contract was -- had ended in '99, so we have a well site that has also been sold to a group that wasn't even in existence at the time I sold it to them. So I understand. But it's a bigger issue. I have the state -- I think -- I do not in any way, shape, or form believe that we as a private citizen should be

the claws in the cat fight between the state and the county and 50 million gallons of water flowing across our land. That's not my point or issue here.

Yes, could we have negotiated. I don't know of any others that have negotiated without it being a separate contract. I know of none that I know of.

MS. PARSONS: I understand. But if it is an issue -- are you asking that the county take a look at this issue that the water was withheld from your property?

MR. VAREL: No, I'm not looking for personal assistance in my legal matter. I'm more concerned as a private citizen that the riparian water rights, the surface water rights are there for all of us, not a select few, or not those that can afford to buy it.

MS. PARSONS: Absolutely.

MR. VAREL: Period. That was my only comment.

CHAIRPERSON HIRANAGA: Any other questions?

Next testifier is Jonathan Starr.

(Brief recess.)

CHAIRPERSON HIRANAGA: I would like to call

the meeting back to order. Next testifier is Jonathan Starr.

MR. STARR: Good afternoon. My name is Jonathan Starr. I'm here as a private citizen and as a customer of your fine product, though I see it's in short supply today. The water shortage meets the water board.

Anyway, I would like to begin by, first of all, complimenting the mayor and his administration as well as Director Tengan, and by association the board, for finally creating this discussion. And I don't

think this is a matter that anyone is really happy to have the realization that there are serious water issues and shortages. But I think that it's years overdue in having this discussion and having all these players in one room and being able to talk about Central Maui water. And I think that the designation issue, that was inevitable. I think that by stopping -- issuing reservations, I think that that's for the first time a recognition of the problem. And until you recognize a problem, you can't deal with it.

So I think that really we should all look at

the bright side that for now there is the opportunity to create some solutions. And frankly, I envy you guys who are on the board who are in a position to use your wisdom and help to guide the policies here.

There certainly are problems. There are certainly solutions, too. And I think that it's a time for surface water to start to enter the Central Maui system. Though it's a little bit more complicated than it seems, I do think that a deal should be struck with Brewer and those entities, but I

think that ultimately to make that work the county will probably have to follow the practice of eminent domain because there are quite a number of different people, different entities that believe they own that water. Brewer and Wailuku Ag and other -- the other companies that preceded it, have been selling those water rights for at least 80 years that I'm aware of and there are all kinds of contracts out there that may be illegal, but people believe that they have bought that water and own it and just by having control of the forest and control of the ditches may



not be enough because people will still believe that they own that water and that may or may not be the case. But eminent domain will certainly -- is certainly one way to divorce rights that are not legal from the process.

I recently was house shopping in the Wailuku-Waihee area and I looked at three different properties that were on the ditches. And all three of them, one of the selling points was this has rights to ditch water. And the previous people have been watering, you know, their acre or two-acre or

half-acre of orchids or papayas or whatever they were growing there with water from the ditches. And you have a right, if you buy this, to that water. And in all three cases I said can you show me documentation and they said well, we'll work on getting them. And I doubt such stuff exists, but still, many people believe that they exist. So that will create an issue. Whether they actually own that issue or not, if people believe it, the county is going to have to deal with it before it can be diverted into treatment plants and used. And also, some of that water should

go back to stream restoration.

Now, probably a quicker fix would be something that we discussed on the board a couple of years ago and that would be to, first of all, tie the upcountry and central systems together, which would immediately end any problems with a drought affecting one system and not the other. It would suddenly make the upcountry system as adequate as the central system. It would also get rid of -- enable operationally to deal with the lead and copper problem in a more

effective way because by mixing groundwater in with the surface water going upcountry and taking some surface water down, it would be able to dilute the acidity upcountry and keep that to where the orthophosphate -- phosphoric acid or anything else need not be added.

It would operationally save a lot of money because water likes to flow downhill. When it's really wet, water is very plentiful in the ditch system and not much of it is getting used upcountry. At those times water could be put through Memcor

microfiltration units and put into the central system and the central system would be more than adequate with that. And then in dry periods when the ditch gets cut back, then the wells could be cycled a lot harder because they have been pumping less when there is a lot of water coming through the ditch system.

One of the previous testifiers mentioned the Memorandum of Understanding with A&B. And my -- the thing that I recall most about that was that the county regained an additional 4 MGD of water at Kamole Weir when which is unused from EMI. And so there is 4

MGD of unused water at Kamole Weir that can be used most of the time, not all the time when the ditch is dry, but most of the time that water can be used. It would be a relatively easy thing to do to build -- put in some Memcor units at Kamole Weir and then put that water into the central system. And since that water is already the county's by agreement, that could be done relatively easily. So I request that those options be looked at. And tying the two systems together I think would alleviate a lot of operational concerns.

North Waihee is not the immediate answer. And

I was very surprised to read in the material published for this meeting that there was more water available currently for North Waihee. Now, the only -- the southern portion of North Waihee aquifer has been developed. The northern portion, I know that there are plans to eventually drill some wells up there, but they're years away from functionality. On top of that, the only research that's been done there, the only memo I've ever seen regarding that is in the

staff report to the Water Commission in 1997 when they were discussing designation at that time. And the Water Commission staff, in consultation with USGS hydrogeologists, said that they don't expect to get more than half a million gallons per well north of there because of the subsurface conditions. So the southern half of North Waihee, which is where we have wells now, we're currently pumping in excess of 6 MGD. The 12-month moving average is I think four and a half MGD. And I would like to read to you from the only water planning document that's been accepted by the



water board that discusses Central Maui sources for the last 10 years, and this is the Final Supplemental Environmental Impact Statement for the East Maui water development plan that was accepted by this board last September and it was prepared by John Mink of Mink & Yuen and it talks about different sources for Central Maui. And I would like to read from page 69 of this FSEIM plan. This is item 12.1.3, "Source: North Waihee. Status: The average allowable yield of 4 MGD is for the region between Waihee Valley and Makamakole Valley. It should not be exceeded even when the Kupaa

well is added to the system. Currently about 4 MGD is sent to the Central Maui system from four North Waihee wells -- North Waihee 1 and 2 and Kanoa 1 and 2.

Another well, Kupaa, is not yet connected to the network. Total allowable average yield when all wells are on line will be approximately 4 MGD, potential yield. An average production of 4 MGD from the North Waihee aquifer between Waihee Stream and Makamakaole will be fully developed. Constraints: No more than 4 MGD can be expected from the North Waihee project, although the entire North Waihee aquifer system, which

extends from Waihee Valley to Kahakaloa, has a sustainable yield of 8 MGD."

Now, those are the strongest words in this entire document. And Mr. Mink, who has been the geologist for the county for 30 years or so, is mincing no -- he's not mincing words when he says that 4 MGD is the most we should be taking out of there. However, right now we're taking six. So there is not another two to take from there, folks. And we should realize this and be willing to admit that. And I

think that now this is being discussed, perhaps we can head toward a solution. But the solution is not in North Waihee. We know that.

Just a couple of words regarding the Central Maui Source Joint Venture. I'm the only person in the room who participated in those negotiations on the side of the water board and the county and I'll be happy to serve as a resource if this issue does come up again. And I don't think it should come up again.

I think that where it was left was that there was certainly a feeling on the part of the negotiating

team that no water was owed and that there was not going -- there was no merit that we would be sued by the joint venturers. And there is quite a number of reasons for this, I'll be happy to explain them at length at any point. But just, you know, one or two brief things is that the joint venture agreement talked about the Drilled Wells Protocol which was an additional document. And that Drilled Wells Protocol, which was the basis for the joint venture water production well plan, was not followed. The joint venture did not do what they said they were supposed

to do. They were supposed to go in and drill a set of two wells, starting in the location where they did drill wells, and then go half a mile and drill another two and another half a mile and drill another two. So at each of those sites they were going to drill one well that was a production well and one well that was a back-up well. And that is the way you're supposed to go about developing water.

And unfortunately, at that time the sustainable yield expectations of Iao Aquifer and Waihee were reduced and there were other arguments I

understand within the joint venture about whatever.

So instead of drilling these two wells here and then

half a mile another two and so on, they drilled the

first two and later added a third to that same

location. And where at that location there was only

supposed to be one production well working, they

drilled three wells and then they came in and claimed

that because the wells, two 4-million gallon and one

5-million gallon pump capacity wells, totaled 13, that

they were owed 13 million gallons a day. And that's

bogus. I mean, in reality, they should only get --  
they should have only gotten production from one well,  
but, you know, it's -- to give them the benefit of the  
doubt, in all the calculations they were given the  
production of two wells which when rated for peaking  
factors turns out to be less than 6 MGD.

It also -- on another basis, those wells have  
never produced an average of more than 5.5 million  
gallons a day in any given year. Last year it was  
about 5.4 MGD was the 12-month moving average of their  
production. And the utilization so far by joint



venture has been close to 6 MGD. So they have received more water in meters than they actually provided. When I've heard it said that --

CHAIRPERSON HIRANAGA: Can you complete your --

MR. STARR: I'll conclude quickly, yes. I've heard it said that they both built a pipeline, so something is owed to them. That's not true. The transmission line agreement is a completely separate agreement. They put money forward and built a large pipeline that fed Kihei and Wailea. They were paid

back every penny for that pipeline. And by 10 years ago, they had been paid back in full. So they should not be using the fact that they built the pipeline as an issue.

Anyway, I hope that this issue was dead, it should stay dead, it's been dead for a while, and hopefully it will never come alive again. And if it does come alive, I'll certainly be happy to be here and plead the people's case. Good luck to you guys and solve our water problems. Aloha.

CHAIRPERSON HIRANAGA: Any questions for

Jonathan? Yes, Ginny.

MS. PARSONS: Jonathan, when you were referring to the Waihee well and you said we were pumping 4 million, did you see the spreadsheet, the weekly spreadsheet that took us up to designation where we were pumping over 6?

MR. STARR: Yeah.

MS. PARSONS: And the week before that, it was almost 6, it was 58.94. And the week before that, it was 48.84. I mean, what you're saying, I'm agreeing

with what you're saying, but we were way over it at the time of designation.

MR. STARR: Well, yes, we were over that. But the 12-month moving average, which I would have to say should be the arbiter --

MS. PARSONS: It was six something.

MR. STARR: Well, I think --

MS. PARSONS: At the time of designation, it was 6.

