

County of Maui Water  
Supply

**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI**

**REGULAR BOARD MEETING**

Held at the Kahului Shopping Center, Kahului, Maui,

Hawaii, commencing at 9:00 a.m. on August 28, 2003.

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

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A P P E A R A N C E S

CHAIRMAN:

KENT M. HIRANAGA

VICE CHAIRMAN:

MICHAEL P. VICTORINO

BOARD MEMBERS :

KENNETH M. OKAMURA

DOROTHY R. PYLE

SALLY RAISBECK

GINNY PARSONS

MIKE NOBRIGA

CLARK HASHIMOTO

DEPUTY CORPORATION COUNSEL :

EDWARD KUSHI, JR., ESQ.

DIRECTOR :

GEORGE TENGAN

BOARD SECRETARY :

CATHY HOWARD

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CHAIRPERSON HIRANAGA: Call the meeting to  
order. First I would like to recognize attendance.

We have Kenneth Okamura, Sally Raisbeck, Clark

Hashimoto, Mike Victorino, Mike Nobriga, Ginny

Parsons, Dorothy Pyle, and Brian Miskae present.

Stacy Crivello I guess is excused.

Are there any announcements at this time?

MS. RAISBECK: Yes, I have some announcements.

(Brief recess.)

CHAIRPERSON HIRANAGA: I would like to call

the meeting back to order.

MS. RAISBECK: Yes, Mr. Chair. I have several  
announcements. On September 3rd, the Council Water  
Resources Committee meets at 9 a.m. It will consider  
the Board of Water Supply rules. There is a letter  
from the Council Chair that I haven't yet had a chance  
to read that will also be considered by them.

On September 5 and 6, Maui Tomorrow and the  
Department of Health and other organizations are  
putting on a two-day Watershed Awareness Involvement

Conference at MCC on a lot of very interesting panels and I'm looking forward to it very much. They're also getting wider participation by offering free food, music, and door prizes.

On September 4, 7, and 14th, that same conference is sponsoring some watershed hikes. On the 4th in the Iao Stream -- well, in one of the tributaries to the Iao Stream, on the 7th in the watershed above Waiehu, on the 14th in the watershed above Waikapu.

I believe it is still true that on September

18th, the deputy director and Jacky Takakura are going to be speaking at the Haiku Community Association meeting. I believe that's still true.

On September 22nd, that is the deadline for EIS comments on Maui Land & Pine's Upcountry Center. The plans include -- according to the Maui News, the plans include drilling a well and turning it over to the county with an arrangement like the previous arrangement with Everett Dowling. And I wondered if the director is sending comments on that EIS.

On September 25th, that is the 30-day deadline

for intervention for Maui Land & Pine's request for urban and rural reclassification by the State Land Use Commission for the entire watershed above Kapalua. I was absolutely amazed at the size of what they're asking for urban and rural reclassification.

My last announcement is that I want to thank Jacky Takakura, David Rezens, Paul Seitz, Walt Hagar, and John Kahalehoe who gave several board members, including me, a wonderful tour of the upcountry water system and the Keanae-Hana water system. I was



enormously impressed by the water treatment facilities upcountry and they gave us a very thorough, very professional and very interesting tour. So thank you very much. That's all.

CHAIRPERSON HIRANAGA: Any other

announcements?

Next agenda item, approval of minutes. Are there any corrections to the minutes of June 26, 2003; July 10, 2003; or July 24, 2003?

MR. VICTORINO: I move to accept.

MR. HASHIMOTO: Second.

CHAIRPERSON HIRANAGA: Move to accept by Mike

and second by Clark. Any discussion? All in favor of  
accepting the minutes, indicate so by saying aye.

[Chorus of ayes.]

CHAIRPERSON HIRANAGA: Thank you. Anyone from  
the public that wishes to provide testimony at this  
time? Elliott Krash.

MS. KRASH: Thank you, Mr. Chairman. On  
August 14th, Barbara Long sent a letter to the  
chairman and to the members of the board and I would  
like to read that letter for you. I'm testifying in

regard to the item on water availability, Iao aquifer.

I think that's VI(A) on your agenda.

"Dear chairman and board members. Since the  
vote on the charter amendments that placed the  
Department of Water Supply under the Mayor's office,  
the function of the water board has been in limbo to  
the detriment of Maui's residents and taxpayers. I  
believe it would be appropriate to place the following  
questions on the next board agenda to enable full  
discussion and progress towards a determination of  
what, if anything, the water board can, should, and

will do to assist the administration, the council, and  
Maui residents.

"How can the water board best serve its stake  
holders? Is it feasible for the board to help  
determine policy in the distribution of Maui's water  
resources? Can the board be a funnel for public  
concerns and ideas to evaluate such questions as how  
to best ensure water goes to development projects that  
aid people who live and work on Maui? Does the  
department or the administration have a policy to

determine allocation? Can the board help? Can the board work with the long-range section of the planning department to determine need and infrastructure for desired growth? Could the water board be the venue for public participation in this crucial process?

With affordable housing demand high, supply low, can the board work to create availability of water in appropriate areas?

"Water, its availability or nonavailability, is at the crux of Maui's future growth and economic development. Rather than the nine board members

volunteering their time without direction, wouldn't it be better to define the board's and the department's part in responding to the present situation which could in a Honolulu Advertiser story of August 10th, according to economist Leroy Laney could grind growth to a halt.

"In addition, because the role of the board is not defined at present, does it make sense to move their meetings to a Wailuku location more convenient for public participation? And for this same reason, what is the current need for verbatim transcript by

court reporter when the board's deliberations are not meeting any present policy or advisory requirement?

"Thank you for your consideration of this matter. I would appreciate being notified of the board's agenda addressing my questions. With Aloha, Barbara Long."

CHAIRPERSON HIRANAGA: Any questions for

Elliott? Thank you.

Anyone else who wishes to provide public testimony at this time? If not, I'll close the public hearing.

Next agenda item is Unfinished Business,  
continuation of discussion and possible action  
regarding the designation of the Iao Aquifer.

MS. RAISBECK: I think these agenda items  
today are extremely important. They also might run  
long. I know Dorothy has to leave at 12:00 or 12:30  
and I wondered will we have -- do other members have  
time commitments that might give us -- that might  
break up our quorum at sometime?

CHAIRPERSON HIRANAGA: I have not been



informed of anyone's time requirements.

At this time does the department wish to add to their previous presentation?

MS. KRAFTSOW: I guess I was asked to explain the items on pages 3 and 4 of your agenda. As we stated at the previous meeting, the information given to you was estimates and these estimates, as more information comes in, are changing.

So I have redone a couple of the calculations here of remaining water and did one to reflect the fact that -- on page 4 to reflect Sally's question. I

did not reduce it to 3.6. I reduced it to 4 because  
it was still way less than 90 percent of the aquifer.  
That was one option. And I called the State Water  
Commission about it and he said well, you know, we  
would in the long haul of course recommend that you  
follow your hydrologist's recommendations, but in the  
near term the pumps were sized for the capacity. So I  
went back and checked pump capacity and went oh my.  
Until Kupaa is in -- I think Kupaa should be in very  
shortly -- but until it's in, we actually have 6.6.

So I did another calculation to let you know

it's revised downward based on the capacity. And so that's at the bottom right-hand of page 3 of your packet. That's what I would say is realistic currently because it is installed capacity based on well tests.

In addition, we had and not reflected here of those that we had as of the day before yesterday that were entered that were 15 reservations that were actually installed the day after designation. So that left the outstanding reservations down to 551,150.

We did receive a request from the Department

of Hawaiian Home Lands to be added to the reservation list, which would bring reservations up if it is approved -- that is still to be determined, looked at -- to 648,150. But they were in the pending subdivisions list.

The other thing that came out of that request for reservation from Hawaiian Home Lands, they were in the independent subdivisions list as 68,400 gallons. That was for 114 lots. The request they made is now is for 118 lots with an irrigation. So instead of

68,400, that would be 97,000 gallons, estimate. And  
so that would bring pending subdivisions to 1.981 --  
1,981,600 --

MS. RAISBECK: Excuse me, Mr. Chairman, I  
don't know what figure she's referring to here. Could  
she specify a little bit more?

MS. KRAFTSOW: Oh, okay. Sally, if you look  
at your bottom -- on page 3, the bottom left was the  
initial calculation, right? And if you look at  
subdivision -- or even the bottom right say and you  
see the subdivisions pending was 1.953. With the

updated information on Waiehu Kou, that number would  
be changed to 1.982 I guess or actually 18916.

MR. OKAMURA: What figure are you talking  
about?

MS. KRAFTSOW: Subdivisions pending. If you  
look at the bottom right-hand slide on page 3, where  
it's 1.953.

MR. VICTORINO: That is to be changed, is that  
what you're saying?

MS. KRAFTSOW: Yes, because Waiehu Kou is  
asking for -- what they're asking for includes -- I

would estimate it at 97,000 gallons a day instead of  
68,400 as I had it listed.

MR. OKAMURA: So it should be changed to what  
figure?

MS. KRAFTSOW: 1.9816. So you could round it  
to 1.982. There are also numerous meters that have  
come in to be installed that we just obtained  
yesterday that we're still entering. And some of  
those are from the reservations, others are from  
subdivisions pending, others are from bonded, so we'll  
have to tease that out as we get the data and we have

it about halfway entered so far. That's all I have to say right now.

CHAIRPERSON HIRANAGA: One point of clarification. So what's remaining? Zero point -- negative 0.708 to 0.522, what does that mean?

MS. KRAFTSOW: Oh, okay. That would be if you counted pending subdivisions plus other subdivisions, that are no longer pending, they have received final approval and they have all their approvals but they may not have installed a hundred percent of their



meters yet so they're still installing meters. So you would add the 1.953, or now 1.9, whatever, to the 1.143 and that totals 2 point something. And then you subtract that from the 1.388, right, and you get a negative.

So that means if all pending subdivisions were to be built now -- which they're not always built right away, some of them are built 10 years later. But if they were all built out right now, we would be in a negative situation already.

And the other is if you look at only those

subdivisions which have already been approved and bonded, and/or either approved or bonded, so they have put money down and we know they are going to be -- so that's kind of a range.

CHAIRPERSON HIRANAGA: Ginny, you had a question?

MS. PARSONS: We're basing these meters on what, 600?

MS. KRAFTSOW: It varies, depending where it is. So we use the standard. If it's a 5/8-inch meter, we'll use 600. But if it's in Maui Meadows or

certain parts of Kihei/Wailea, empirically we know

it's higher so we'll use a thousand there per lot.

Depending on the size of the lot and if it's very

small --

MS. PARSONS: What I'm getting at is I

understand there is some new reservations that are

coming on, people are trying to upgrade from 5/8ths to

three-quarters, and I know we talked about that with

the mayer and he wasn't inclined to do that. Is there

any way that we can cut that three-quarters requests

back to 5/8ths and save some of the flow to put back

in here until such time when we get another source on  
line?

MS. KRAFTSOW: That's a policy decision that  
is made above my level or traditionally is made above  
my level. I think it probably could be done. I don't  
know if it would be done necessarily in every case or  
only in certain cases.