MR. STARR: Okay. Yeah, it's certainly exceeding 4. And whether 4 should be the real number,

I'm not sure. The real number should be 3.6 because you should rate the sustainable yield by a little to give some head space and provide some water for private users. But in any case, we're certainly well over 4, so we can't allocate more water from that source and I think we're in agreement there.

MS. PARSONS: I see. And this was for the mayor as well, I had a real problem with the idea that we were going to be giving out more water when we don't have enough to deal with in Waihee and this is the point that he's making, I just want to make sure

you understood, we were at six something when we designated. And we don't know right now what it's going to be coming up in the future. And if we had a drought, we have nothing left either, so.

MR. STARR: I agree with that. I own a lot of property in Central Maui, I'm a developer, and I certainly don't want to -- I certainly would like to see meters be able to be issued because I'm going to need some myself. But when we don't have the water, I think that we have to do what has to be done and it's going to be difficult for all of us.

CHAIRPERSON HIRANAGA: Thank you, Jonathan.

Is there anyone else who wishes to provide public  
testimony at this time?

MS. ANDERSON: My name is Michelle Anderson,  
I'm executive assistant to Council Member Wayne  
Nishiki. I'm speaking on my own behalf.

I'm sorry, I'm not prepared to testify. I  
just -- from what I've heard, I feel compelled to say  
a few words. And one is that nobody owns the water in  
the state of Hawaii. The water is a public resource.

It's owned by the public. And it's managed through a public trust by the state for the people.

Wailuku Agriculture does not have water to sell. They don't own the water. The water was for their use for their agricultural purposes, which no longer exists.

The correct way to allocate the water is under the State Water Code, there is a provision for instream flow standards and that's how the water should be reallocated, not through private sale to the county. And I think the Supreme Court decision in the



Waiahole-Waikane case reaffirms that. And I do know that the State Land Use Commission follows that Supreme Court decision in their deliberations on district boundary amendments and any petitions that come before them. And I would hope that the county would also start following that decision. Thank you.

CHAIRPERSON HIRANAGA: Questions? Thank you.

MR. SHEPHERD: My name is Glen Shepherd. I have nothing particular to reveal, but I point out and appeal to you people that there be no executive sessions. This is a public trust. All people should

be privy to all the information, whether it's good,  
bad, or indifferent, and we should know what's going  
on, especially when it's considered that people  
involved in previous deliberations and agreements,  
that now we are in a more critical position, then by  
golly we should know about it. Thank you.

CHAIRPERSON HIRANAGA: Any questions for

Mr. Shepherd? Anyone else wishes to provide  
testimony?

At this time I would like to call upon Mayor  
Arakawa.

MAYOR ARAKAWA: Thank you very much. What we were going to do, we were going to be part of the administration proposal, so we would have some discussion with you while the water department is making presentations. There are a lot of things that we need to discuss.

Now, contrary to popular opinion, we need to inform you of a lot of things that we've been researching so that we can do the evaluation based on some facts and not just, you know, all these things

that have been floating as rumors. So we're going to be trying today to inform you of a lot of the things that we've been gathering.

Also, if our lawyers insist on an executive session, the reason for it they will make clear, but some of these things we need to negotiate and if we're going to be doing negotiations we don't want to be able to run afoul of what our lawyers' advice is.

But the basic purpose for us being here today is to be able to try and now give you the information that we've been researching for the last four months.

As the mayor, I feel that if we're going to be discussing, we need to have the best information that's possible. We don't fly off the handle with half truths and innuendos and be able to make assumptions based on smoke and mirrors. And hopefully after the discussion today, you'll have a lot better understanding of what we're looking at from the water perspective. But I'll make a presentation as part of the water department.

CHAIRPERSON HIRANAGA: Okay. Thank you.

George, do you have a presentation now?

MS. KRAFTSOW: As you I'm sure are all aware,  
we're discussing the Central Maui system which is the  
blue area.

This is a breakdown from the 2002 annual  
report. You can see that even though the north area  
has the most surfaces, the south area uses the most  
water. And this breakdown between aqua, green, and  
pink also equates to the community plan regions that  
are served by that system.

These are our Central Maui sources. There is  
also the Iao treatment plant which is now shown here

because it would be right on top of Wailuku shaft.

We're currently at present using on the order of

24.447 MGD. That includes ground and surface water.

As you know, the Iao Aquifer was recently designated. The criteria for designation listed here are in your handouts, but just to make them easier to see, I've done it this way. Whether an increase in water use or authorized plan use may cause the maximum withdrawal from the groundwater management area to exceed -- the maximum rate of withdrawal, which is the

sustainable yield.

Number two, whether there is an actual or threatened water quality degradation as determined by the Department of Health.

Number three, whether regulation is necessary to preserve diminishing groundwater supply for future needs as evidenced by excessively declining groundwater levels.

Number four, whether the rates times spacial patterns or depths of existing withdrawals of groundwater are endangering the stability for optimum



development of the groundwater body due to upconing of  
  
saltwater.

Whether the chlorides content of existing  
  
wells are increasing to levels which may materially  
  
reduce the value of their existing use.

Whether excessive preventable waste of water  
  
is occurring.

Whether serious disputes respecting the use of  
  
groundwater resources are occurring.

And whether water development projects that  
  
have received federal, state, or county approval may

result in the opinion of the commission in any one of  
the above conditions.

Designation proceedings are not new. They  
have been ongoing since 1986. The most recent  
designation proceedings were decided in November of  
2002. And in that decision, the commission set four  
triggers for designation: Two for Iao, one for  
Waihee, one was a milestone trigger that would affect  
both.

For Iao, they determined that they would  
designate if pumpage exceeded 90 percent of

sustainable yield or 18 million gallons, or if the midpoint of the transition zone at the Waiehu Deep Monitor Well rose above 680 feet.

For Waihee, they decided that Waihee Aquifer would be designated if the MAV of the water level at Kanoa test hole dropped below 6 feet. Using their initial benchmark -- I just had a phone call after this was sent out to you, in the staff report it says it's at 7.24 feet. The most recent MAV according to the phone call was at 7.25 feet, so that's good news.

It appears that Waihee Aquifer is holding up fine.

And the milestone for both aquifers was to get a

contract going for a numerical model for the Iao and

Waihee systems within 60 days of the November 20th

decision, which was met.

As you're aware, based on those triggers we

exceeded 18 MGD on a MAV basis in June of 2003 and so

that's why we were designated.

So what happens now is that all existing users

have one year to apply for existing use. Each

application must demonstrate that seven criteria can

be met. Essentially that it can be accommodated, that it's reasonable and beneficial, and so on. I won't go into them because you have it in your handout.

This is a lengthy process. Most small domestic users are exempted. We'll also have to submit a shortage plan and the State Water Commission may or may not find our existing Iao shortage plan adequate for this purpose.

There were, as of the November findings of fact, 48 wells, tunnels and observation wells in the Iao Aquifer shown here. Since that time, an

additional 4, using a total of about 160,000 gallons, were approved. At the time of the findings, non-DWS pumpage from the aquifer was about 400,000 gallons a day. So that would make about 560,000 in non-DWS pumpage. All of those wells and users will have to apply within one year for existing use permits.

We use about 10 existing wells in one tunnel in the Iao Aquifer, and in addition two new wells are proposed or in progress actually for the purposes of distribution and withdrawal. But since we can apply for these by wellfield, we'll probably be able to

submit for just five to seven "existing water use" applications, depending upon the strategy of what's the best way to go.

In the meantime, because of redundancy standards, you can see that we have quite a bit more installed capacity than what the regulations allow us to use. And even so, the roughly 46 million gallons a day in installed capacity is less than we need by standards.

So looking at what we can really use, this is

getting to the point of water reservations. We assume 90 percent of the Iao sustainable yield which is 18 million gallons, 90 percent of Waihee which is 7.2 million gallons. The Iao Tunnel, which is shown here as 1.2 MGD; the median flow is actually 1.4, but the mean flow minus one standard deviation is 1.25, so we didn't count it as any more than 1.2. And the Iao treatment plant we assumed 0.6. Now, that plant actually has a higher capacity, it's more than 1.2. But the agreement that we have to use the water from that ditch stipulates that we won't withdraw any more



than 300,000 gallons when ditch flow condition are quite low. So we rounded that down to be conservative and come up with a total of about 27 million gallons total available capacity on that system, accounting for all regulations.

Now, compared to that, here is what we're using, this is the June 30th numbers. I got the July numbers today, but I don't have them in this presentation. Iao was over ninety percent at 18.63.

In the report I got today, it's come back down under 18 in Iao. We were using 4.536 in Waihee. Iao

Tunnel, that's just -- it's just whatever flows. So we had been getting -- we've been pretty lucky, getting 1.359. And the Iao treatment plant, our MAV was 0.489. So our total moving average withdrawals were about 24.447.

In addition, water meter reservations received prior to the date of designation totaled about 565,000 gallons per day as shown here. So then the total in use of reserved is the bottom number there, 25.012.

So now we get to calculating remaining water capacity. And this is why we stopped giving out

reservations. With 27 million gallons available in total and 25.012 used, the remaining supply theoretically would be about 1.98, almost 2 million.

We did a tally and I should say that all of these numbers are still estimates -- we're still not 100 percent comfortable with them, but we looked at all the subdivisions pending, and that totalled about 1.953 MGD if they were all built out. Some of those move much more slowly than others.

Now, some of those -- a subtotal which I have

in a different color there because it's still part of  
the 1.953, have bonded their improvements, which means  
they made an agreement and they have put down a bond  
and they have started to build. And then there are  
some others that are no longer on the pending list but  
we know they're not completely built and that was  
about another .143. So depending whether you subtract  
bonded and pending or whether you subtract  
subdivisions, all subdivisions, we came up with a  
range of -0.108 to 0.035 to 1.122 million gallons  
remaining available, which meant that there was no way

that we could guarantee that somebody who took a reservation today and might expect to receive service two years from now could necessarily be guaranteed that water. And so we made a recommendation to stop accepting water meter reservations.

In addition, there are discretionary approvals in which people come to the planning department and request approval of a project district or change in zoning for a proposed project or an SMA or those kinds of projects and we have a total water use represented by these of about 8.47 MGD, of which about 3.76 were

told that they might have to develop their own source.

Now, that's Central Maui and this is South Maui. Those projects can take 20 years to build out or they can come much more quickly. So they may not be asking for water during the immediate time frame of concern, but we like to track them anyway.

Looking at just the demand trends, they indicate consumption roughly in the range of 29 or 30 by the year 2020, and 34 or 35 by the year 2030. Now, that's a smaller range than we would use for the Water Use & Development Plan, but that's just to give you a

ballpark figure.

So you can see how things are changing. The map on the left is the old land use and you can see all the mac nut and cane in there. And then on the right you see the proposed projects in virtually the same areas. So looking at that, we have to consider what we're going to do about it. I should also mention that if we were to build out the community plan, if it were to be built out it would represent more than 60 million gallons per day of use.

MS. RAISBECK: I didn't hear that number.

MS. KRAFTSOW: If the community plan were to be built out, it would represent more than 60 million gallons a day of water use. That's including all three Central Maui community plan areas.

So we've been preparing -- we have a table of options that we've been preparing. Different people are working on different projects. There are several source options on the table to meet our source needs and we've been looking at the yield and time frame and costs and impacts of those and we'll be doing more of



that. Many of these have already been discussed and raised today. I'm not going to go into this too much more.

But I wanted to -- before I get into what our best options are, I just wanted to back step a little bit. I know this is a kind of a rap you've heard before about the mountains and the forest and everything, but it does affect our source choices, so I just want to backtrack and say that as you probably already know, despite that the fact that Hawaii is in the middle of the ocean, it's actually in a fairly

arid area with rainfall in the open ocean only 25 to 30 inches per year, and yet Puu Kukui receives an average of 355 inches per year. And the reason that Hawaii is so water rich is what happens when the wind converges on the mountains. The northeasterly trade winds gain moisture and warmth as they flow across the ocean. They reach the islands and they are deflected upslope, cooling as they rise and causing the moisture to condense. And meanwhile, high elevation cool winds traveling from the northeast also subside towards the ocean surface and that subsiding air blocks the rise

of the trades up the mountains and that creates a thing known as the trade inversion, which is a layer of warmer air between 4,800 and 7,000 feet. So when the moisture laden air rises up the mountains and is held down by the inversion layer, this convergence leads to the condensation and release of moisture which would just go run off if it weren't for the forests which collect and store the water and provide abundant surface area to help capture the water.

And all of that results in a precipitation

pattern that looks like this. You can see the blue and purple areas have the highest rainfall. And now I get back to source.

It will come as no surprise then that if you look at an aquifer map of the island, the richest aquifers are on the northeast side, by and large, 48,96, 48,31. You can see that we eventually -- that's where the water is in terms of groundwater and that's also, as you can see by the ditch patterns that were built years and years ago, that that's where the surface water -- the most surface water is to be

found. So these patterns will dictate where we go for  
  
new source.

One more thing before coming back to new  
  
development options, I'm not going to go into much  
  
into conservation today, but that is very much a part  
  
of our plan. This graph estimates half a million  
  
gallons per day saved out of the Central system with  
  
existing conservation measures, not counting reclaimed  
  
water use which is another 4 or 5 million gallons a  
  
day, I think. These are based on average estimates  
  
for fixture counts that we've given out.

More compelling is the reduction in unaccounted for water that's been achieved from measures such as automated metering and detection and repair and preventative maintenance. And this is based on a data set that our consultant claimed to make sure that the pumpage and the billing actually were reflecting the same exact period instead of offset by as much as four months.

Okay. With all that said now, here are our major source development options. The Iao tank site well and Waikapu well are only for distribution of

withdrawals to improve the pattern of withdrawals from within Iao Aquifer, which is something that the State Water Commission does want us to do.

In terms of groundwater development, the Camp Maluhia well -- well, the Kupaa wells will be done soon and the Camp Maluhia well will bring us into the northern half of that aquifer and then subsequently the Waiolai and Waiolena wells. It would also be possible to have another well such as a private developer developing a well in the north half of the

aquifer. To bring East Maui water over, we are stalled on that, but I think we might be able to bring Hamakuapoko water soon.

Desalinization is an option that is also being discussed, or temporary use of existing wells. I think Lucienne brought up that possibility that's been on the table, too.

And then surface water development. We could develop new surface water, put in an intake, or we could develop high level water that is -- that is currently distributed to runoff and not groundwater.



Or we could take water from the existing ditch systems.

Now, I want to go in a little bit further to why we are seriously looking at surface water. The left column of this slide shows the sustainable yield for the nearest aquifers that we could use to serve this system of groundwater. The right column reduces the sustainable yields to 90 percent. And the far right reduces the two on the east even further. The reason that I did that is because John Mink in the 1990 State Water Resources Protection Plan said that

the sustainable yield estimates for the Paia and Haiku aquifers were pre-irrigation estimates and he suggested in the Water Resources Protection Plan -- in the text of that plan that a more conservative estimate for use until a better water budget is achieved would be 4 million and 15 million respectively. So just to be cautious, I reduced that. And you can see that at 90 percent of sustainable yield or less, if that were to occur, with an anticipated community plan buildout of over 60 million gallons, sooner or later we're going to need some

surface water.

I should stress that even though all these numbers are estimates, they're clear enough that they point a direction.

Desalinization of brackish aquifers could help, but in the brackish aquifers that we have the for the most part quantities wouldn't be high enough to solve a problem like this. Ocean water could be desalinated in quantities like this. I think that that is being investigated by the mayor's office.

This is a schematic of a portion of our Central Maui system with the costs of serving water in different elevations and areas showing. And I don't actually unfortunately have on here the main thing I wanted to show which is the cost of the Iao treatment plant because at the time this was put together, we didn't have a year of data there. But I can tell you the costs of some other similar plants, the cost of the Lahainaluna area, the Lahaina treatment plant, which is the same kind of treatment plant for fresh water, is 51 cents per thousand gallons. And

Upcountry it runs from \$1.43 to \$1.71, but that's

because part of the pumping up is included in that.

So it looks like if you consider the costs and ease of use and the quantities that we need, it does all point to the need for surface water. And the use of already developed ditch water, if we can obtain it, is also likely to have less environmental impact than the development of any kind of new source, be it groundwater, surface water, or desalinization with its brine disposal issues.

So despite environmental challenges and the

fact that environmental challenges exist to all of these issues, that seems like a good option from that perspective, too.

So now the question is can we get the ditch water and if so, where can we get it. This slide shows our systems. I don't know if it's showing up. The aqua, the very, very light aqua we can kind of see, are the ditches, and the dark blue is our Central Maui pipelines. So you can see that it would be feasible from an engineering perspective to get water from either the Waihee ditch systems or the Koolau

ditch systems.

From USGS report -- one of the USGS reports estimates that there were nine small ditches in the Waihee area, but only six are still in use. The Spreckels and Waihee ditch are the two major ones and they divert an average of about 40 MGD from the Waihee River and from tunnels that are driven into the valley walls above the streams. About 6 million comes from the Waiehu stream, two forks, and then the Nanania and Waikapu ditch carry another 18. The [inaudible] ditch

is no longer in service. And Everett ditch, I don't know if that's in service or not, but it used to carry something like 3.

This is from the 1990 State Water Resources Protection Plan, also estimates a total of about somewhere between 55 and 65 MGD, depending on how much flow in Spreckels came down from Waihee. And more recently, Wailuku Agribusiness reported average flows of 63.24 MGD in its entire water collection system. And this data comes from a report prepared for the Wailuku Sugar Company in 1978 and it evaluates 23



years of continuous data from 1955 to 1977. And

average, total average flows are estimated at 59.88.

But on one of the sources that they list there is the

Wailuku pump, so taking that out it estimates at

48.12. So we're looking at a total flow through those

ditches on the order of 50 or 60 million gallons.

And from the east side, the total flows are

about 164 million gallons. So both of those have the

quantity we need and probably would be cost effective

and less environmentally damaging to use than any of

the other options, which is why we're seriously

considering surface water.

And at this point I'll stop and just take any board input. Thank you.

MAYOR ARAKAWA: If you're not going to break, again, what we wanted to do is present some of the numbers we've been able to dig up in order to present you a more accurate description of what is happening with the water situation.

But as you can tell, and I don't think this is something that's a secret to anybody in our community that's been here for any period of time, we are

running into trouble by taking water exclusively out of the Iao aquifer system the way we're doing it and some of the ditch systems. So the numbers that we're working with are very restricted.

Now, whether it happened today, tomorrow, or next year, we're going to run into a problem. And it's time that we also looked at what the lead times are in order to be able to get some of the corrections because no matter what anybody else may think, you can't make the corrections overnight. We can't just

say we want a new treatment plant, plop it down today.

Those concerns are that have been raised that it takes time to be able to plan all these things, locate a site, try to work with it, those are real.

The water department has to be able to produce water to our community in a consistent manner without endangering the community.

Now, yes, we do have some capacity that has not been already allocated as meters, which is why we're still granting meters. What we did was we took a conservative approach and we said we're not

accepting reservations. Now, by not accepting reservations, what we are doing -- and I think we can use some real life examples. Let's say, for instance, that one of you wanted to build a house and you went to the bank and you secured a mortgage for that new house on the assumption that you were going to be able to get a water meter. And you spent the time and energy to create that house. And then when it came down to move into it, you were told you were not getting a water meter. Would that be fair? Would any of these large developers -- or small developers for

that matter -- who approach their banks, their funding sources on the assurance that they are going to be able to get water meters as part of that package, go through all this problem, secure the loan, start doing all the research, getting everything done, and then when it came time you had those buildings up there in time to sell them and you couldn't give them the meters that they thought they were going to have, what kind of financial damage would we be doing? That's why we're not accepting the reservations because we don't want to project an assurance that we cannot

fulfill.

If we have the water available, we are still issuing the meters. But we're not going to project out what we cannot fulfill. And we've already reached that point.

Now, if we're looking at being real about what the reservations are that are already out there, we look at what's happening with all the demand that's occurring right now, and then we start looking at what is it that the community's needs truly are. Can we

continue building a lot of houses? Yes. Is there a demand for the high-end houses? They're selling, there must be a demand. Are we taking care of our local community, people that live in our community? Are they the ones getting into the \$400,000, \$600,000 plus houses that are being constructed? I dare say not too many of my friends are getting into the \$400,000 and \$600,000 plus houses. Not the ones that are working in the hotels, working in the stores, working in the businesses around us. So we really need to start looking at how we're going to be



allocating the water and our resources to be able to  
take care of the needs of this community.

Is there a demand? Absolutely. If we were to  
build another extra thousand units a year, could we  
sell them? Absolutely. But is it our charge to take  
care of our community? I think that's something that  
we need to look at.