MS. PARSONS: So we may be able to save some  
of our flow for right now. Maybe that's a  
recommendation we might want to make or consider from

the board level that we don't issue any upgrades from  
  
5/8ths at this point until such time maybe as a new  
  
source.

MR. OKAMURA: I have a question about like  
  
what she was asking about the rates that you assess --  
  
not assess, but the amount that you estimate each  
  
meter is going to use. 600 gallons per month for a  
  
5/8-inch meter, is that --

MS. KRAFTSOW: 600 gallons per day is -- it's  
  
based on statewide system standards.

MR. OKAMURA: Okay. And you're saying some

places they use more.

MS. KRAFTSOW: Yeah. We do know -- when we do -- these inferred reservations, it's not like somebody is actually reserving that specific quantity of water. But when we were trying to decide how to estimate the reservations, we went through a lot of possibilities because we know empirically we have the data, we know certain regions of the island use considerably more than standard, other regions use considerably less. We know that we can't control once a meter is out there whether the person is going to use it more or

less. So we wanted to be conservative, but if we went purely by capacity it was just some -- I can't remember the number, but it was just huge, it's like there is no way these meters would ever use that water really.

So what we did was we started to go with per acre standards. And for single-family residences, it really is pretty much either standard or what you know empirically about the area. We have charts and we can run a query at any point in our computer that says okay, break it down by this region, how much water it

uses on the average.

And then for larger meters, if it's not a single-family meter, if it's larger meters, there is some judgment involved and it's me that's making that judgment. And that is if it's a commercial operation say in Kihei, I look at other one-inch commercial meters in Kihei and look at what's the average median of that. I try to go a little bit above the average as an inferred reservation, just to be conservative.

Things like that. So there is some judgment and staff



consideration.

MR. OKAMURA: So you base it on an average.

But then I guess the problem comes when it's a dry month and you have the worst case where people need to use a lot more water, then we go over the limit and that's where we run into trouble.

MS. KRAFTSOW: Right. I actually go -- if the per acre standard is more than the average, I go with the per acre standard. But in some areas, the per acre standard comes in less than the average, then I don't go with the average. I go with the 75 percent,

one of the higher range but within the range.

MR. OKAMURA: But you could go with like a worse case scenario, too, you could go with that.

MS. KRAFTSOW: Yeah.

MR. OKAMURA: Which would really, you know, would be really high estimated. Maybe we should be doing that if the dry times of the year are times that get us into trouble as far as overdrawing. What would be -- would that be possible?

MS. KRAFTSOW: I think we try to build a safety factor in by going with something towards the

high end of the range. We look at the average, the median, and the high and low end of the range. And we make pretty much a judgment call that's usually between the average and the high end. It's not usually the highest of the high end because there is usually a few just really outrageous [inaudible] --

MR. OKAMURA: Because already with the existing meters, we went above the limits, right, last month or so?

MS. KRAFTSOW: You mean the one project that I referred to?

MR. OKAMURA: What I meant was in terms of total usage, we went like 19.4 million gallons.

MS. KRAFTSOW: Oh, right.

MR. OKAMURA: And that's what we want to try to avoid. And so I guess the other question I would have is that people already hit the limit and we're going to give out some more meters, there is no way we can say that we're not going to, you know -- we're not putting ourselves in worse jeopardy by doing that, maybe we have to follow our commitments, but --

MS. KRAFTSOW: I think that what was decided sometime back, I forget the date of the memo, we were using slightly earlier estimates, we didn't have much but we had to go with the best numbers that we had at the time, right. And we took what was estimated remaining available at the time and cut it basically in half and said we'll give out meters up to that amount and now we're just trying to track if we're up to that amount. And we could revise it further downward, but it was only I think another 800,000 gallons after designation that we were going to give

out.

MR. OKAMURA: Thank you. I think we need to be really conservative, knowing that what happens when it's dry. I don't know if that's for you to decide or who is to decide that.

MS. KRAFTSOW: I should say also that as far as reservations go, except for this possible Waiehu Kou question because it's DHHL, it's done, I'm not even looking at the meter issuance now until after the fact. So.

MS. PARSONS: What do you mean, it's not --

MS. KRAFTSOW: We're no longer issuing reservations. And the only reason that Waiehu Kou is being considered is because of Hawaiian Home Lands, and that will be, you know, and so I'm not reviewing or issuing any further reservations in Central Maui at all right now. And I think engineering is only following up to what the memo stated we should do and we're just trying that.

MR. VICTORINO: Ellen, a couple of questions I have for you. As Mr. Okamura has stated that we should look at the high end and use that as a basis,

we've always used a running average as far as the Iao  
was concerned, right?

MS. KRAFTSOW: For pumpage we use a moving  
average.

MR. VICTORINO: So that's right. Second  
question I have is when is Kupaa going to come on  
line? You said shortly; what is shortly?

MS. KRAFTSOW: Kupaa?

MR. VICTORINO: Kupaa, I'm sorry.

MS. KRAFTSOW: By the end of the year, I



believe, yeah? It's scheduled for completion within  
  
this fiscal year.

MR. VICTORINO: See, these are the kinds of  
  
things that I think sometimes makes it difficult to  
  
make decisions when you don't have specific time  
  
frames. I understand there are things that hold back  
  
projects, but, you know, that's why when you say  
  
shortly, is it six months, is it a year, and more of a  
  
specific time frame I think is important for the  
  
public and us to know to make decisions for the  
  
future.

Secondly, in this area right now, when we're talking we stopped taking all new reservations and I'm correct, right? That was the mandatory order from the mayor, no new reservations. But right now you mentioned that you're catching up with all the present reservations that were in the system.

MS. KRAFTSOW: They're not reservations.

These are -- we stopped taking reservations.

MR. VICTORINO: Okay. That's been determined.

MS. KRAFTSOW: And then we had gotten -- for a while we weren't getting -- what we're trying to do

now is track what meters have been issued because they were going to continue issuing meters for those ready to accept service up to another 800,000 gallons.

MR. VICTORINO: At this point.

MS. KRAFTSOW: As of the date of the decision when it was announced, yeah. And so now what we're trying to do is track the meters that were issued and how much water they represent.

MR. VICTORINO: And then finally, with that in mind, that 800,000 gallons that you just referred to, what do you anticipate from all your tracking, best

estimate right now, will be actually used?

MS. KRAFTSOW: I can't answer that right now.

We just got the stack yesterday and we're still --

MR. VICTORINO: When would that become

available?

MS. KRAFTSOW: I'm hoping within the next --

I'm hoping within a week.

MR. VICTORINO: Within a week. So by our next

meeting, we hope to have that kind of information.

MS. KRAFTSOW: Right. But that will change --

can change daily as meters are issued, right, we go  
back and we track them and look at them.

MR. VICTORINO: So right now we're just --

MS. KRAFTSOW: It is -- it's a moving target.

It will be a moving target until it stops, yes.

MR. VICTORINO: And when you say stop, that  
means when all these present reservations that are in  
have been issued -- but you mentioned something about  
10 years down the line -- we have subdivisions  
scheduled for 10 years down the line.

MS. KRAFTSOW: No, what I'm saying is that

sometimes projects, these large projects --

MR. VICTORINO: Yes.

MS. KRAFTSOW: They do a subdivision, a large lot subdivision.

MR. VICTORINO: Right.

MS. KRAFTSOW: And it's really the large lot subdivision is not going to generate any water use in and of itself. Then they are going to do another large lot subdivision and gradually -- it's only really when they get down to lots. And then even when they're doing a phase that has actual lots that

they're really going to sell, sometimes that phase can take some years to fully build out and sell and market.

MR. VICTORINO: I understand that. But --

MS. KRAFTSOW: So the water -- so you don't see the actual water demand either until the thing is fully built out.

MR. VICTORINO: Okay. So I understand that part. However, part of the reservation is that speculative number of lots that will come out of that subdivision.

MS. KRAFTSOW: No, because I'm talking about subdivisions which do not have reservations. Okay. Reservations, we had 565,150 gallons worth.

MR. VICTORINO: Okay.

MS. KRAFTSOW: Of reservations, period. Plus maybe another 97,000 for Waiehu Kou. That's reservations. That's all that we normally, in the water resources and planning division, that's all we dealt with. That's reservations only. That was a number, it was determined using best empirical data



and standards.

MR. VICTORINO: Okay.

MS. KRAFTSOW: In addition to reservations, the mayor had requested because he want to know what would happen if things that are not reserved -- because we don't issue a water commitment, period, until somebody has paid for their meter.

MR. VICTORINO: Right.

MS. KRAFTSOW: And even a reservation, there is some wiggle room put into the contract, okay.

MS. PARSONS: Pardon me. Can you explain the

commission's views between reservation versus  
commitment? Because I don't understand that, and that  
was real cloudy before. Because they don't  
necessarily review -- they don't view a reservation as  
a commitment, they said.

MS. KRAFTSOW: Who is -- oh, the State Water  
Commission?

MS. PARSONS: Yeah. Explain that.

MS. KRAFTSOW: Because they're looking at  
existing use. They are going to look at existing use  
as of July 21st, 2003. And everybody has one year to

put in their permits for existing use, every user.

And so they probably will try to honor anybody who's already existing and using water. It's conceivable they could even make people cut back. But that's their first priority, people who are actually existing users.

So people who have reserved water are not considered to be existing use as of the date of -- and you know, even if they decide the issue like in Molokai, they designated I think it was 1992 and we didn't have our existing use permit until 1995 and

even then we were already using more water than what we were permitted for. But that was existing as of 1992. And future use permit, we still don't have it on Molokai. So --

MR. VICTORINO: So the bottom line in all of this -- and no offense to you, Ellen, I guess just for the public to understand is we have what we know actual usage is as of right now.

MS. KRAFTSOW: Uh-huh.

MR. VICTORINO: We have X amount of

subdivisions or homes or whatever that have been committed for meters at this point which you guys are entering so that you can figure out how much more usage will be added on. That's what these figures are here.

MS. KRAFTSOW: We know actual usage and we know water meter reservations. And those numbers are pretty solid.

MR. VICTORINO: What's that?

MS. PYLE: Is that committed, a reservation, is that committed? These terms are very, very

nebulous.

CHAIRPERSON HIRANAGA: Dorothy, Mike has the floor.

MS. KRAFTSOW: It is confusing. And it's a legal question I'm not going to even touch. We'll do our best certainly to meet those reservations.

MR. VICTORINO: And Ellen, I'm not trying to put you on the spot, believe me, I'm just trying to get it clarified in my mind and in the public's mind what we're trying to achieve because we have so many like Dorothy mentioned nebulous out there that we hear

this, we hear that, we're not sure specifically where we're at. So that's why I was trying to ask, okay, these figures you were giving us earlier are just estimates, committed --

MS. KRAFTSOW: Yes.

MR. VICTORINO: So I can use the word estimate?

MS. KRAFTSOW: Existing use is obviously not just an estimate. Reservations is an estimate, but it's a pretty good estimate. Subdivisions is a lot weaker because the amount -- the speed with which we

had to do that quantity of data, the amount of data that's in the files, the level of familiarity that the staff has with the projects because we're not working on them, there are many factors.