So we wanted to present a real picture of what  
we're doing. Now, in looking at the sources that are  
available -- let's take the aquifer water because  
that's what we're doing right now. Even if we expend

a lot of money and dig a whole new series of wells,  
what is it that we're going to be able to get back in  
return for the amount of expenditure? How many  
millions of gallons can we expect by drilling more  
wells in an aquifer that we're already challenging.  
The expectation is not going to be very great for the  
return. So when we are looking at this, we're going,  
you know, we're already -- even if Iao -- we can  
spread out the yield, we can get a million here or a  
million there by spreading this out. We still will be  
stressing the same aquifer or putting a lot of expense

into an area that we know is already challenged. The same is true at Waihee or North Waihee.

Again, we can develop a little bit more. The science of developing water and utilizing our aquifer is not an exact science. There are many things that we don't understand about the -- what is happening with that water underground. We can't see it, we can't feel it, we can't grab it. But if the salinity rises, we threaten our entire community water resource, would that have been good management? And

would we be responsible? I think not.

So again, what we need to do is we need to start looking to other resources that we can get to be able to get to where we need as providing the water for our community.

We can look at desalinization. Why? Because that's water that's really available. Could we require new developers that want to come in with big projects to do their own desalinization if they want to? We could do that as a policy, could run that through the council, create a policy to do that. But

we wanted to know what the real numbers were when we start looking at. And I believe Jacky is doing research on that, we're trying to come out with a very real number which we can look at. But we're probably looking at somewhere between two and three dollars to be able to produce that water and that's very expensive versus the 50 cents that we're working with right now. So there is a lot of extra costs that would be involved in doing that and the maintenance of the ongoing cost of running that plant would also have to be added in there.

Looking at the stream water, what is available, you heard the presentation, there is approximately 50 million gallons of stream water in the Wailuku area if you're using the numbers that we got from Mr. Chumley from Wailuku Agribusiness and those numbers were presented to a number of different boards, including our administration. So we're looking at those numbers.

Is that something that we can and should use as a resource? Again, I believe that that's an area that we can and we should be exploring, that's why

we're doing this.

Now, I believe George also passed out as part of your packets a lot of information we got from the state. Now, as you start going through that information that is there from the state, you're going to be going over a lot of information that up to this point has been kind of nebulous, not very clearly defined. And you're going to find that there are state laws that apply when we go into designation and we don't do designation. And I believe you should

study what those rules actually are and we'll have time to look at that a little bit later. But we can't get into this and try to make good decisions unless you can understand what those rules are. It's taken us almost four months to be able to put these packages together so that we have an understanding of what's going on, what rules apply.

Now, in dealing with water that is surface water, the rules are different than dealing with water that is aquifer water. So don't confuse the two, they are two very distinct different water sources with



very distinct rules. The rules that apply to designation versus non-designation also should be very clear, you should understand that very clearly. And you should ask our corporation counsel. And part of that material you have explains the difference between what designation does and what non-designation does, both surface and subsurface. Because there are some very interesting rules and law that apply. If you understand the laws, you'll see the logic behind designation and non-designation.

Now, the designation occurred and there is not

much I can do about it. But looking at and understanding those rules will give you a very clear indication of the different laws that apply.

I am not quite sure how much detail we can get into in open session and I'm sure that Ed will tell me if I'm overstepping bounds when we start talking about what water resource and what we can do to try and get water. I will tell you that up until now, what we have tried to do with Wailuku Agribusiness, we have asked them to wait until we could study it to get the laws before us that we understand what those laws are

before we even started negotiations or start talking about water rights and how to be able to deal with working out the grievance of water rights.

This is why I wanted to be very clear that we have not been negotiating at this point because I don't want to negotiate from a position of ignorance in which I would have been if I didn't understand those rules. And because we are charged with being responsible for the community, it's our job to understand what it is that we're dealing with. The

community may not have the time or may not have the ability to research all these things, but we have to.

So I apologize to you because I have asked our water director to be very careful as to what information he's been releasing and what he's been committing to or saying until we have all the information that we can get to the best of our ability into one package to present to you today.

So some of you have been requesting information and going to the water department and trying to dig for information. And just be very clear

that under my directive, I didn't want the water department to be giving you half informations, half truth, until we could get a real good grip on what's actually there.

So those of you that have been trying to pry information out of the water department and found it very difficult, that's my fault. Because again, I don't want anybody to take this issue that is a very hot public issue that will affect our entire community and start passing around misinformation. There is too much of that already been passed around without us

contributing to it. Okay.

So I know some of you are a little bit mad at the department, but don't be mad at George or anybody else in the department. That was a decision that I made. All of you know how I operate, I like to work with best information and I don't like to deceive the public even with half truths. So that's why we're at where we're at today.

We are coming to you to be able to discuss these issues that you have in your packet. Contrary to popular opinion, your opinion is very important.

You are an advisory board and we will be presenting you with a lot of the information, but we could not ask for your advice unless we could present you with enough information to give us advice.

So in dealing with the supply that we have right now in the Iao Aquifer, you've heard that, when you start getting into discussion about the joint venture, we'll be having much deeper discussion. And on that I'm not sure what corporation counsel is going to allow me to speak to in public or not. So I'm just

broaching that very gently right now.

In dealing with other agreements that we have

-- and again, part of the problem was trying to get to

the facts. How much water do we actually have

committed? What organization did we owe water to

through prior commitments? What are the laws that

apply? When you talk about the Memorandum of

Understanding, to what does that commit the county to?

Did we have representatives that were making

commitments for us in a legitimate manner, and was

that going to be binding on all of us? I mean, we had



to really understand what was happening. So we'll present some of that to you a little bit later and again I'm going to defer to corporation counsel to make sure that I don't overstep.

But these things need to be resolved. I think everybody, especially this board, needs to understand what the real rules are, what the legal ramifications are, because indeed there are legal ramifications and there are laws that, you know, if someone within the department is making a commitment for us, they are a legal entity, an extension of county government. And

there are legal ramifications if they're making commitments even though they may not -- or should not have made those commitments. So we have to look at what those realities are and what we're working with.

I will tell you that since I've gotten involved in this, I've been very careful and one of the things that we will discuss later is I have not from my administration acknowledged any kind of agreement with the joint venture to this point. We know that there were discussions beforehand. We know that there were commitments beforehand. But our

administration has not made any commitments nor are we  
acknowledging that there is a commitment or a  
responsibility for us at this point.

After we have the discussions with corporation  
counsel and with you, then we'll get into some of the  
particulars about that. So contrary to popular  
opinion, not everyone acknowledges that we owe them  
credits because we are not acknowledging that  
officially or even unofficially. That's something  
that we will discuss and we will decide on. And once

we have that -- those agreements and those discussions, we'll also take this to the County Council because they are a partner with us as well.

So I know there are a lot of questions that were asked this morning. Many of those are answerable in the documentation that you have before you. Are there any questions? I know I'm speaking very generically.

CHAIRPERSON HIRANAGA: Ginny.

MS. PARSONS: Mayor, when did you -- when exactly did you know we were going to have to

designate? When did you know that you were going to have to give the aquifer to the state?

MAYOR ARAKAWA: When I heard about it from someone who reported that it happened in the newspaper. I was in San Francisco. And I read -- somebody called me up and said that Iao Aquifer was designated while I was in San Francisco. I did not know until after the Iao Aquifer was designated that it was going to be designated.

Now, I have known for years that we've been talking about designation. But the actual

designation, to answer your question as honestly as I can, I did not find out until after it had been reported in the newspaper.

MS. PARSONS: But you just said that you've been working on this for four months.

MAYOR ARAKAWA: Yes, we have. I put together information, trying to put together information and trying to narrow it down what is real and what is not. Now, understand this is the four month -- this is a moving average --

MS. PARSONS: This is a conflict here, Alan.

You're telling me that -- you just stated on the record earlier that for four months you've been trying to find out who we owed credits to.

MAYOR ARAKAWA: That's right.

MS. PARSONS: Right. Well, why would you even be looking for that information if designation wasn't an issue?

MAYOR ARAKAWA: No --

MS. PARSONS: That you knew about.

MAYOR ARAKAWA: No, you asked me when did I

find out about the designation.

MS. PARSONS: I asked you when exactly you  
knew about the designation.

MAYOR ARAKAWA: I've known about designation  
since I got on the County Council 10 years ago.

MS. PARSONS: No, no, I'm talking about the  
eminent designation. I'm not talking about --

MAYOR ARAKAWA: The eminent designation I  
found out when I was in San Francisco and I heard  
about it because somebody called me and told me about  
it.



MS. PARSONS: But you were gathering this information that you had George put in a packet for us that deals with designation, for four months?

MAYOR ARAKAWA: We've been putting together what are the real facts and what is the data? What is the joint venture agreements, what agreements are they? The memorandum of understandings, what are out there? How much water do we really owe? How much water is there really in the aquifers? We've been doing -- we've been working on getting some of this research --

MS. PARSONS: Who is "we"? And the board wasn't included in this and none of the board members that I know about have been included in this who have the history. Who is "we"?

MAYOR ARAKAWA: "We" is our administration. I've got people in our administration looking for this information, trying to put together a packet so we can deal with this.

MS. PARSONS: Don't you think it would have been prudent to come before the board and ask for some of the board members for some history to help you and

it would have expedited the information that you needed? I mean, you took a waste of time with administration whose jobs are paid for with public funds when you could have immediately accessed this through the department or through the board members.

MAYOR ARAKAWA: Ginny, please understand, I've been dealing with this issue as the Planning Chair of the Council, as the Land Use Chair of the Council, for years. This is not something that I'm coming into this January. We had this issue as far as water

researched out by a member of my staff when I was the Council Land Use Chair. The ability to get the information that we need is one of the reasons why we have a new water director.

Now, to be able to understand what is there, what are the real laws, and what are the real agreements that are there, first you've got to get there. And in order to be able to talk to the state about what the rules are, first of all you've got to get the state to be able to sit down and really define them. That has been challenging at best.

Now, if you say it's so easy to do and this is something that could have been resolved very easily that all this information was there, then I challenge you and I ask you why wasn't it done 5, 10 years ago. The fact of the matter is it's very difficult to get good information and put it all in one place and that is what we have been doing.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Welcome, Alan.

MAYOR ARAKAWA: Yes, Sally.

MS. PARSONS: Let me just say that I am so

glad that the voters decided to put water under the  
mayor and the council because this kind of exposure of  
the issues is what we have needed for years as we  
adopted this course that took us head on into a lack  
of water and consequent designation. So I'm very  
grateful that you and the council together now have  
the responsibility to take care of our water problems.