Also, you know, even just the estimates that are in the computer, you know, 114 lots and by the time they're done, 118. These things happen. It's part of the normal subdivision process, there are minor project changes. And for that reason, it's an estimate. It's a best estimate that we have at the



moment.

MR. VICTORINO: And the last thing, I promise we'll move off the subject and let other people -- on this next well that we are going to hopefully get on line within the next six months, what is the best estimate about the amount of gallonage that we would get out of this well? How much can we pump out of this well, keeping it at a safe level, et cetera? Do we have any idea?

MS. KRAFTSOW: Well, again, out of the entire Waihee Aquifer, what we're estimating is available is

7.2. So if installed pumpage is 6.6, regardless that we could actually pull more from the well because that's a matter of redundancy standards and everything, it will bring us from 6.6 back to 7.2. And that will be within a few months, I think.

MR. VICTORINO: Okay. Thank you.

CHAIRPERSON HIRANAGA: Dorothy, did you have a question?

MS. PYLE: I just -- I guess -- I'm still confused by the terms reservations and commitments. They just seem very nebulous to me and it makes it

very, very hard to understand what any of these numbers mean.

MS. KRAFTSOW: Could I just defer to corporation counsel on that because it is -- it is -- the water commitment form says, you know, we will, as long as water is available, we will give you water, all right. But there is some circumstances in which even a meter reservation can be held back and I would like to refer to corporation counsel.

MS. PYLE: Stop right there, though.

Reservation commitment. You're saying a meter

reservation and then does that commit water. Because just a little while ago I thought you said it didn't. And so there is a confusion about the terminology or how those terms are used, which leads us to not really understand which categories the available water are really in.

MS. KRAFTSOW: If you have a meter, water is committed to you, period, if you have a meter. If you have a meter reservation, it's like a promise to do our best efforts. But again, you're asking me and I

would rather you ask corp counsel.

MS. PYLE: There he is. Let's ask him.

MR. KUSHI: What is your question?

MS. PYLE: The confusion that seems to exist,

at least from what I'm hearing, between the

terminology of a commitment and a reservation.

MR. KUSHI: Mr. Chair, what I believe Ellen is

talking about is she's trying to give you figures or

actual hard numbers. She gave you the hard numbers in

terms of actual meters in use, which is of record.

MS. PYLE: That one is clear.

MR. KUSHI: The reservations she's talking about I'm assuming are those applicants or land owners or developers who have actually paid for a reservation. You just don't get a reservation; you pay for a reservation.

MS. PYLE: All right. Can I keep asking --

MS. PYLE: Let me finish. And that's pursuant to your rules. If the applicant is not ready for service at this time to hook up for whatever reason, maybe distribution lines, if the department has adequate source at the time he applies, that applicant

can come in and actually pay for a reservation for a meter, one or two or whatever, if the department has adequate source at that time.

Now, the question becomes is that a commitment on behalf of the department if that applicant does not hook up one year, two years from now. A reservation lasts, according to your rules, up to three years. So we're talking about reservations made in May of this year, it may last until two or three years from now. What if we dry up three years from now, what do we do? Your rules provide that, again, in the event -- I'm

just citing from your rules -- that in the event  
occurrence or condition not caused by the board which  
prevents the board from performing its obligations,  
excuses the board from those obligations except to  
refund the money. That seems quite harsh, frankly,  
but again, this is what your rules say.

So I think Ellen is [inaudible] giving hard  
facts, reservation facts, and pending subdivisions who  
have not made reservations. Correct?

CHAIRPERSON HIRANAGA: Yes, Ginny, go ahead.



MS. PARSONS: Sorry, Sally.

What you're telling us then is that reservations without a source is the issue, and we don't know how much source we have right now. If we continue to keep the reservations that we have right now, we're in conflict with what we did upcountry. We returned \$200,000 of reservation money in March because Pookela well wasn't on line yet. However, we do have a source. And, you know, this is a concern when Ellen can't tell us exactly how much water we are going to be using because she doesn't have all of her

facts and figures yet together to do, how can we

continue to even give out meters on the reservation?

That's kind of what I think we're looking at, is how

can we continue even -- to do that when we don't have

source -- we don't have knowledge of how much source

we have yet.

And this, again, I'm going to go back to the

fact that these are hand taken numbers that we use on

this. These are like they go out, the meter readers

read the meters, and we get the numbers. The SCADA

system is going to give us a different view or a more

in-depth view, I should say, than what we do on reading meters on a certain day of the month. So until we have the SCADAs -- until we can look at the SCADA system to see what's transpired for like the last six months, how can we tell what we actually are pumping?

MR. KUSHI: Ask her.

MS. KRAFTSOW: Okay. A couple of things. One is upcountry has had a shortage or for many, many, many years. Defining a shortage. All right. So it's a separate situation. I won't even go there.

But for here, reserved meters are already subtracted before we even get to the remaining supply estimate. So that 1.388, the 565,150 is already included -- is already deducted, sorry, before we get even to the subdivisions issue, okay. So we set aside water, unpumped water was set aside for those reservations before we even looked at subdivision, water available for subdivisions without them.

So we are going to make every best effort to honor the reservations and part of how we did that was

set aside an amount of water for them.

And I think Mike had a question earlier. I'm  
sorry, I didn't include the whole report, but last  
meeting that -- in that report you would see the  
schedule of all those things, yeah.

CHAIRPERSON HIRANAGA: Sally, let me ask you a  
question. Is your question regarding what the topic  
is right now or --

MS. RAISBECK: It has to do with system  
capacity that is on this same --

CHAIRPERSON HIRANAGA: May I ask one question

just before we move on to your subject?

MS. RAISBECK: Yes, it relates to what Ginny was saying about how much source do we have and I would like to take that up.

CHAIRPERSON HIRANAGA: Okay. I just to clarify here. So this system withdrawal, these numbers are coming from where? Is that what is being -- it's coming from the pumps or it's coming from like what Ginny says it's coming from meter reading?

MS. KRAFTSOW: No. Those are from pump reports. And that's actually June 30 numbers. I can

update you with July 31 numbers.

CHAIRPERSON HIRANAGA: So if there is leakage within the system, that's irrelevant.

MS. KRAFTSOW: Yes, it would be reflected in the system numbers.

CHAIRPERSON HIRANAGA: The other question I had was what is the difference between -- you have SUBT bonded -- is that substantially bonded or --

MS. KRAFTSOW: Sub total.

CHAIRPERSON HIRANAGA: So this 0.723 is within the 1.953?

MS. KRAFTSOW: Yes.

CHAIRPERSON HIRANAGA: But subdivisions

pending means they have preliminary subdivision

approval? Is that how you become a subdivision that's

pending?

MS. KRAFTSOW: Their application has been

entered and I would say the majority just of the ones

that were counted like, you know, some we looked at

and this doesn't represent water use because it's just

a large lot or whatever. The majority of the ones



that are in this number would have been beyond the preliminary approval stage. But the term does not necessarily mean that they have received preliminary approval. It means that their application is in and being considered.

Preliminary approval usually happens pretty fast, so the majority would have. Probably almost everything in this number.

CHAIRPERSON HIRANAGA: But they're determining the likelihood of these pending subdivisions to come to fruition. The construction plan design stage or --

MS. KRAFTSOW: We deleted anything that was expired, denied, or just so old that it was --

CHAIRPERSON HIRANAGA: Inaccurate?

MS. KRAFTSOW: Yeah. So that those would not have been added to the total.

CHAIRPERSON HIRANAGA: So you're saying these subdivisions pending, there is activity by the owner which would give you reliance that they plan to bring it on.

MS. KRAFTSOW: Yeah.

CHAIRPERSON HIRANAGA: Sorry, Sally, go ahead.

MS. RAISBECK: Thank you, Mr. Chair. I feel like we are bogged down here in details having to do with regulatory -- the county's method of regulating and accounting for meter use. I am more concerned about what I see as a more fundamental question which is are we looking accurately at what source we have available. And Kent mentioned the fact that between source as pumped and source as used in people's meters on the street, there is leakage. So that you can't go right up to the amount that is pumped, you can't expect to distribute that amount.

But I want to go back to -- again, this is on page 3 of what was mailed out to the board, and the top left side there says System Capacity. Now, 90 percent of Iao sustainable yield is 18 MGD. And correct me if I say anything wrong, Ellen, just break right in and correct me if I say anything wrong. We are limited by the State Water Commission to use only 18 -- we cannot -- that's on a 12-month moving average. In the summer months we can use more, in the winter months we use less, but a year from now we

still will not be able to use more than 18. And a  
year from now they may cut us back even from that 18.

Is that correct?

MS. KRAFTSOW: They could cut us back or they  
could increase it. They still deem the sustainable  
yield to be 20 million and they're doing the head and  
shoulders model, the groundwater study --

MS. RAISBECK: It won't be ready.

MS. KRAFTSOW: Whenever it's ready, it's  
possible that it would say that there is more than 20  
if it were distributed better. I mean, what I'm

saying is the range is right now 20 million is the sustainable yield. The trigger for designation was 18. We doubt that they would give us a hundred percent of the 20 millions, but it's going to be their decision and they could opt to give us more than 18. But at this point they have not given anything, so we're trying to stay within the 18.

MS. RAISBECK: Okay. They could cut us back to less than 18. The USGS model results won't be in for several years, so we aren't going to know anything a year from now. But they could cut us back to less.

Worst case scenario is for some reason they decide to cut us back.

But assume we are able to maintain that 18 MGD, which is their usual practice. Meanwhile, looking at the next figure on that table, you are using 90 percent of Waihee sustainable yield and using that as 7.2 MGD. Now, at the last meeting I urged very strongly that we consider what John Mink has said which is I looked at the map of the Waihee Aquifer.

All of our wells in the Waihee Aquifer, including the Kupaa well, are within the lower -- the southernmost

third of that aquifer. And we are pumping up to --  
one month we pumped up to 6 MGD from one third of the  
aquifer when John Mink, the hydrogeologist, has told  
us it should only be 4, we should only be using 4 out  
of that section of the aquifer.

If we, in two or three years -- well, three or  
four years, we expect to have more wells in the  
northern part of the aquifer, presumably we might be  
able to get another 4 MGD from that part of the  
aquifer, but again that's years way, that's not now.



So that I think using that 7.2 is not looking at the  
real facts of present pumpage.

Now, you say that if we look down at the  
bottom of that table and we look at when you're saying  
total system capacity is 27 MGD, I think that's bogus.

Then the next table you run a scenario where  
we only -- instead of using 7.2 for Waihee, we use 6.6  
for Waihee. And I think that's bogus, too, because  
you said, if I read you correctly, you said that you  
looked at installed present, installed pump capacity,  
and it was 6.6. Now, does that include the fact that

normal process, normal usage is you figure out of the total installed pump capacity you only get 45 percent usable? Does that 6.6, is that 45 percent of something? Or is it the total installed pump capacity.

MS. KRAFTSOW: No, it's installed capacity.

MS. RAISBECK: It is total.

MS. KRAFTSOW: Uh-huh.

MS. RAISBECK: So that one should actually be using the 45 -- if you want to be conservative, if you want to be safe, the reason they cut it back to 45

percent most of the time is because you have situations where pumps are down, you have all kinds of situations that have led as a matter of common practice in water systems all over the country, they only use 45 percent of installed pump capacity to figure how much water they're really going to have available.

MS. KRAFTSOW: Except this is the Central Maui system. We have more than 46 million gallons of installed capacity. So we're not even -- we're not even touching --

MS. RAISBECK: But the rest of it is in the Iao Aquifer that we can only take 18.

MS. KRAFTSOW: They can back each other up so you have to look system wide. I mean, there is maybe some small regions right in Waiehu Town where it would be harder.

MS. RAISBECK: But we have already found that some of that installed pump capacity in the Iao Aquifer were built badly, like three wells in a small area, and if you pump them hard --

MS. KRAFTSOW: Not included in the total that

I just --

MS. RAISBECK: That's not included in the

total?

MS. KRAFTSOW: Mokuhou 2, no.

MS. RAISBECK: If you really pump hard, you're

already getting salt into some of those wells,

brackish water, and if you have really pump hard

you're going to get more brackish water and we will

have less supply.

So I think the conservative way to go is with

the very last scenario you gave, which is on page 4, where it says the total system capacity is -- you're only using 4 MGD from the Waihee Aquifer. Rather we don't like that because that says we only have 23.4 MGD. And we already have in use 25, which means we're already in a deficit. And if you then put in about 2 MGD from reservations, from meters you are giving out right now today, you come up to where we are very much in a deficit situation right now and we're just heading into the hottest part of the summer.

So I think the whole calculation, from the

physical facts of it, nothing to do with who gets meters and who doesn't get meters, the fact of the pumpage right now exceeds what we should be pumping and it will only get worse if we give away more meters or give out more meters and give out more reservations. I mean, we stopped giving reservations, that is good, but every meter you give out is making the situation worse for the people who are already on the system. Because we don't have enough water to really cover what is needed in the hot summer. And I'll be happy to listen to your comments on what I

said.

MS. KRAFTSOW: Okay. Well, obviously your suggestion would be the more conservative -- most conservative way to go. That's why it's presented. But we did discuss it with the State Water Commission staff and the wells are tested, the performance on the aquifer they assure us right now the Waihee Aquifer as we have been pumping it is remaining in good shape. In fact, on moving average chlorides went slightly -- or the moving average, the water level went slightly



up, which is a good sign for the aquifer. So it's within the testing range of the pumps that were installed and it is within the -- it is not appearing to cause any detriment to the aquifer at this time.

So with that and given the huge economic impact if we were to just cause everything to come to a screeching halt, we opted to try to put the brakes on a little bit more gradually. And -- let me finish. And I think that I understand your concern. I would say, too, though, that Mr. Mink said -- his comments were regarding long term and they were also -- the

paper that you showed me, that's different from the report that I had initially seen but the one that was passed out that you showed us all I guess August 11th, he says you should not expect to get more. He doesn't say you shouldn't take more, it's going to harm the aquifer. He says you should not expect to get more. Wait. So, I mean, I think that in the long term we would want to distribute our pumping appropriately, we would probably try to take no more than four on each half of the aquifer, if that still remains the best advice of hydrologists. But in the short term, as

we're building towards that direction, towards the northern half of the aquifer, it doesn't seem to be causing a problem. That's based on the pump tests that were run on the well and it's based on performance of the aquifer while they're using it that way.

And so weighing that against the other options, I think it was determined that it would be -- you know, you want -- it's the same thing of how can you most benefit all the involved parties without harming them, right, give the least harm and most

benefit. And since the aquifer seem to be handling it and it is only a temporary situation until we get more sources and we are actively pursuing those, it seemed to be okay, let's slow things down considerably but keep using that much was an appropriate decision because the aquifer is handling it right now.

If that changes, obviously we have to take another look. But we've spoken to the commission about it.

MS. RAISBECK: Mr. Chair, may I continue

questioning?

CHAIRPERSON HIRANAGA: Yes.

MS. RAISBECK: Yeah. I would like to read what -- that I brought to the attention of the board last time. This is in the Final Supplemental Environmental Impact Statement for the East Maui Water Development Plan -- which I keep having to remind myself that is not for water for East Maui, it's for water for the central system.

And in that report, which was written by Mink & Yuen, it says, "The average allowable yield of 4 MGD

is for the region between Waihee Valley and Makamakaole Valley." That's the region where all our pumps are. "It should not be exceeded even when the Kupaa well is added to the system. Currently about 4 MGD is into the Central Maui system from four North Waihee wells, another well at Kupaa is not yet connected to the network. Total allowable average yield when all wells are on line will be approximately 4 MGD."

So that he says, I think, in no uncertain

terms, don't take more than 4 MGD from this southern

third of that aquifer which is where all our wells including the Kupaa well is.

Now, let me go on to one further point before, you know, you comment on that, and that is that when you say the Waihee Aquifer is in good condition, last November along with setting a trigger for designation of the Iao Aquifer, the Water Commission set a trigger for designation of the Waihee Aquifer. And that one is not in terms of million gallons a day pumped; it's a different kind of trigger, it's a trigger on the water level in the Kanoa test well. If that hits 6

million gallons -- 6 feet, I'm sorry, 6 feet above sea level, if the water in that well declines to 6 feet above sea level, we will be automatically designated in Waihee, just like we were automatically designated for Iao.

I wasn't able to get a timed graph from the department of the level of that well, which I wanted in order to see what the trend was. And so I called up Gordon Tribble from the U.S. Geological Survey to ask him, and I tried to look on the internet on the



USGS website. And he explained something to me that I would have loved to share with the board via e-mail if I could have, but I wasn't. What he told me is that the reason they're having trouble with the use of that figure is because they do not have an accurate measurement of the height of the well. And the way they measure the height above sea level of the water in the well is from the top of the well they measure down to the top of the water. And then if they know the distance from the top of the well to sea level, they can subtract and get the height of the water in

that -- above sea level of the water in that well.

He said that there is about half a foot difference between John Mink's measurement of that and another surveyor's measurement of that. They have a program which they hope will give an accurate figure sometime in November. Right now there is half a foot uncertainty.

I looked at the graph of the water depth from top of the well to the water and since April that has declined about half a foot. So we're down a foot from -- we could be down a foot from the numbers Ellen was

quoting which was 7 and a half or 7 and a quarter feet. We could be down -- easily down a foot from that. We know we're down half a foot. Depending on the measurement of the top of the well, we could be down another half a foot. That would leave us 6 inches before we hit automatic designation in Waihee.

So I think we need to be very conservative because that water level has declined half a foot since April. If we keep pumping the way we've been pumping, it can go down another half a foot and, bam, we're designated.

MS. KRAFTSOW: I would like to respond to that. Number one, Sally, when you made that request at the last board meeting, the very next day I phoned Gordon to ask for his numbers. There are a few things you should know. The graphs that he posts on the web and the numbers that go with them, first of all, they didn't send it. They said we'll send when it we can get to it. Okay. This is the water department requesting it, who funds some of the studies and they didn't send it. Okay? Still have not sent it.

Number two, he said just pull it off the web.

The issue is when Roy Harding did his analysis, it's

the same -- the water, regardless of what benchmark

you use, the water is doing what the water is doing.

But the State Water Commission used a starting

benchmark of 7 point something feet, I don't even

remember. The benchmark that they are graphing

against and publishing is 6 point something. The

water is the same, regardless of which benchmark, they

just disagree about which is the better benchmark.

Okay?

What the water commission does is they get the USGS numbers and they translate it to their benchmark because the state commission's decision to designate or not was based on the analysis done with the commission's benchmark. But the USGS is still publishing their benchmark. So what that does is put us in the position of things looking much worse than they are, even though the benchmark is the same.

Once a correct benchmark is set, the entire analysis is going to be redone, as far as I understand it, they are going to do the entire analysis over so

that it's all consistent to one benchmark. But in between times, we didn't even get the data. So you say you couldn't get it from the department. Isn't it interesting you can get it from USGS -- we asked USGS for it. So I shouldn't publicly be revealing my frustration about that, but I am because we talked to USGS that it would be doing a disservice to the public to publish inconsistent data when the data we're being regulated against is the data the State Water Commission did their whole analysis on. It makes us look dishonest, which we are not and it is not fair to

us to put us in that position. And they did not honor

that concern. And now here we are.

But the fact remains that the State Water Commission, the e-mail -- and I can forward it to you if you want -- the e-mail I got from Kevin, the most recent MAV was 7.25. That's actually good, compared to last year at this time of year. That's pretty good for July. And the Waihee Aquifer seems to be doing fine.

I agree we need to proceed with caution. We



need to look at it again and again and again. But we can't just, you know -- I don't like this implication that we're in any way doing anything less than a conscientious job, because we're not.

MS. RAISBECK: Mr. Chairman, I stand by my position that I think the proper scenario to use is the one that uses 4 MGD from Waihee, not 7.2 or even 6.6. And that if that is true, then we are already in deficit. In fact, from Ellen's figure for that scenario, we are over using and over pumping by 3.7 MGD or two and a half MGD right now at this moment.

Thank you.

CHAIRPERSON HIRANAGA: Thank you, Sally.

Ginny, you had a question?

MS. PARSONS: I would like to get a clarification. Ellen, where did you put the Hawaiian Hawaiian Home Lands reservation, the 97 which is about 60,000 gallons, where did you put that in?

MS. KRAFTSOW: The 97,000 gallons for Waiehu Kou?

MS. PARSONS: 97,000 gallons.

MS. KRAFTSOW: In this particular scenario

where I had you next to the 1.953, write it instead,  
  
what was it, 1.9816.

MS. PARSONS: That's what I thought and I have  
  
a problem with that because Hawaiian Home Lands comes  
  
first.

MS. KRAFTSOW: Right, well, if they get the  
  
reservation, then it would move up to --

MS. PARSONS: It's not an if. They need to be  
  
in the reservations. That's not even a negotiable  
  
point. They're first. So the reservations now become  
  
6 -- well, it's more than that.

MS. KRAFTSOW: It becomes 648,150. Because  
some were already installed out of those that were in  
that 565,000.

MS. PARSONS: That needed to be clarified.

Thank you.

MS. KRAFTSOW: So that would also come back  
out of the 1.95. 68,400 would come --

MS. PARSONS: Still puts us with a minus 805  
in Waihee, what I calculated, somewhere around in  
there.

CHAIRPERSON HIRANAGA: Kenneth?

MR. OKAMURA: Thank you. I can see that one of the problems maybe Sally is using the USGS data information and Ellen -- the department is using the water commission information. So, you know, there is nothing to be said that one is better than the other. And it's really a problem to use consistent -- did you evaluate, Sally, the water commission data and Waiehu monitor?

MS. RAISBECK: Thanks for the question, Ken.

The USGS is the one that does the measurements. I

don't think -- not the water commission. There is I think what Ellen brought out is a valid question about if in September the USGS finds out through this elaborate procedure involving two very high quality GPS antennas that over a period of eight hours can give you a very accurate elevation, if they find out that that is the elevation of the well, that is it, there is no controversy. I don't think the Water Commission is going through any procedures to determine the elevation of the well.