And I personally, I can't speak for the rest  
of the board since we haven't discussed this, I  
personally feel you did the right thing in saying that  
we're not going to take water reservations because

it's like writing checks on a bank account which doesn't have any funds in it or doesn't have enough funds to cover them. It verges on fraud to promise water to people that isn't there. So I applaud you for saying no more water reservations.

I think we also need to look very carefully and I will ask you -- George has said in the material he gave us, Ellen has said in her display, that North Waihee has 7.2 MGD available. It doesn't. Do you agree that North Waihee right now has 7.2 MGD that we

can keep drawing in perpetuity, or is it really 3.6,  
  
which changes the whole sum of what is available.

MAYOR ARAKAWA: In looking at what North  
  
Waihee can do, we could add more capacity by drilling  
  
more wells that we don't currently have. Part of our  
  
discussion has been how much do we really have  
  
available and at what point do we jeopardize what's  
  
there. All I can work on is what numbers the state is  
  
willing to allow us to draw.

Now, whether that is safe or not, at this  
  
point it's hard for me to say because I am not the



scientist that's making that determination. All I can work from is what the state allows us to work with and what our water department says is the acceptable levels.

I have my doubts -- and again I prefaced a little bit earlier, I have my doubts that we're going to be able to get a whole lot more water even by drilling more wells in North Waihee or elsewhere because we're talking about any kind of reasonable quantities, which is why I'm looking at the surface water.

Yes, we can get more. I think that it's --

this is my personal opinion -- that we're at the point

where it's getting dangerously iffy and we are

chancing things because we are trying to pretend that

a real issue does not exist because we don't want to

damage or potentially damage our construction

industry. We're in a boom right now where as many

units as can be put on the market are being sold.

It's like, you know, selling pancakes for breakfast.

So there is a huge push right now to continue that

trend. The reality is if we continue that trend much

longer, we may be in a position where we endanger everyone.

Now, I don't want to see the housing market stop. I don't want the damage to our economy. But it must be balanced off as to what is safe for our community. And again, if we close our eyes and we pretend nothing is going wrong, as we have all this time when we had 70 percent of what the aquifer could perform, 80 percent of what the aquifer could perform -- how many meetings, how many times have we met on

designation of the Iao Aquifer with the state? This is not a new issue. We talked about designation for years and years and the state has deferred designation for years. Finally last year they put in a stipulation once you hit 90 percent, it's automatic because that was only way to get around the politics. And that's my opinion as well. Because nobody had the political will to try and say this is a real problem that must be addressed with real solutions.

Now, these solutions are not rocket science.

These solutions have been discussed before by many

people. Using surface water is not a new concept.

And indeed we have work agreements enough to get

surface water, as has been stated earlier today.

But, we are in a position right now because we have not stayed ahead of the curve. And we need to get back in to perspective as to what we will provide and we can provide and hopefully we can resolve this issue very quickly and allow things to take a safer, more sane course.

MS. RAISBECK: I agree with most of what you've said and I certainly agree with a push to look

into getting surface water to supply Central Maui.

The question remains to me, what is available now just

like what is in my bank account right now. And even

though I think I may get a thousand dollars by the

15th or something, if I write a check on what I don't

have --

MAYOR ARAKAWA: By our best guess, Ellen

produced what she believes is available now. We have

about 2 million gallons left, a little over 2 million

gallons that is available that according to the

statistics that we have, okay, that's the best guess

that I have to this point.

Now, the other available water is surface water. We have statistics that show that surface water is there. The challenge is to get it from the streams into the pipes to be able to alleviate this.

Now, do we need 50 million gallons of surface water tomorrow? No, what we do need is enough to be able to take us out of the situation where we're jeopardizing the aquifer until we can develop a strategy and until we can develop plans to get more

available resources or set a direction in this community as to where we want to go with the plans of the community.

MS. PARSONS: I am very specifically challenging that 7.2 MGD, which would be 90 percent of what the state has said the entire aquifer might provide -- not does provide, but might provide. I am specifically challenging that and saying that is not water we have. And if we give out meters on the expectation that we're going to get 2 million gallons a day from North Waihee, I think we are writing checks



on a bank account and we are defrauding somebody.

MAYOR ARAKAWA: Again, I'm working on the best information I get from our water department and our water experts. We can debate how much actually is there, we can over the numbers, we can ask the water department to be more complete in how they're coming to their information, and that's part of the purview of this board and this discussion. So I'm not going to sit here and try to defend a number. We can ask Ellen --

MS. PARSONS: The bottom line, it was a number

I'm [inaudible].

MS. KRAFTSOW: The reason that I used 7.2 is I was looking at the aquifer -- the state's set sustainable yield is 8. And Mink did recommend that we should take only 4 million gallons from each half of that aquifer. But it was a recommendation, didn't become a regulation, and it was a long-term regulation. Mink, if you speak to him, certainly recognizes that as you're developing water, you drill a well and you put in your line to the next well and then you go out a little further and you drill a well,

and it takes a while to get to that point. It's  
harder to just go -- I don't know, say if you put a  
well every couple miles, to all of a sudden go 10  
miles with your transmission, the cost/benefit of that  
for your customers is very hard. And Mink realized  
that it would take a few years to get all the way up  
there. And the state is okay with that, too, right  
now.

So it's not that -- you're right, in the long  
term we don't want to be taking over 4. But until we

can get there with our CIP projects, everybody

involved recognizes that that would be the case.

MS. PARSONS: Well, to me you might equally

well say that there is 40 million gallons a day in

Honokohau and we take 90 percent of that and say we've

got, you know, 36 million gallons a day from Honokohau

-- we don't have it. We don't have it now. So that

how can we give out meters now based on water that we

do not have?

MS. KRAFTSOW: I guess we recommended that we

stop giving out reservations, but --

MS. PARSONS: Meters, too.

MS. KRAFTSOW: But the entire aquifer system does have a yield of 8. So as for the long term of the aquifer, you're right. But in the interim, you're not going to be pumping down the aquifer if you complete your capital program -- or at least the state has never expressed any concern that we would. I mean certainly we discussed it with them.

MS. PARSONS: Excuse me, I have another question for Ellen, separate question. May I or does somebody else.

CHAIRPERSON HIRANAGA: I'm going to call for a  
  
short recess, ten minutes.

(Brief recess.)

CHAIRPERSON HIRANAGA: I would like to call  
  
the session back to order.

Mike, you were going to ask a question.

MR. NOBRIGA: I got a question, Mr. Chairman.  
  
Could Ellen or somebody tell this group what year was  
  
the Iao Aquifer sustainable yield changed to its  
  
current level?

MS. KRAFTSOW: I don't remember. I'm sorry.

MR. NOBRIGA: That's kind of critical as we're  
going forward.

MS. KRAFTSOW: I think it was Mink that  
suggested that -- the 1990 plan already had it at 20.  
Is Herb K. still here?

MR. NOBRIGA: Do you know, Mr. Mayor?

MAYOR ARAKAWA: I'm not sure exactly. I don't  
know if it was before I got on the council.

MR. NOBRIGA: It was 1976 or '78 when the Iao  
Aquifer -- the Iao Aquifer was first seriously under

production, pursuant to the letter from Mr. Muriyama.

There was a much higher estimation of sustainable

yield. It was in the hundreds of millions of gallons

per day. Or something like that. I don't remember.

MAYOR ARAKAWA: I think it was 30 --

MR. NOBRIGA: I know it was higher than 20.

So what's -- what kind of facts would we have to say

that the rest of the island aquifer yield would be as

given?

MAYOR ARAKAWA: You really have best guess of

what numbers are produced by the state, just as we do,



until we can do test wells and really examine what it is, which is part of the reason why we still have to continue with those studies to drill a test wells and be able to sample and try to verify. Until then, it's a guess.

A lot of the numbers that were given, people made assumptions. Now, when you go back and you start looking at your joint venture agreement, part of that agreement states that there would be 19 million gallons of new water produced. Now, when they agreed to that, I'm sure they were expecting that, you know,

there would be 30, 40 million gallons a day that's available. So the numbers that were actually contracted for are much higher than they have ever been able to produce.

MR. NOBRIGA: So what I'm hearing here today is that you're recommending that we discuss the viability of going forward with watershed protection with purchase of lands previously or currently owned by C. Brewer.

MAYOR ARAKAWA: Not necessarily, but we will be discussing that as part of the discussion.

MR. NOBRIGA: Okay.

MAYOR ARAKAWA: You know, you have the state -- the state -- we had a meeting with the state and some of the things that the attorney general -- state attorney general produced for us in front of you. And I'm going to have corporation counsel give some explanations as to the law that's available for us to consider.

MS. LOVELL: Good afternoon, I'm Jane Lovell,

I am a deputy corporation counsel. I don't know

specifically what issues most concern you, but I am prepared to discuss, if it would be helpful to you, the practical things that happen after designation. I can walk you through the differences between the surface water designation versus a groundwater designation. Or if it would be helpful, I'm also prepared to discuss in general the issue of who owns the water and some of the Hawaiian -- the development of water law in Hawaii.

But I recognize that we're getting later in the day, so if any of that would be useful to you, I'm

here, I'm prepared to be of assistance.

MR. NOBRIGA: So what I want to know what we asked you to discuss. What are we being asked to discuss and come to an answer for? Because I haven't heard anything yet today this afternoon where you needed us to answer a question.

MS. LOVELL: I think that's more of a political question than a legal question and I think that that question perhaps can best be answered --

All right. There are two different statutes in water code that determine when an area is

designated as a water management area. What we have in the Iao system for the Iao Aquifer is a groundwater designation. And there are a number of triggers which we went over earlier in the presentation. And we hit one of those triggers which was established in a decision of the water board or the State Water Commission last November and there were a number of triggers that were set forth and one of those triggers was met in July. And that was why the designation was automatic at that point and that was -- that particular trigger was exceeding 90 percent of the

aquifer's sustainable yield, or 18 million gallons.

And that's based on the 12-month moving average.

The ability to designate an area as a surface water designation area are different. Instead of a large number of criteria such as there are for groundwater management, there are really only three criteria for designating surface water areas. One has to do with regulation being necessary to preserve diminishing surface water supply for future needs.

Another is if there is stream pollution or an ability

for streams to carry pollution away. And the third, and most interesting I think because of the vague way in which it's worded, is that serious disputes respecting use of surface water resources are occurring. So the state can designate an area as a surface water designated area if there are serious disputes respecting the use of surface water. That is something that's kind of unique to the surface water area.

Following -- if somebody alleged that there was a serious dispute, then what would happen next



would be public hearings, investigations, findings of fact and conclusions of law, and so forth. It could be a fairly long and complicated process. And I think this board has seen that process in work in the groundwater area.