I think Ellen was perhaps unwittingly

misleading when they talked about different

benchmarks. There are no benchmarks, as we understand

benchmarks being something that has been surveyed

accurately and set into the ground is what I call a

benchmark, and there aren't any in the area of this

well.

If they want to measure, they have to measure

-- they will measure from Kahului Harbor on up where

there is a benchmark and that will -- then they will

use this GPS equipment to determine accurate

elevation. At that moment -- when they develop that

accurate elevation, then we will know from the measurements they make of the depth of the water in the well what the height above sea level of the water in the well is. And I'm sure the Water Commission is not going to argue with that.

The Water Commission can say oh, well, we were really thinking of something else and so we're going to change our trigger, but that's a very lengthy process for them to change a trigger. So that I don't know without hearing from Roy Hardy or the State Water



Commission, I would not assume that they would very quickly or easily change their definition of what the trigger is. It would be easier for them, if it turns out with these accurate measurements that the height of the well is 6 feet or less, it would be easier for them to designate. Otherwise they have to go through a long process to change the trigger.

MS. KRAFTSOW: Actually, I would like to respond to that, they measure against -- they didn't have a benchmark that they had confidence in, so they measured against an assumed benchmark. And both the

USGS and the State Water Commission initially used the benchmark that the State Water Commission is still using. USGS found what they thought was a possibly better benchmark to use. And yes, I'm not talking about a specific survey thing in the ground, I'm talking about the purpose that that specific survey thing serves which is another okay use of the term.

We're going out with them I think the first or second week in September to re-GPS and retry to figure out the vertical -- the real vertical elevation. But the entire analysis that was done and the 6 foot

trigger that was set was set using the original benchmark. So if your numbers -- if your elevation changes, the whole analysis changes, you just adjust your benchmark and the spreadsheet changes. And it's not a long, lengthy process. They can do it and they will do it. My guess is they will do it. Because we've talked to them about it. It is not fair -- when the aquifer is not changing based on how you change your benchmark, it is not fair to penalize the department based on, okay, you've done your entire analysis on one criteria and then you change the

criteria and say oops, you lost. You need to do your analysis and is the aquifer really changing at the rate that you say it's changing, then you need to measure it consistently along your whole rap. And you know that as long well as I do.

MS. PARSONS: So actually, if I could sum up, there is the geophysical question about what is the height of water in the well. There is the regulatory question about what will the State Water Commission use as their trigger if the situation as far as

elevation changes. And also pointing out that going back to the physical situation, the water in the well has declined by half a foot since April. Thank you.

CHAIRPERSON HIRANAGA: We're going to call for a 10-minute recess.

(Brief recess.)

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

MS. KRAFTSOW: Do any other board members have questions regarding this issue?

MR. NOBRIGA: I have a comment, Mr. Chairman.

From where I sit, there is no recommendation required of this body at this time. The board, prior to the recent charter amendment, had approved and has everything necessary in order to take action with the administration and the department in moving forward from the designation of Iao and Waihee aquifers.

Should the administration like to review those comments and recommendations that we had provided them, I'll be more than happy to sit with them, as would any member of the department. At this time I wish to defer this matter. There is no action

required.

MR. HASHIMOTO: Is that a motion?

MR. NOBRIGA: No, just recommendation.

CHAIRPERSON HIRANAGA: Before we move to

motions, I just had a couple of questions.

Ellen, when do you think the so-called 800,000

gallons per day allotment would be used up? Do you

have a time frame in mind?

MS. KRAFTSOW: I don't at this time. Until --

I guess what we can do is enter how many are being

received and plotted over time and see what pace it's

going at. But at this point I don't have it entered.

I don't know.

CHAIRPERSON HIRANAGA: If you're able to, that  
might be some useful information for us.

Also, I guess question for the director, has  
there been any formal challenge to the mayor's  
decision to halt the acceptance of meter reservations?

MR. TENGAN: The only action I'm aware of is  
the actions of the council this week. The County  
Council is challenging the mayor's authority to stop



reservations.

CHAIRPERSON HIRANAGA: Thank you. If there  
are no further questions --

MS. RAISBECK: I have a question. I'm not  
sure what you were referring to when you asked Ellen  
about the 800,000 gallon a day allotment. What is  
that?

CHAIRPERSON HIRANAGA: I believe that's their  
so-called remaining capacity that they were going to  
issue meters on.

MS. RAISBECK: I don't see that figure on any

of these sheets of paper.

CHAIRPERSON HIRANAGA: Is that a wrong figure

I used?

MS. KRAFTSOW: No, that is the figure from

before these were done from the initial discussions

when it happened and the estimates at that time, it

came out to about 1.6 -- where you see 1.988 or 1.38,

the initial estimates were right in the middle of that

were 1.6. And so they decided to be conservative and

take about half of that and say we'll give out that

many meters and that's it.

CHAIRPERSON HIRANAGA: So that's the number

you're working with --

MS. KRAFTSOW: That predates -- yeah, that

predates this and we're just trying to keep it up to

date of where we are and where we would be against

that.

CHAIRPERSON HIRANAGA: So it's 800,000

gallons --

MS. KRAFTSOW: Was the correct number.

CHAIRPERSON HIRANAGA: Is that a moving number

or is that still the number you're using?

MS. KRAFTSOW: That's how much additional average, but we're not going to wait a year. I mean, we would estimate the average. It's about how much additional -- they stopped giving out reservations and they said they would give out up to another 800,000 gallons.

MS. RAISBECK: Okay. I find that a very, very weak number because the thing you say you're averaging is a situation where using 7.2 MGD from Waihee with a situation where you're using 6.6 from Waihee, both of

which I think are wrong, and you're saying well let's strike a balance between those two and we'll say we have 800,000 gallons of water to give away. It doesn't make sense to me.

MS. KRAFTSOW: No, Sally, that was from before the estimated -- it was a prior month, the source use was lower, it was not quite the heat of the summer yet. And the estimated subdivisions total was also I think a little bit lower, but that wouldn't have affected that number. So it was -- the pumpage capacity, yeah, it was capacity and in use and

reserves. Capacity, less in use and reserve, at that time that it was done, it was a few months ago. And it wasn't splitting the difference, it was using the 7.2 at that time.

CHAIRPERSON HIRANAGA: Yes, Dorothy.

MS. PYLE: Actually, with all due respect to Mr. Nobriga, some of us were not present when the board discussed these issues before, and the actual designation of the Iao Aquifer had not taken place at that time the board apparently discussed these issues, so I really feel that perhaps as an advisory board, no

longer a board that has the ability to take any kind of action, but as an advisory board, that perhaps it really is in our best interests and in the county's best interests to offer advice to the department that caution should be followed and that we would as a board -- and this is of course for the board to agree or disagree on -- that we would advise that extra caution and some kind of tracking be afforded to the board and to the public about what's going on here.

I don't feel that we get enough information

fast enough perhaps and there must be a better system

for us or a better way for us to have accurate information in order to offer advice. I'm just -- I'm just stating that, I think that we can only offer advice and I think that we would be negligent in our duty not to do that at this point in time.

CHAIRPERSON HIRANAGA: Yes, Ginny.

MS. PARSONS: On that same line, I think that maybe it's time that we start seeing if we can't get the SCADA system reports and let's take a look at the last six reports and get a graph. I know it's going



into the [inaudible] in November and we'll have numerical, but maybe we ought to see the graphs for right now.

MS. KRAFTSOW: Just yesterday I got that data, maybe one-minute intervals going back several years. You can imagine one minute intervals going back several years is in several separate files. I mean, I would have to go back to them and ask them to graph it and compile it separately I think more realistically. But I did discuss with them the differences between the SCADA and pump reports and.

The flow meters that are out there, the RTU report, is the same flow meter that's manually read.

And there are periods when the pump is off and due to a restriction in the device or something like that, it might continue to read [inaudible] GPM or even 81 GPM or even 100 GMP even though the pump was turned off because there is a pressure -- it's the way that there are three kinds of monitors, there is like a [inaudible], a paddle wheel, and an ultrasonic device.

So what they do is they double-check the data with run time. There is a timer on the pumps also and they

double-check the data. But it is the same flow meter that that data could be automated. But even if it were automated, it would need a lot of staff involvement with expertise to understand the devices and the pump behaviors and the pump -- certain pumps have their efficiency curves, you know, it's rated at a constant head at 1250, say, it may go -- it may vacillate between 1200 or 1300 or something, but it's not going to go down to 100. If it's on, it's not going to be down at 100.

So it looks to me like the data is -- from

what I've been hearing so far, it looks to me like the data should be pretty consistent once system adjustments are made. The other difference would be averaging method because if you go out and read once a week or once a month or whenever you go out and read, you're reading a total of that month. If you're taking a sum of one-minute increments and you miss some period where it's running 180, you're going to -- you could throw your numbers off. But also, you set the start time that you want and the end time you want

on those increments, right, so you're going to get a slightly different average than the guy who goes out in the field and he goes out maybe every Wednesday at the end of the month or something. It's going to be slightly different between the 1st and the 31st. So there is an averaging difference and there is a checking it against the run time difference. It seems to be where the differences come from because it's the same flow meter, whether it's sent through the SCADA or whether it's manually read. I don't know if that makes sense, but -- that's where we are.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Thank you, Mr. Chair. At the risk of adding more complication to the situation, I would like to read a memo from -- or letter from Danny Mateo, Chair of the Council Water Resources Committee, to the water director, dated August 14th, 2003.

And I should explain to all of you that for many years I have made a practice of checking the notebook at the Council Services Office. Each Council Committee keeps a notebook of all correspondence that comes in and any item whatsoever of information

relating to a given agenda item is kept in a notebook for public use, for the press and for the public to use. So this is a letter that Danny Mateo sent to Mr. Tengan on August 14th. It says, "Subject: Status of Iao and Waihee Aquifer Systems Designation." WR 8 is the agenda item.

"As you know, Mayor Alan Arakawa has announced that as of July 21, 2003, the County has indefinitely stopped accepting applications for water meter reservations in Central and South Maui. May I please request your department's assistance in providing the

following information regarding applications for water meters for the Central and South Maui areas.

"One, the number of applications received by your department on or before July 21, 2003 for which water meter reservations have not been given.

"Two, the amount of water that would need to be committed for use if these applications were approved.

"Three, the number of applications received by your department after July 21, 2003.



"May I also request your department's

assistance in providing the following information:

One, a summary of all pumping state data transmitted

to the State Water Commission on Water Resource

Management regarding the designation of the Iao

Aquifer.

"Two, a summary of all pumping data for the

past five years recorded by the county's SCADA system

for the Iao and Waihee Aquifers and for the Central

and South Maui regions.

"Three, an explanation for any pumping data

relied upon by your department that is different from the information provided for by the SCADA system.

"Four, a summary of all pumping data provided to Mayor Arakawa that was intended to influence or may have actually influenced the decision to halt water meter reservations in Central and South Maui.

"Five, time lines for water source development for Central and South Maui.

"Six, a summary of litigation regarding water sources. Please provide the current status of each case. If any information to be transmitted regarding

this inquiry is confidential, please transmit it by  
separate cover clearly marked "confidential."

"Seven, a summary of any information regarding  
noncounty pumpage for the past five years. Please  
include an estimate of unrecorded usage.

"Eight, existing allocations under the  
applicable water use and development plan.

"Thank you for your time and attention to this  
matter. A response no later than August 27, 2003  
would be greatly appreciated. And please feel free to  
contact me or my committee staff. Sincerely, Danny

Mateo, Chair, Water Resources Committee."

And I read this because I think it's almost  
humanly impossible to gather that amount of  
information in the time available, but when it is  
gathered I would certainly hope that the Board of  
Water Supply would also receive a copy of all this  
information. Thank you, Mr. Chair.

CHAIRPERSON HIRANAGA: If there is no further  
discussion, I'll open the floor to a motion.

MS. RAISBECK: I would like to make a motion,

Mr. Chair. I believe that the director would like us to support his and the mayor's decision to stop the issuing of water meter reservations. And I don't feel qualified to decide who has the power to issue that order, but I feel strongly that it is an order that should have been issued and therefore I would like to move that the board express their sense that this is a measure that is needed, whoever is the authority who should make that decision. It is a measure that is need to protect the water supply.

CHAIRPERSON HIRANAGA: So simply stated, your

motion is to recommend support of the mayor's decision  
to halt acceptance of meter reservations.

MS. RAISBECK: Yes.

CHAIRPERSON HIRANAGA: Is there a second?

MR. VICTORINO: For discussion purposes, I  
second that motion.

CHAIRPERSON HIRANAGA: Discussion.

MS. RAISBECK: As I say, it's a thorny  
question of who has the power to issue such a ruling.  
But I think the board can -- perhaps it should be  
rephrased, but I think it's a decision that is prudent

and responsible and I don't think at this point it serves the public to not do it because the Council and the Mayor have different views about whose is the authority to issue that. So I would move that -- I am open to friendly amendments that would rephrase it.

CHAIRPERSON HIRANAGA: Yes, Mike.

MR. NOBRIGA: Thank you. I speak against the motion. It brings up the question of what is the purpose of the Department of Water Supply. The purpose of the Board of Water Supply is -- the Department of Water Supply, as I understand it, is to

supply water to the consumer, which is the general public. By supporting the motion, we are telling the department that it's not their duty to supply water to the general public. That's it.

CHAIRPERSON HIRANAGA: Dorothy?

MS. PYLE: I actually think that by not supporting the more cautious view of how water is used, the Board of Water Supply and the department would not be acting in the best interests. We do need to recognize that there is a limited amount of water



in and on and around Maui. And while it certainly is the obligation and the duty and the responsibility of the department to supply water, it is also the duty and responsibility of the governments and the administration, the leadership and the county to determine how the resources of the county will be used to do that. And since there is not an unlimited supply of money, there is not an unlimited tax base, there is not an unlimited ability to establish new sources of water overnight and instantly, we need to offer our advice to move in a cautious direction so

that the water that we do have available can continue to be used by the greatest number of people.

So I would voice my support for a motion that does support the action that's been taken.

CHAIRPERSON HIRANAGA: Yes, Ginny.

MS. PARSONS: Where do we draw the line in the sand, though? And that's the biggest case -- that's the biggest issue that we have right now. We have a number of reservations that are coming on line and we have a lot of unknowns and where do we draw the line? Do we just not give out any more -- I mean, we have

reservations which are paid for and we're giving meters out to those. Are we drawing the line after that point or are we drawing the line before it or where are we drawing the line? And that's not clear enough right now for us to support the motion. I mean, when those things are answered, you know, and we know what the next movement for source is, I think the motion should be -- I think another motion should be thought of after the point is we encourage the department to bring on more source and figure out how to get more source in here quickly. And then whatever

the mayor and the director decide they have to do in  
the meantime is their decision. But we -- our  
encouragement should be we need more water source on  
line and we need it on immediately.

CHAIRPERSON HIRANAGA: Yes, Ken.

MR. OKAMURA: Mr. Chair, I think, you know, in  
our discussion today show that there are a lot of gray  
areas. We're not sure what the actual situation,  
whether we're going to -- it's a dangerous bad  
situation or not. But I think it would pay to be

cautious and I think the motion is to support the mayor's position that we stop taking reservations for water meters. Although this will create a lot of problems or may create problems, I think this is the least we can do at this point.

I can also agree that another motion should be made to expedite the development of surface water source as soon as possible, seeing as how we've been drawing from the same aquifers and we don't want to do that, seems like a much more -- so I say voting for this measure is the only thing we can do at this point

to try to correct the situation which should have been handled a few years ago. Thank you.

CHAIRPERSON HIRANAGA: Mike.

MR. VICTORINO: Just to add to the sentiment of Mr. Okamura and Ms. Pyle, I think caution has to be used at this point. However, the determination who has the power to do it, whether it's the council or the mayor, is a political football and I don't want us getting caught in between.

I would like to -- if Ms. Raisbeck is willing to do this, I would like to change the motion, instead

of saying supporting the mayor's, I would like to support that this board would be in favor of the mandatory restriction on new reservations. As a board, that's what we would be recommending, to whoever the powers to be. But not to get caught in the political football because I don't want later on people to say well, you were on the mayor's side or the Council. I don't want to be caught in between that. But I agree with the basis of the motion, so I would like to change it if it can be done on a friendly basis to say we agree with the mandatory

restriction on new meter reservations as a board. I would like to change the motion to that, if that's okay with you, Ms. Raisbeck.

MS. RAISBECK: Yes, Mr. Chair, that is perfectly acceptable to me. I think that is a very worthwhile change.

CHAIRPERSON HIRANAGA: So you're willing to amend your second?

MR. VICTORINO: That's correct, I would amend my second.



CHAIRPERSON HIRANAGA: Yes, Clark.

MR. HASHIMOTO: Mr. Chair, I think I would like to support what Mr. Victorino just mentioned about and I certainly would not like the same thing what's happened to Upcountry where many people's dreams have gone, so to speak, down the drain because there is not enough water. And it's the same thing that's going to happen to Central and South Maui.

I think what we need to do is I know Wailuku Ag has sources of water that we can tap into, if we do have the ability to purchase a lot of these lands.

And I think I echo what everybody else has said that we need to look for new sources not only for Central but also Upcountry because I think Upcountry has really suffered, you know, needlessly or whatever, many, many years.

CHAIRPERSON HIRANAGA: Yes, the motion has been amended to remove any reference to the mayor.

MS. PARSONS: Then can we also add to that motion that the expedition of the new source development?

MR. VICTORINO: I think that would be a new

motion -- that should be another motion, entirely  
separate.

MS. PARSONS: Why can't we include them?

Let's just put it all in one? Why?

MR. VICTORINO: I would like a separate  
motion. I think we're moving in one direction.

MS. PARSONS: Let me move to amend the motion  
that the board advises that we advise the mandatory  
cut back and that we also recommend the development of  
new source to be expedited for central valley.

CHAIRPERSON HIRANAGA: Is there a second to

the proposed amendment to the motion? There is no second.

MR. VICTORINO: Mr. Chair, if there is no more discussion, I would like to call for the question.

CHAIRPERSON HIRANAGA: All in favor --

MS. RAISBECK: So could we restate the motion so that everybody is clear about what they're voting?

CHAIRPERSON HIRANAGA: The motion I believe is the board recommends -- the board supports the action to halt water meter reservations at this time.

MS. RAISBECK: Thank you.

CHAIRPERSON HIRANAGA: All in favor, please so indicate by raising your hand. Let the record show Kenneth, Sally, Clark, Mike Victorino, and Dorothy Pyle in favor.

Those opposed? Let the record show Mike Nobriga and Ginny Parsons in opposition. So the motion passes.

MS. KRAFTSOW: Mr. Chair, may I ask one question?

CHAIRPERSON HIRANAGA: Yes.

MS. KRAFTSOW: The motion that just passed, did I understand correctly that notwithstanding that, that support to stop giving out reservations, that the board would still support the issuance of a reservation to the Hawaiian Home Lands project?

MS. PYLE: I don't think we have a choice.

CHAIRPERSON HIRANAGA: The motion was to support the mayor's decision -- to support the decision --

MS. KRAFTSOW: To stop giving out reservations, right. And it would be a new

reservation, that's why I'm asking for clarification  
on that point.

CHAIRPERSON HIRANAGA: Yes.

MR. KUSHI: Mr. Chair, you just voted on the  
-- you approved the amendment to the motion. Now you  
need to --

MS. RAISBECK: No, we did not.

MR. KUSHI: You approved the amendment to the  
main motion. Now you need to approve the main motion.

MS. RAISBECK: Mr. Chair, would I be out of  
order to ask Ginny to make a separate motion now to

accomplish what she had in mind?

MR. VICTORINO: Now we need to make approval  
on the main motion.

MS. RAISBECK: Oh, we haven't got to that? I  
beg your pardon. I beg your pardon.

MR. VICTORINO: Thank you, Mr. Kushi.

CHAIRPERSON HIRANAGA: So all in favor of the  
main motion, please so indicate by raising your right  
hand. Let the record show the same individuals,  
Kenneth, Sally, Clark, Mike Victorino, and Dorothy



Pyle in favor.

Those opposed? Let the record show Mike

Nobriga and Ginny Parsons in opposition.

Do you wish to make --

MS. RAISBECK: Now could we --

CHAIRPERSON HIRANAGA: Do you wish to make a

motion, Ginny?

MS. PARSONS: I would like to make a motion

that the Board of Water Supply recommend to the

administration and the Department of Water Supply that

they expedite new resources for Central Valley to be

on line as soon as possible.

MR. VICTORINO: Before someone seconds the motion, I would like to not only say Central Maui but include Upcountry, you know, so that should be included in the motion, too, please.

MS. PARSONS: Central Maui and Upcountry. New water sources.

MR. VICTORINO: I second that.

CHAIRPERSON HIRANAGA: So moved and seconded by Mike Victorino. Discussion?

MS. RAISBECK: May I offer a friendly

amendment? Can we include the Council -- the  
  
administration --

MS. PARSONS: That is part of the  
  
administration.

MS. RAISBECK: Not the Council.

MS. PARSONS: Yes, it is. Council and  
  
administration. It actually includes George as part  
  
of the administration.

MS. RAISBECK: Yeah, George, but not the  
  
Council.

MS. PARSONS: But it does include --

administration does include Council. Is that not correct?

MR. KUSHI: Not on Maui.

MS. PARSONS: Not on Maui? Not at this time, is that what you're saying? Not this administration then. As far as I understood, the administration was --

MR. KUSHI: I think Mr. Kane would have a problem with that.

MS. PARSONS: Just to make it clear, County

Council and the administration and the mayor.

Specifically the mayor.

CHAIRPERSON HIRANAGA: Discussion, Ginny? Do

you want to discuss the motion?

MS. PARSONS: I think it's self explanatory.

MR. OKAMURA: I had a question. You know, as

far as Central Maui is concern, the Iao Aquifer and

the Waihee Aquifer is close to the limit. Would it be

proper to specify in this motion that we try to seek

maybe surface sources of water or other sources of

water besides the Iao Aquifer or Waihee Aquifer?