If there were surface water designation, it would be a similar process, but the trigger would be different. The trigger would merely need to be if there was serious dispute. Yes.

MR. OKAMURA: I think the bottom line in having the Iao Aquifer designated, if we were to

involve any kind of penalties or fines per se, but just is that how would -- let's say this county does not abide by the -- the county just has to abide, right? Like the State Water Commission is the final authority in regards to the use of the water from now on.

MS. LOVELL: Well, what happens is that all the existing users have to apply for a permit, including the Department of Water Supply. And as Ellen has explained, the Department of Water Supply is by far the largest user of the water from the Iao

Aquifer. So the department will apply for a permit,  
as will other people who are using wells in the  
aquifer. Then the State Water Commission gets those  
permit applications and presumably acts on them within  
90 days.

There is also a period of time involved in  
which people can protest or object or whatever. It  
can go to a contested case hearing if there are  
objections or disputes. That process can take a great  
deal of time.

But basically once the Department of Water Supply applies for a permit, the State Water Commission will grant to the department a certain allotment. And if there were no problem with supply, then everybody who applied for a permit would just get as much as they asked for. But since we know that there is a problem with supply, there has to be an allocation.

It's our expectation that we would get an allocation of roughly what we've been using, or 18 million gallons. That could be wrong. The State

Water Commission could lower that number if in its best judgment -- but we will ask for what we have been using. We assume other users will also ask for the amount that they have been using. And since the Department of Water Supply is the largest user and because the water code -- the water code contemplates that for domestic users, for business, for homes and that sort of thing, that the county water department will do sub allocations, and basically there will be no huge change. We will apply for a permit, we will get an allocation, and then it's up to the water

department to decide how that water then will be used  
by the end users, namely homes and business.

MR. OKAMURA: And if the county goes over the  
amount, let's say 18 million gallons, what happens  
then?

MS. LOVELL: There is provisions in the water  
code that allow the State Water Commission to revoke  
permits if they are violated. So theoretically if the  
department used too much water, more than it was  
allocated, the permit could be revoked or changed.

There are no provisions that I'm aware of for

criminal penalties or large fines or anything of that nature. Basically the idea is you get a permit for a certain amount of water, you have to stay within that, and if you don't, you risk losing your permit.

MAYOR ARAKAWA: Okay. So to make a long story short, at this point what it is is the county has been working with the State Water Commission for some number of years in avoiding designation and avoiding designation set these criteria by which we will follow no to avoid designation. And we've triggered one of

those, so we're in designation. So the threat of designation is no longer something that we have to follow all those criteria for.

What happens now is there is an amount of water in the aquifer. We put in an application for a certain amount of water. The state will consider how much water they will give us and then we will be asked to manage that amount of water. If the allocation from the state, say, is exactly where we are right now and no more, then we could not issue any more meters. It's that simple. If it were less than what we have



right now, then we have to find some way to manage with providing less. That's what we will be charged with. So there is a possibility that we may actually have to go into water saving. We may have to find some way to cut back on what we're actually allowing people to use right now. We would have to manage it. That's what designation is. Okay. It didn't give us one drop more water than we had previously, or one drop less water than we had previously. It's a tool to manage the aquifer.

Now, that being said, you know, we still have

the problem of what we need to do going forward. Now,

-- Mike?

MR. NOBRIGA: Is there any funding mechanism that is triggered because of the designation?

MAYOR ARAKAWA: No. The state doesn't give us any more money. As a matter of fact, they don't have resources there to manage anything, which is why they just give us the responsibility and they are a layer of oversight. So there is no more money that we're going to be getting.

MS. RAISBECK: Question, Mr. Chair.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Now, Alan, at the meeting before Danny Mateo's committee, Roy Hardy from the commission said that of course the 20 -- the top 20 there is something that not only the county but current private users -- and he estimated that as being between half a million and a million -- and brackish water use had to be -- the parks use brackish water, and that has to be included in the 20. So it's very -- we do not think that it's likely that we will

get more than the 18 if you have to include those two things within the 20?

MS. LOVELL: Well, at this point I don't think it would be responsible for us to guess exactly how much we will get. But my understanding of the law is that when you apply -- when you put in your permit application, you state how much you've actually been using and from what sources. And then the amount that you're allotted by the State Water Commission is based on current use up to the point where you don't have enough water and then if the current users are using

more than exists, then an allocation happens.

That allocation as between competing users is done by the State Water Commission. However, the entire allotment of the county's water will go to the water department, which will then do all the suballocations right down to the homeowner level if necessary.

MS. RAISBECK: So you're saying that the county parks department will not be considered a separate user. The brackish water that they use will be considered part of the county's allotment; is that

your understanding?

MS. LOVELL: Well, I wouldn't want to go that far because I don't know precisely what brackish water we're talking about and where it comes from. So I don't want to be able to give you a legal opinion based on lack of knowledge there.

But basically the county gets an allotment and it's up to the county to suballocate as between the users, whether it's the county parks department or individual businesses or homeowners.

MS. RAISBECK: I understand. I have another

question and the thing is that legalities are one thing and actual water is something else again. The physics of the whole system don't necessarily abide by laws; they just happen or they're natural laws that they abide by.

One of the -- the Waihee Aquifer itself could be -- could become designated by a trigger automatically if the level -- the head level in the Kanoa test well goes below 6 feet. Now, we got a reading, 7.25 I think Ellen said, but we have no idea

of the time sequence on that reading. Is that level declining over say a 5-year period, what is the trend of that trigger, so that we aren't caught unexpectedly again where the Maui News says aha, Waihee Aquifer is designated, and we didn't even have the data in advance to know that was happening -- was going to happen.

So my question would be probably not for you but for George. If the trend, whatever it is, on that head level were to continue, say another year, would we go below 6 feet on the head?



MR. TENGAN: It's kind of difficult to answer

the question because we know -- in the first place, we know that the head level has decreased over time.

However, my understanding is that the pace at which

it's being reduced has somewhat been stabilized,

although it's still going down, it's not going as

quickly as -- as quickly as it was when we first

starting monitoring the levels.

MS. RAISBECK: It would be very helpful to the

board, I think, if we could see again a graph, say of

the last five years, showing what the trend of that

head level is because then we could, you know, project

let's say, wow, we could be in trouble in

such-and-such a time period, or we don't have to

worry, everything is fine.

So if we could say in the next board meeting

have that in information available in a graphical

form?

MR. TENGAN: I suppose we could prepare

something. I don't know, you know, how -- you see, I

don't want to put out something that might create a

panic unnecessarily.

MS. RAISBECK: I'm sorry. I'm sorry, George.

MR. TENGAN: But, you know, I suppose we could  
develop something like that based upon our current  
data.

MS. RAISBECK: I think we have to know -- I  
mean, how could can we possibly advise anybody if we  
don't know what's happening?

MAYOR ARAKAWA: Let's try to answer that  
question, Sally. We'll try and get you that  
information as best we can.

Now, let's get into the nut and bolts. Mike

brings a very valid point and we are running into some time constraints. We need to be looking at, first of all, is it worthwhile going after further wells within this aquifer. That's first and for most consideration.

A second consideration, should we go after surface water in this area.

A third consideration, and this one I think you can look at the costs that might put this on the back burner, which is desalinization.

Another consideration is what was proposed earlier, something that we've looked at, is putting out a pipe up to Haliimaile and connecting up the system. Okay. Those are possibilities that we can look at.

The East Maui wells that we're looking at them right now, even if we get the two East Maui wells that exist, we are currently using those wells to supply upcountry during a drought situation. So if we're using that water to supply upcountry during a drought situation, I'm not sure whether it would be wise to

add that in as added water for Central Maui because we are using it as a reserve. Okay. So even if that is connected up, which is something that we're working on right now, I'm not saying that it's adding a whole lot to our system.

We're trying to work with these considerations. We need to look at some of the costs that are going to be involved in doing this. So I'm going to be asking you to work with the department to try and see which is the better way in your opinion to approach this.

Our initial feeling is that surface water is the fastest and the cheapest. If we do surface water, we have to create a treatment system for the water.

If we do surface water, we don't have to do all the treatment in one plant as a permanent plant at the outset. We can do a temporary plant and then we can take some time to build a more permanent plant that's larger.

The legal aspects of doing this is, first of all, if we're going to choose to do surface, we need

to be able to start discussions into -- serious  
discussions with Wailuku Agribusiness over a surface  
water issue.

Now, just recently Wailuku Agribusiness sent a  
note to Council Member Nishiki -- and this is public  
record -- which basically outlines their -- a proposal  
by them for the purchase of their system. And I'm  
going to pass some of these out to you so you can look  
at them and take a look at that.

I'm not going to get into the nuts and bolts  
of this discussion today. I just want you to have



time to look at it. It also describes in there the acreage, the amount of volume that -- projections coming out from each of the different areas. So you can look at the water availability in each of the areas. And you will see that he puts a value on this, so you can take a look at that. This is similar to one of the proposals that was quoted earlier. So take a look at it. This is a possibility that is purchasing the entire watershed and any subsequent other aspects of the water collection system.

Another alternative that we can look at is

going to the state and asking for a water allocation for surface water. Now, this leads to part of what the laws are come into play as to what we can and cannot apply for. If the county goes in and applies for and tries to get a water allocation from the state, then we will trigger a series of different events that will occur because of the laws. And that I want to discuss I think in executive session. We need to discuss in any kind of detail because it gets kind of complex and I don't want to do that in open session. We'll just confuse everyone at this point.

The other aspect of that is looking at what the rules are right now as currently applies to -- and those are in front of you in the handouts that were given to you for today's meetings.

We have certain rights that are allowed in the county, in the state. If you look at the -- if you look at this handout, page 26, you're going to see an explanation of who owns water and how the laws that we have come into application. Now, this is an outline of it. And again, we wanted to give this to you in

outline because if we start getting into too much more detail, then we want to do that probably in executive session because it will involve our strategy.

In a brief explanation -- of course when I'm talking to you, I have a hard time flipping through this and finding things. If we are looking at what is available, there are certain rights for people who have their property right alongside the streams that exists. And there are rights for people to be able to utilize that water if they're right along the streams. There are rights for Hawaiian cultural uses. And

there are public rights. And there are rules that apply for water being removed from a stream to other areas.

Now, in some of the discussions that have occurred, we've talked about water being used in other areas for, in this case, the sugar cane for HC&S.