MS. PARSONS: New sources.

MR. VICTORINO: New sources. It's all  
encompassing.

MS. PARSONS: Everything that they can find.

MR. OKAMURA: Another well in the North Waihee  
Aquifer would not be the solution.

MS. PARSONS: They better know what they're  
doing on that.

CHAIRPERSON HIRANAGA: The motion is just to  
identify or obtain new sources. Yes, Sally.

MS. PARSONS: Yes, Mr. Chair, I would be

strongly in support of this motion. I think we  
  
definitely need new water sources.

CHAIRPERSON HIRANAGA: Any further discussion?

MR. VICTORINO: I call for the question.

CHAIRPERSON HIRANAGA: All in favor of the  
  
motion to recommend or to support or to urge the  
  
administration and council and the mayor to seek new  
  
sources of water for Central Maui and Upcountry Maui?

All in favor of the motion, please so indicate by  
  
raising your right hand. Let the record show it's  
  
unanimous, so the motion passes.

Next agenda item is East Maui Plan - Status

Report on Litigation Concerning East Maui Plan.

MS. LOVELL: Good morning, Mr. Chairman and members. My name is Jane Lovell. I'm one of the deputy corporation counsel serving the County of Maui by providing legal advice. And I'm specifically assigned to litigation and therefore I'm here today because I have been assigned to the litigation over the East Maui Plan. However, as long as we're in open session, I just wanted to let you know that I am



constrained to only provide you with information  
  
that's already in the public record.

CHAIRPERSON HIRANAGA: Yes, Mr. Nobriga.

MR. NOBRIGA: So there would be nothing that  
  
you could share with this body that would be of  
  
exclusive nature?

MS. LOVELL: I'm happy to tell this body what  
  
litigation has been filed and what has happened to  
  
date in that litigation that is public. However, I do  
  
not believe it would be wise for me to discuss  
  
strategy or anything of that nature in a public

session.

I believe very much in the right of the people to know what its government is doing and in the right of the press to freely report all such information.

However, it's simply not practical for sensitive

negotiations to be revealed in a public way for

everyone to read on the front page of the newspaper.

That's what I'm saying.

So I'm happy to answer your questions or to

give a very basic status report on this litigation,

but in open session it would not be wise and I would

not be advising you about strategy and that sort of thing. If you feel that as an advisory board you should have that information, then I would recommend that you hear it in executive session.

CHAIRPERSON HIRANAGA: Yes, Ginny.

MS. PARSONS: Jane, have you read the correspondence from Mr. Nishiki?

MS. LOVELL: Yes, I have.

MS. PARSONS: And how do you comment on that?

MS. LOVELL: I think -- I don't have it right here in front of me, but my understanding is that

Council Member Nishiki feels that because this body,  
the Board of Water Supply, does not have the power to  
take direct action, that therefore an executive  
session is not appropriate.

I say with respect to Mr. Nishiki, I disagree  
slightly and that is that this board does have the  
power and the duty to advise. And I don't see how can  
you properly advise without information.

And to the extent that the board and its  
members have been named in litigation, you have the

right to attorney/client privilege to receive legal  
advice from your lawyers in private.

MR. NOBRIGA: Mr. Chairman, I have heard  
sufficient information from Ms. Lovell that would  
cause me to make the motion to go into executive  
session.

MR. VICTORINO: Second.

MR. NOBRIGA: Let me make the motion.

Mr. Chairman, at this time I move that the  
board convene into executive session pursuant to  
Hawaii Revised Statutes 92-5(a)4 in order to consult

with the board's attorneys on questions and issues  
pertaining to the board's duties, privileges,  
immunities and liabilities.

MR. VICTORINO: Now I second.

CHAIRPERSON HIRANAGA: Any discussion?

MS. RAISBECK: Yes, Mr. Chair. I support the  
motion. I believe we should go into executive session  
and I think Mr. Nishiki is incorrect in believing that  
because we are an advisory board and cannot take  
action, that we have no basis to convene. I think as  
an advisory board we do need to have sufficient depth

of knowledge of these important issues that we can  
give adequate advice. Thank you.

CHAIRPERSON HIRANAGA: Any other discussion?

If not, I'll call for the vote, motion to go into  
executive session. Please so indicate by raising your  
hand. The motion is unanimously approved. I'm going  
to call for a 5-minute recess to allow the general  
public to leave.

(Brief recess.)

[Executive Session I held.]

CHAIRPERSON HIRANAGA: I would like to call

the meeting back to order.

MR. VICTORINO: Mr. Chair, I would like to make a motion if I may. I would like to move that we approve the direction which the corporation counsel has related to us about the ongoing negotiation for settlement on the East Maui Plan litigation.

MS. RAISBECK: Second.

CHAIRPERSON HIRANAGA: Discussion?

MR. VICTORINO: Call for the question.

CHAIRPERSON HIRANAGA: Personally I have some



reservations regarding certain details of the proposed negotiations, but at this time I will defer to the better judgment of the department and corporation counsel and the mayor.

If there is no further discussion, I'll call for the vote. All in favor, say aye.

[Chorus of ayes.]

CHAIRPERSON HIRANAGA: All opposed? Motion carries.

I would like to go into recess, be back in session at 12:30. So if you want to go get your

lunch.

(Brief recess.)

CHAIRPERSON HIRANAGA: I would like to call the meeting back to order. Next agenda item is Central Maui Joint Venture legal issues regarding joint venture agreement.

MR. NOBRIGA: Jane Lovell, are you counsel for this matter?

MS. LOVELL: No, not necessarily, but I am prepared to address it today.

CHAIRPERSON HIRANAGA: Will you have a seat,

please?

MS. LOVELL: It's my understanding that the board has asked for an update on the status of certain negotiations that were ongoing on the Central Maui Source Development Agreement, the Joint Venture Agreement from 1975. Some legal questions arose last time about whether that agreement is still in force and what happened to the negotiations over it and so forth. And I am prepared to address those issues today, although as with the last discussion we had, I think that if we are -- if I am to give legal advice

to you regarding my interpretation of the agreements  
and their force and effect, that that legal advice  
would best be given in executive session.

MR. NOBRIGA: Mr. Chairman, for this matter I  
move that the board convene in executive session  
pursuant to HRS 92-5(a)4 in order to consult with our  
attorneys on questions and issues pertaining to the  
board's duties, privileges, immunities and  
liabilities.

MR. VICTORINO: Second.

CHAIRPERSON HIRANAGA: Is there any

discussion? If no discussion, all in favor say aye.

[Chorus of ayes.]

CHAIRPERSON HIRANAGA: Motion carries. We'll

take a five-minute recess -- one-minute recess to

clear the room.

[Executive Session II held.]

CHAIRPERSON HIRANAGA: I want to thank

corporation counsel for the update on Central Maui

Joint Venture. I don't believe there is any motion

required regarding that.

Next item on the agenda is Discussion of  
Sunshine Law by Office of Corporation Counsel.

MR. KUSHI: Yes, Mr. Chair, members of the  
board. I've just passed -- staff just passed out to  
you a letter addressed to you and the members, dated  
today, it was done this morning. Again, we apologize  
for not earlier submitting it, but time does take its  
toll. However, we had discussed this before and first  
do you want me to read the letter, Mr. Chair, or have  
you had an opportunity to read the contents?

CHAIRPERSON HIRANAGA: I don't believe it's

necessary.

MR. KUSHI: For the public, there are extra copies. In essence, the letter describes a situation where we've been alerted that there may be violations of the Sunshine Law by one or more members of this board. In essence, we're saying that the issue of e-mails between and amongst more than two board members, and in some instances not only two or more board members but to other non-board third parties as well as media. The contents of these various e-mails range from, you know, requests for items to be placed

on future board agendas to send us version of minutes  
of a prior board meeting.

Again, our letter to you basically in essence  
sites two sections of the HRS Sunshine Law, Sections  
92-4 and 5 of the Hawaii Revised Statutes, and also it  
references Section 92-2.5(a) of the HRS. Maybe I  
should read that into the record. 92-2.5(a) HRS  
states, "Two members of a board may communicate or  
interact privately between themselves to gather  
information from each other about official board



matters to enable them to perform their duties

faithfully as long as no commitment to vote is being

sought."

Now, moving on the specific provision that we

believe has been violated or may be violated is

Section 92-5(b) HRS which specifically states, "No

chance meeting, permitted interaction, or electronic

communication shall be used to circumvent the spirit

or requirements of this board to make a decision or to

deliberate toward a decision upon a matter over which

the board has supervision, control, jurisdiction, or

advisory power."

Based on the situation and the circumstances that has come to our attention, we would take the position that any and all e-mail communications or broadcasts from one board member to two or more fellow board members, regardless of the content contained in the communication, violates the spirit if not the letter of the Sunshine Law.

However, to confirm our view, and the basis for this letter to you is that we would strongly advise that our office on behalf of your board be

directed to request a formal opinion from the Office  
of Informational Practices of the State of Hawaii,  
which office administers the Sunshine Law.

We have listed three proposed questions to be  
asked of the OIP and I have listed them and we will be  
open to any further suggestions or inquiries that you  
or any other board member would want to include. The  
specific questions would be that in reference to  
Section 92-2.5(a) HRS: "Must the communication  
between two board members be "private" or can said  
communication always be transmitted or broadcast to

non-board third parties and/or the media?" It's a fairly narrow question, but I guess it's meant to interpret that section.

The second question would be in reference to 92-2.5(a) HRS, "Are communications or interactions between three or more board members, regardless of the content and/or intended purpose of the said communication or interaction, a per se violation of the Sunshine Law?" That is a more -- a broader question.

And lastly, "Does the prohibition contained in Section 92-5(b) HRS specifically with respect to the prohibition of electronic commissions or e-mails, apply only to executive sessions?" Mainly that's a technical question because that section is found in the executive session section of the statute.

Again, you know, this has been hanging in my office for a while. We would like to conclude it. We would like to have OIP tell us what to do or not to do and what is permitted and with your help we can advise this board as well as all of our other boards and

commissions.

CHAIRPERSON HIRANAGA: Thank you. Are there  
any questions for corporation counsel?

MS. RAISBECK: Yes, Mr. Chair.

CHAIRPERSON HIRANAGA: Yes, Sally.

MS. RAISBECK: Thank you. Yes, I have a memo  
that I would like to distribute to the board if you  
will hold on just a minute. Yes, I am the board  
member who's being complained of and Ginny Parsons --  
who unfortunately is absent now -- is the person doing  
the complaining.

So I had heard indirectly, not from her, that she was sending e-mails around to everybody and his brother complaining that I was breaking the Sunshine Law. I'm sorry that she's not here now, I'm sorry that four members of the board are not present, because I think this could be an interesting discussion. Perhaps we could -- I have told the corporation counsel's office that I would welcome referral to the OIP because I, too, want to have these questions answered about what is permissible in situation this board find itself in.

I would also add a question whether there is anything in state law or our rules which says that only the chair can put an item on the agenda. I would like to have it made explicit that the board by majority vote at each meeting can decide what items should be on the agenda. I have felt very restricted by not being able to have items be on the agenda that I felt and history has shown it would be very important for us to discuss but we have not discussed because they have not been on the agenda.



The memo that I passed out lists all of the e-mails I have sent to the board and the e-mails that I have sent to and from the Chair. I don't list e-mails that I sent only to one member of the board because those are not in question. And I think probably now is not the time to read through them, but I would appreciate it if board members, before the next meeting, could read through them.

And what's very interesting to me is that the first illegal e-mail was sent by Clark Hashimoto, who is not here, to Mike Nobriga, the Chair, about a

substantive issue that farmers should be exempted in a drought declaration. Mike replied to Clark with a copy to the entire board, "Thanks, I'll let George know." Dorothy responded to the board of them, "I agree," and then the board election to be in June.

And at that point Ginny made the objection that this was contrary to the Sunshine Law. And my e-mail then to Ginny said, "Thank you for the Sunshine Law reminder. Can the board discuss how the board can communicate within the bounds of the Sunshine Law?"

That was June 1st. And we have not been able to have

any discussion of how the board can proceed better in attempting to accomplish some work within the bounds of the Sunshine Law.

And my view of the Sunshine Law is that it exists to protect the public's right to know. The public has a right to know what we are doing except in these narrowly defined cases where negotiations are going on. The public has a right to know what's on the agenda and it has a right to know how decisions are made. So I firmly support that we should not, even though it would be convenient, we should not be

discussing substantive matters by e-mail among the whole board. It's inconvenient, but it protects the public. I'm strongly in favor of that.

What I don't agree with is that if I want to send an agenda to the chairman -- I mean an e-mail, pardon me, to the chairman, saying I would like such-and-such an item on the agenda, that I am prohibited from copying that e-mail to the members.

That doesn't make sense to me. But if that's what the OIP says, I'll abide by it for sure.

It doesn't make sense to me that if I have a conversation with Mr. Tribble of the USGS and he tells me information that's extremely important and to me urgent, that I'm prohibited from sharing that with the board until the next board meeting which is probably a month away.

So I have questions about if I get information from whatever source, is there any legal way that I can share this with the board. And back at the time of that first memo on June 1st, I said is there a way that we can have a public file at the board's office

so that as letters come in like the letter from Barbara Long to Dave or other letters, as they come in they are put in the public file and they're available to anybody who wants to take the trouble to read the public file. That to me would mean that any information, whether it comes from the press or the public or a board member, would be available to the public and to me that would be a way of observing the Sunshine Law while allowing the board to get more information than it is currently getting.

And I think the proof of the pudding is that

we had so little information that all of us and the council learned that the aquifer had been designated from the Maui News. The Maui News had information, the board did not have that information, the council did not have. I think we need better communication.

So my answer is that I would like to not beat a dead horse here, but I do have some further questions that I would want the corp counsel to communicate to the OIP. And if you want, I will go into these questions now or if you would allow me to work it out with the corp counsel as to what questions

I think should also be asked or would you prefer to  
have it done now?

CHAIRPERSON HIRANAGA: What is the corp  
counsel's preference?

MR. KUSHI: Mr. Chair, we would prefer, so  
that we don't get it wrong, that something in writing  
be sent to us.

CHAIRPERSON HIRANAGA: Directly from board  
members to you?

MR. KUSHI: Well, if it's with your approval.



CHAIRPERSON HIRANAGA: Well, I would like an opportunity to review the final draft, but --

MR. KUSHI: I would suggest that Member Raisbeck send it to you and if you feel it's appropriate, send it to me.

CHAIRPERSON HIRANAGA: Okay. Is that okay with you?

MS. RAISBECK: Is it okay with the rest of the board that I would send an e-mail to Kent saying questions I want added to these questions to the OIP, and then Kent would presumably forward that to

Mr. Kushi and he could send a letter to the Office of Information and Practice with questions that we would like answered. How does that --

CHAIRPERSON HIRANAGA: Yes, Ken.

MR. OKAMURA: Mr. Chairman, first of all, I think -- I wanted to act on the corporation counsel's request for the three questions to OIP. He asked us to formalize the fact that we were going to ask him to ask the questions to OIP. And so I would like to make a motion that we do that, and then afterwards address the question of what to do with additional questions

which I think we should discuss first. These are okay to me, these make sense, and not that the others aren't going to make sense, but I would like to see the questions.

CHAIRPERSON HIRANAGA: Well, that would prolong the process. But if you're looking for, you know, an answer fairly quickly -- you're welcome to provide me questions as well as any other member. And if there is redundancy or for whatever reason I determine that question need not be answered, but that likelihood would probably be fairly remote. I don't

know if there is a need to discuss the merits of the question.

MR. OKAMURA: Okay. I agree, I think as long as at least two people work on it, you know, Sally works with you, Mr. Chair, and --

CHAIRPERSON HIRANAGA: Well, I'm going to compile the questions and submit them to corporation counsel, who will then draft a letter. We could review the letter before sending it out.

MR. VICTORINO: Mr. Chair, if I may, I would

like to not prolong the conversation on the -- like Sally said, beat a dead horse. I would like to move on this and by the next meeting have everything resolved what questions are going to be sent in be prepared, ready to go, final approval by the board, and we send it out and be done with it. I mean, I don't want to prolong this. I think we need to resolve this and let's move on. And I've always been a kind of stickler about name calling and all this kind of stuff. I don't agree with it. We all have our different opinions. I'll be the first to admit I

don't always agree with Sally or can you or anybody in this room, but I also respect everyone's opinion because they are valuable opinions. But I want to get it straight so we get it done and we move on.

It's been a long meeting. I know one of our other board members is going to be leaving soon and we're not going to even have a quorum. So I think I would like to defer this matter until this entire question has been answered -- I mean the questions have been sent, put together with corp counsel, Sally, Kent, you, Mr. Chair, and maybe if Mike or I or

anybody else has, get it to him, get it prepared; at our next meeting we can take action and move on.

MR. KUSHI: Mr. Chair, final comment. To get it expedited, if you are saying you approve the three questions here, fine, we can get it out right away. And with your added questions, if I can include it subject to your approval, assuming that some members request questions that you don't approve of to have my office send, fine and well. Each member or any member of the public on its own can request an opinion from OIP. So is we don't do it through our office on your

behalf, anybody can do it on their own.

MS. RAISBECK: Mr. Chair, I would prefer to go with what Mike suggested, that we defer it and send in all the questions as a package. That would also allow the other members of the board -- there are four members absent -- it would allow them to participate in the decision as to what questions ought to be sent and I think it would be educational for all of us if it could be deferred now.

CHAIRPERSON HIRANAGA: Well, I guess rather



than saying deferred, what I would suggest is that all members who want questions to be included in the correspondence have them to me by say next Friday, September 5th, so that corporation counsel can incorporate it into a letter, draft letter, which will be available for the next meeting for discussion.

MS. RAISBECK: How will the four absent members find out about that?

CHAIRPERSON HIRANAGA: I would suggest they watch Akaku.

MR. VICTORINO: I like that suggestion.

CHAIRPERSON HIRANAGA: Maybe we can work it out with Cathy. I don't know. But I mean, because corporation counsel needs time to draft the letter, so it gives you a week to e-mail me your questions and I'll e-mail it to corporation counsel and hopefully by the next scheduled meeting he will have a draft letter for discussion.

MR. KUSHI: Mr. Chair, please e-mail only between the two of you for now.

CHAIRPERSON HIRANAGA: So is there a motion required for this action?

MR. VICTORINO: I don't think so.

MR. KUSHI: No.

CHAIRPERSON HIRANAGA: Any other discussion  
about --

MS. RAISBECK: Agenda items.

CHAIRPERSON HIRANAGA: Well, regarding this  
matter. Is that acceptable to everyone? So have your  
questions by next Friday.

MS. RAISBECK: Through Akaku I would ask the  
absent board members to ask me for a copy of the memo  
I passed out, or to ask Cathy. Thank you, Cathy.

CHAIRPERSON HIRANAGA: Okay. Last agenda item is the receipt of board member request for matters/items to be placed on future board agendas.

Yes, Mike.

MR. NOBRIGA: Strongly would like the Chair to consider adding an item of lunch on the agenda.

CHAIRPERSON HIRANAGA: So noted. Any other items?

MS. RAISBECK: Will any of the things discussed today be brought forward -- I mean --

everything is finished of the agenda items we had  
today; is that correct?

CHAIRPERSON HIRANAGA: It appears so to me.

MS. RAISBECK: I would like to put on the  
agenda the question of surface water sources as a  
source of supply.

CHAIRPERSON HIRANAGA: For Central Maui?

MS. RAISBECK: For Central Maui and for  
Upcountry.

MR. VICTORINO: All of Maui.

MS. RAISBECK: All of Maui. Surface water

sources.

CHAIRPERSON HIRANAGA: Identifying them? You  
want them identified or --

MS. RAISBECK: Well, I just want to have a  
presentation on the kind of thing that was in the  
water use and development plan when it was last  
approved, a sort of updating of surface water sources,  
private and county.

CHAIRPERSON HIRANAGA: Any other questions?

MR. VICTORINO: Mr. Chairman, I think she made  
a point of saying private and county. I think we can

depend on the department to know most of the county sources. But private sources, am I correct, Mr. Tengan, it may not always be available to you guys?

MR. TENGAN: That's correct.

MR. VICTORINO: I don't want to put them in a position that if they don't have the information, that we get upset. I would like to know county or anything that is being negotiated or something that's being worked on for the county. Beyond that, with private sources, I think it's going to be real difficult,

Sally, because you have to ask these people to come in to tell us what's available because we don't always know that.

MS. RAISBECK: Oh, another thing I would like on the agenda, Mr. Chairman, Lucienne deNaie has been working a project for the County of identifying both ground and surface water for the island of Maui. She had a contract, as I say, with the County. I believe her report is going to be out by the end of September. And if we could have a presentation of her results,



that would be very interesting, I think.

CHAIRPERSON HIRANAGA: Shouldn't we wait until the report is actually in fact received instead of anticipating its completion?

MS. RAISBECK: Well, if it's not on the agenda -- I mean, if it's on the agenda, it can always be deferred. If it's not on the agenda, then you can't put it on. She said the end of September.

CHAIRPERSON HIRANAGA: I try to limit the number of items on the agenda based on reasonable time frame for the meetings. So putting things on that

might be discussed eliminates other items that could  
be discussed.

Now, you wanted to say something, Ellen?

MS. KRAFTSOW: Just that we've had a request  
in to the commission for -- just that with regard to  
resolving this status of all the surface water intakes  
throughout the island, we've had questions into the  
commission and they have actually been actively  
working on it since at least last October. Those  
issues are not resolved and we don't have the data.  
They don't even have really a lot of the data. And so

there is nothing that earthshattering that we could  
give you at this point, but it is something that's  
being working on worked on actively by staff for the  
commission.

CHAIRPERSON HIRANAGA: Thank you. Any other  
announcements? If not, this meeting is adjourned.

(WHEREUPON, the meeting was adjourned at 1:30  
p.m. )

*"By Water All Things Find Life"*

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