Part of what we need to discuss is what those rights are and how we want to be able to protect or work with those rights. Okay. Because the laws are very clear that if we're going to be discussing that, because they are not immediately connected to that stream,

they have very low standing within the state system  
and their rights to that water are very far down the  
list, versus the community rights which is something  
that we can clearly establish.

One of the other things that has been  
discussed today is whether or not we want to negotiate  
or we want to condemn properties and the water systems  
because that is also an option that we have to look  
at.

And understand that when we're having this  
discussion with our executive staff, we have three

lawyers, we have almost everybody that is involved with land use and water in those meetings. It's not just the mayor and a lawyer. The decisions and discussions are held with a large group. So we're trying to come up with the methodology to approach this from a logical standpoint. And that's some of the decisionmaking that we're going to be asking you to participate in and then later on the council as we get the recommendations. Because it will come to a point where we're going to have to make some serious

decisions as to whether we want to be good guys

because we feel something should be done, or we want

to follow the laws as they're established, or whether

or not we have other emotions that come into play that

we have to consider, versus what we need to

accomplish. Okay.

That's where the tough political decisions

come into play. Because as has been stated, if you

read the -- for instance, you read the joint venture

agreement, there is some very clear points in there if

you look at it that virtually say that the joint



venture ceases at a time. They are very clear points that say that this is what will be performed, 19 million gallons will be developed in new water. There is very clear points that, if you read, there are two agreements, one is transmission and one is source development. And the transmission, there is money that was actually paid back, 70 percent of what was collected was paid back for the development of that system to those that contributed for a while. There is also money that was put into that by the county, state, as members of that joint venture. So what is

the total that is actually owed. And what -- where should that discussion be? I mean, that's something are we going to be looking at this from an emotional standpoint or looking at this from a business standpoint, how we make those decisions again. We'll be talking to you a little bit more detail. We'll probably do that in executive session to give you a better picture.

But the general concept we're talking about right now, I believe the public should be entitled to listen to. Because it could very well be at this

point that the Jonathan Starr is correct that we have already paid what was already taken. And the statistics or the numbers that we work with may be we need to analyze those a little bit better.

The other aspect comes in and this is for public decision making, too, is knowing what we know and trying to work with the joint venture agreement, we do have the Memorandums of Understanding that were created and there are several Memorandums of Understanding, not just one document. And we're going

to allow you to read those, but not today. And when you read those, you'll see what limitations were put on the county and on the members of that and we'll give you a legal opinion as to what we believe those memorandums of understanding say and what our obligations are. We'll tell you that I made a point much earlier with the lawyer from the joint venture that the county -- this administration has not negotiated, and I did that very deliberately. Because I don't want anyone to assume that we are negotiating or we're acknowledging the fact that there is an

agreement at this point. Because then if we  
  
acknowledge that there is something that we owe and  
  
the members are doing this and following along with an  
  
expectation that we have acknowledged this, they have  
  
certain rights. We will get into those details when  
  
we get into those details. And it may very well be  
  
that after we do this, we'll come to a conclusion with  
  
the joint venture once and for all as to what is owed  
  
and what is not owed and we'll put this to bed.

All the other contracts with businesses that  
  
have come in and elements have come in, we're going to

define exactly who owns what [inaudible] some of those contracts.

Now, I can tell you I think without getting into trouble here that the Wailuku well is not owned by the county. Stanford Carra owns that well. He's currently being very gracious in allowing us to take water from that well for free. But he does have the development that's coming up in that area. So what we need to be able to provide to him to be able to get the right to access the rest of that water needs to be discussed. That's again when we start looking at

contractual agreements, we will start assessing some  
of that.

But a lot of the desire by people that have  
are involved in this to get decisions based on  
information that is not the best -- I'm not going to  
be rushed into that and neither should you be. So  
take a look at what we've given you and then what  
we'll do is we'll have another meeting and we'll get  
into a lot more of the detail. But I do think that it  
will have to be in executive session so we can really

discuss this out. And I'm saying a lot in the open right now and Jane may want to kill me later on, but I'm trust that she'll stop me if I get too far into it. But it is sensitive in that I have to be careful what I'm saying to you in public.

Now, if we're going to be looking at water from the strategic standpoint, what we also need to look at is not only the Iao Aquifer. We need to look at all the water resources on Maui and how we're going to deal with them. Right now at this time in history, some of the land developers are trying to do the same



thing in taking over a lot of the plantation water that was no longer watering sugar cane in those distribution systems and we have to decide whether or not we should pursue acquiring those water resources or not. It's not an emergency right now. But as a strategy for being able to handle water for the community long term, should we be looking at those resources currently before there is a large invested body. So we'll start discussing some of those things.

And we will also be discussing again the possibility and the cost of bringing the water down or

bringing a pipeline from Haliimaile to Central Maui  
because there are some concerns with working with the  
community plan rules.

Mike, do you want to ask a question?

MR. NOBRIGA: Yeah. The moving of water from  
the upcountry system down to the central system is an  
extremely highly volatile, emotional subject with --  
not only with agriculture, but a lot of old very  
well-established families that have been waiting on  
the list for years and years and years. I would  
highly recommend that Your Honor not look at the

moving of water down the hill as your first choice of  
priority.

MAYOR ARAKAWA: Well, Mr. Nobriga, as you have  
heard me say, surface water in Wailuku is one of the  
first areas I want to look at. But I want to make  
certain that you all understand that there are  
alternatives that we need to consider and that have  
viability. Now, looking at the reality of putting a  
pipe and then going up and having a discussion in  
public and/or going through contested case hearings,

that's quite a different animal. But that's part of  
  
decision-making. Yes.

MS. PARSONS: Mayor, you know, we've been  
  
having our surface water issues upcountry and we do  
  
have the capability at the baseyard to do a mix of  
  
surface water with groundwater and get a feel for  
  
whether or not we can harden the surface water. Could  
  
you start that process now and maybe that would also  
  
be of help when we're down here and we'll know what  
  
the volumes are that we need to mix with so that we  
  
don't have to get into that same C9 issue. And then

when Pookela well gets on line -- which I hope will be soon -- we may be able to mix and eliminate a lot of this additive?

MAYOR ARAKAWA: I'll let George answer that, but I understand that we are putting in a bigger tank right now. So this year there is supposed to be a bigger tank. George, do you want to get into the mix?

MR. TENGAN: The tank you're talking about is down at the Kamole treatment plant, which is not even close to the Pookela well. It's down -- by the Haliimaile area you're talking about. The Pookela

well is located above Makawao.

MAYOR ARAKAWA: But mixing it to get the C9  
out to be able to dilute it.

MR. TENGAN: I'm not sure, but that's a  
suspicion and that's something that we can look at.

MS. PARSONS: Start testing maybe just to see  
what kind of volumes we can get to harden the water if  
it's possible.

MAYOR ARAKAWA: Just for correction, we're not  
using C9.

MS. PARSONS: Additives. Chemical additives.

MAYOR ARAKAWA: George, you can start looking  
at that.

MR. NOBRIGA: Another option that you may  
consider, you probably need a lot of our resource in  
this is the availability of dike water in the Iao  
Aquifer system.

MAYOR ARAKAWA: We actually walked up Waihee  
Stream the other day. There was a whole bunch of us  
guys that are out of shape, most of us fell at least  
once, but we actually went up and looked at the

beginning parts of Waihee Stream. And we were trying to look at possibility for being able to establish a plan to look at that water. So that's a possibility that we can continue that exploration.

CHAIRPERSON HIRANAGA: Yes, Clark.

MR. HASHIMOTO: We have been talking about sources and things like that, but what about an educated effort in conservation? I think the public, myself included, takes, you know, you take water for granted. We think it just flows. And going to the national convention this year, nationwide over 50



percent of the water is used on lawn and landscape.

And I think we have to really think about

conservation.

And I know Jacky is doing a good job on it,

but I guess in the paper this morning when I guess

Honolulu Board of Water Supply appealed for

conservation, they did get some response. But I think

it's one of the other things we need to consider.

MAYOR ARAKAWA: I think you're absolutely

right. And if you heard what I was saying a little

bit earlier, when we look at what our actual

allocation is, we may actually have to go to the public and set rules on how we're utilizing our water resource.

Now, I will tell you that one of the other things that we need to do in development that will take a little bit more time is taking the Kahului water treatment plant, wastewater treatment plant, taking that and reusing that water. That's an extra five to six million gallons a day. If we utilize everything that we have in the reuse in Kihei for irrigation, that's five to six million gallons a day.

So there are potentials for using reused water as well.

There are brackish water wells that can be used for irrigation that are pretty close to potable in some of these areas. And right now it's more hit or miss. We don't have clearly defined ideas of exactly what exists and where along those lines. So as we start looking at the water, what's really available, I'm a diver, and for years most of us that dive know that there is fresh water springs coming out

in the ocean. And I don't believe right now we currently know exactly what that volume is, how much we might be able to utilize, and what the salinity is. I'm sure there is a lot of things we can do that we need to do, but all of these things take time and money and manpower.

So we're looking at trying to define the science that we just don't have all the tools necessary to do. And the savings of water when we try to develop these types of processes, we really need to start looking at -- if you look at the statistics on

water use, you see that Kihei uses a tremendous amount of water because it's a drier area and in all probability because more water is used on the landscaping than in the Kahului area. And when I say more water, I mean considerably more water. So we might have to look at trying to do some kind of water savings on the landscaping.

So again, if we were to put wastewater, wastewater for landscaping, it might eliminate quite a bit of water use. We do have to do some of that.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Alan, this is a legal kind of question and perhaps Jane Lovell can answer it, or you. We do have an Iao water management rule. And it is apparently, as our corp counsel has told us, that is a rule that applies to us. Is the county going to use that rule if we hit the trigger on that? I refer specifically to Section 16-9-3(e) which if you hit a certain trigger, then there is automatic -- the department may not issue meters or take reservations. Are we going to abide by that and are we going to look at the trigger carefully?

MR. KUSHI: Mr. Mayor, Mr. Chairman,

responding to the request from Board Member Raisbeck,

I did have a chance to speak to the Director Tengan on

this and I believe his response would be that for one,

two triggers that you're talking about under 16-9-4, 1

and 2 --

MS. RAISBECK: I'm sorry, I'm asking about

16-9-3(e).

MR. KUSHI: I'm sorry. 3 --

MS. RAISBECK: I believe it's at the top of

page 104. Hold on, I'll get my book.

MR. KUSHI: 3(e), no new applications for meters -- yes. The rule still applies, but apparently, you know, the way we understand the rule is that it's under the section on caution, low groundwater conditions, which means the 12-month moving average exceeds 95 percent. We're not at that point yet. Neither have we reached the fluoride content that triggers this trigger, if I may.

MAYOR ARAKAWA: Sally, your question is if we do hit those triggers, we will follow the rules.



MS. RAISBECK: You will following the rule.

Yeah. And the actual wording is the actual pumpage, not 12-month moving average. It says -- every other place in the rule that it talks about pumpage, it uses the phrase 12-month moving average, whereas here it says actual pumpage. So if we do hit that, the county will abide by the rule?

MAYOR ARAKAWA: Bottom line is this is a serious problem. And we have to take some stand at some point to really do what we have to do. I don't like not taking reservations. I don't like having to

do a lot of the things that we're doing right now.

But we're responsible. If we get to the point where

the rules states that we have to stop, then we will

stop. If the State Water Commission gives us an

allocation that forces us to stop, we will stop.

But there are things that dictate our actions

over and beyond voluntary rule and it's done that way

for a very good reason. It takes the politics out of

it, it takes the question out of it. It's just

something that you do. So we will follow the laws.

MS. RAISBECK: Thank you.

MS. PARSONS: Just a clarification, Mr. Kushi,  
is it either, or, or both issues have to occur? I  
just haven't looked at the rule.

MR. KUSHI: The rule as I'm reading it right  
now is Section 16-9-3, and there is two triggers and  
it's an "or." And it specifically states any time the  
12-month moving average pumpage exceeds, et cetera, et  
cetera, 95 percent, or whenever chloride contents  
reaches a certain level, then that is the trigger.

MS. RAISBECK: I think you're reading --

MAYOR ARAKAWA: Whatever it is, whatever it

really is, we're going to follow. So I'm not going to

waste everybody's time with a debate on the

interpretation because what it is is what we're going

to follow. But hopefully we'll resolve whichever.

Now, we're talking about a lot of things right

now. I kind of hoped to be able to actually get into

executive session to talk about the joint venture rule

today and I don't know what your pleasure is because

you have -- everybody has been here a long time and

everybody is tired. But --

CHAIRPERSON HIRANAGA: I think we're going to reschedule it for another meeting. But I did have a question. How long does it take the commission after the one-year founding period has been completed, to determine the allocation to the applicants?

MS. LOVELL: Well, if we look to the Waiahole ditch decision as an example of what happened on Oahu when they went through this same proceeding, it was very protracted. Granted, in that case there were many, many, many competing users, whereas here in the Iao Aquifer we have the county is by far the largest

user and then we have about 500,000 gallons or so --

500 million -- 500,000 gallons, thank you, I was right

the first time, that are distributed among other

users. So perhaps it won't be that protracted.

But basically everybody puts in their permit

application. The deadline is one year from the date

of designation. Then there is a time for objections

by citizens groups or competing users, whatever. Then

it goes to a contested case hearing. And if that

contested case phase, in Oahu in the Waiahole ditch

situation took several years. I think just the

hearing dates themselves were close to a hundred days  
of hearings. There were hundreds if not thousands of  
exhibits that were put in, huge teams of lawyers  
involved, kind of a full employment act for lawyers.  
And then they finally reached a decision at the  
commission level, which probably was a fairly fair  
decision because nobody liked it. Everybody appealed.

It then went up to the Supreme Court and it  
takes, you know, a year or two to get something from  
the administration -- from the administrative level up

into the Supreme Court. You've got to go through briefing and hearings. And then justices have to have time to draft an opinion which in the Waiahole ditch decision was their opinion was close to a hundred pages long and it was quite a scholarly exposition of water rights and so forth.

So it really depends on how much of a contest there is. If we have relatively few users and not a great deal of controversy and not a lot of objections filed and so forth, it could be relatively quick, six months to a year. But if we have controversy, then we



could be looking at two, three, four years, if it has  
to go all the way to the Supreme Court.

CHAIRPERSON HIRANAGA: I have a couple more  
questions. Do we have the data for the moving average  
for the month of July?

MR. TENGAN: Yes, we just passed that out  
today.

CHAIRPERSON HIRANAGA: What is it?

MR. TENGAN: For Iao, its 12-month moving  
average is 17.93. For Waihee, it's 4.44.

CHAIRPERSON HIRANAGA: So it's the

department's position that they will continue to issue water meters as long as they can continue to manage the amount of pumpage at or about 18 million gallons per day through conservation measures? Because we're not really going to be getting new sources in the near future. Is that the philosophy of the department?

MR. TENGAN: I guess we feel somewhat comfortable that we can provide up to maybe 2.2 MGD of water to [inaudible] --

CHAIRPERSON HIRANAGA: From other sources, and still keep the moving average below 90 percent on Iao

Aquifer?

MR. TENGAN: As the mayor tried to explain,  
  
it's primarily relying on the Waihee Aquifer.

CHAIRPERSON HIRANAGA: You had a question,  
  
Mike?

MR. NOBRIGA: Yes. Is that -- was that option  
  
be available to us, the one she was talking about?

MS. LOVELL: I'm sorry, which option is that?

MR. NOBRIGA: To appeal the decision of the  
  
State Water Commission.

MS. LOVELL: Oh, to appeal the designation

itself?

MR. NOBRIGA: Yeah.

MS. LOVELL: Well, I mean, we could take them to court, we could sue them and try to establish as a point of law that the triggers weren't met. But, I mean, there are pretty strict legal standards for when they step in and take control.

MR. NOBRIGA: But it is an option for us.

MS. LOVELL: In theory, but we would have to be able to prove that these triggers weren't triggered

and I don't think that's really reasonable.

MAYOR ARAKAWA: Anything is an option.

Whether or not we prevail, that's -- the probability  
is not good.

MR. NOBRIGA: There has been an agenda  
presented for our discussion and that was not part of  
the -- available. So I'm asking if that's available.

MAYOR ARAKAWA: It's something that could be  
-- we can discuss any of this.

MR. NOBRIGA: Thank you.

CHAIRPERSON HIRANAGA: My understanding is

that designation is not for eternity, that an aquifer can be undesignated, but it's an extended process.

MS. LOVELL: Yeah. If circumstances changed, you could either apply -- if you're one of the affected parties within the aquifer, you could apply for de-designation. And under the State Water Code, the commission itself has to review all designations once every 20 years. So it's a pretty long time frame. If nobody does anything, if conditions don't change, the commission will revisit the situation 20 years from July 21st, 2003.

But if there were a significant change in circumstances, we could apply for de-designation.

CHAIRPERSON HIRANAGA: Any more questions from the board? If not, do you have any final words you want to say, Mr. Mayor?

MAYOR ARAKAWA: It's something that really needed to be done for quite some time, trying to resolve water issues. And any other issue that is of the magnitude that this is, it's not going to be easy. There is going to be a lot of controversy that's

involved in this. We have to remember that we have to look after the community's best interest.

Now, in having some of this discussion, when you're having your discussions, you need to be able to figure out when you need to go to executive session or not. And I'm going to ask that you try and meet soon so we can start really hashing out some of these things. Because the sooner we get these things discussed, the faster we can make recommendation and we can work with the council. Even though this is a partnership, to this point we've just been trying to



accumulate all the information, get the best information that's possible.

If there are questions that you have that you want answers for, we'll do our best to try and get those answers. But remember, this is not an exact science. We're working in an area that a lot of the best information is best guess. And if we had decades and we had, you know, unlimited money and resources, we might be able to get much closer and cleaner answers than we are going to be able to get with what we have. I've touched on some of the areas that we

really need to look at hopefully at our next meeting

-- and hopefully that will be within a week or so --

we can take our time to really discuss what is

happening with the joint venture and we can really

start hashing over what are some of the better

alternatives in dealing with the shortage that we

foresee in the future. Because this is an issue that

needs to be resolved because we need to set a pattern

because anything that we do is going to take time to

be able to resolve. Ginny?

MS. PARSONS: When we went into designation

for the Iao Aquifer, that was for the groundwater.

Why weren't the surface waters included with that?

MAYOR ARAKAWA: It's a totally different designation process. The surface water and groundwater are considered different sources in what the State Water Commission is looking at. That's why it wasn't included together.

MS. PARSONS: Do we have to do one to get to the next?

MAYOR ARAKAWA: No, they're independent

sources.

MS. PARSONS: So we didn't have to do one before they would look at the next one? They could have looked at the surface water first?

MS. LOVELL: The way the water code is written may not make total rational sense, but they did come up with two very different sets of criteria for designating. Groundwater, you have like seven or eight different items that they have to look at, whereas surface water is only three. But because there are separate schemes really set up in the water

code, the State Water Commission does look at the two very separately even though from a scientific standpoint it probably would make a lot more sense to be look at groundwater in relation to surface water and vice versa.

Therefore you don't -- you could theoretically have a surface water designation area without designating the groundwater and you certainly can have a groundwater designation without the surface water. But all it takes to trigger a surface water designation is that there is a serious dispute. I

mean, that's the legal standpoint. There has to be a serious dispute. And then you have to have a State Water Commission that will find that there is a serious dispute and on that basis designate.

So it becomes -- it starts off as a legal issue and it becomes ultimately a political issue.

MAYOR ARAKAWA: There is one more thing I would like to consider also. And we've been discussing this, so just in the back of your mind. And that is putting water back into some of the streams. And we started looking at the water resource

stream water. We need to look at possibly returning some of the water to the stream so as part of what needs to be done as well. And I think that -- so anyhow, if you have any more questions. If not --

MS. RAISBECK: Mr. Chair, I just wanted to expand a little bit on Jane Lovell's answer because as I understand it, the water commission can designate in either form on its own initiative, or it can designate if somebody brings a petition.

MS. LOVELL: Right.

MS. RAISBECK: And in particular, this

designation was because Jim Williamson of the Maui

homeowners -- Maui Meadows Homeowners Association,

brought a petition before the board -- the water

commission and that's why it got designated. They

didn't do it on their own initiative but on

petitioning from citizens. And that is a route to

designate, and surface water could be designated that

way also.

MS. LOVELL: That's true.

CHAIRPERSON HIRANAGA: Okay.



MAYOR ARAKAWA: So next meeting, why don't we plan on having an early meeting and being able to just spend some real time hashing out all this stuff.

CHAIRPERSON HIRANAGA: Well, I want to thank the mayor and staff for spending the time with us here today and we're going to be deferring this matter and the remaining agenda items to our next scheduled meeting. The meeting is adjourned. Thank you.

(WHEREUPON, the meeting was adjourned at 5:15 p.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

[\[Back\]](#)