

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR BOARD MEETING
THURSDAY, OCTOBER 23, 2003

Held at the Kahului Shopping Center Conference Room, 65
West Kaahumanu Avenue, Unit 29, Kahului, Maui, Hawaii,
commencing at 9:10 a.m. on October 23, 2003.

REPORTED BY: Rachelle Primeaux CSR No. 370

A P P E A R A N C E S

CHAIR :

KENT HIRANAGA

MEMBERS :

MICHAEL VICTORINO, VICE-CHAIR

DOROTHY L. PYLE

STACY HELM CRIVELLO

GINNY PARSONS

CLARK S. HASHIMOTO

SALLY RAISBECK

KENNETH M. OKAMURA

STAFF :

GEORGE TENGAN, DIRECTOR

JEFFREY T. PEARSON, DEPUTY DIRECTOR

CATHY HOWARD, SECRETARY

ED KUSHI, CORP COUNSEL

HERB CHANG, ENGINEERING

DEPARTMENT OF WATER SUPPLY

TRANSCRIPT OF PROCEEDINGS

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CHAIR HIRANAGA: I'll call the meeting to order.

Let the record show that Dorothy Pyle, Stacy Crivello, Kenneth Okamura, Sally Raisbeck, Clark Hashimoto and Mike Victorino are present. Are there any announcements at this time? Seeing none, approval of minutes. Are there any corrections or comments?

MR. VICTORINO: This is for the October 2?

CHAIR HIRANAGA: October 2, 2003, regular meeting.

MR. VICTORINO: I move to approve the minutes as submitted.

CHAIR HIRANAGA: Motion to approve by Mike

Victorino. Is there a second?

MS. RAISBECK: May I ask if we could have the usual if no corrections are found within 30 days?

MR. VICTORINO: If no questions are found within 30 days, my apologies. Will you second it now?

MS. RAISBECK: Second.

CHAIR HIRANAGA: Seconded by Sally Raisbeck. Any discussion? Seeing none, all in favor, say aye.

(A chorus of ayes.)

CHAIR HIRANAGA: Minutes are passed. At this

time, I will open the testimony to the public. Is there anyone here wishing to provide testimony regarding any of the agenda items, or you may also provide testimony at the time the item is addressed. Lance, do you want to speak now or I guess we're going to go -- that's the first agenda item, so if you want to speak about the Ron Cutler, you can do it at this time.

MR. HOLTER: My name is Lance Holter. I'm speaking in regards to the Cutler application Communication 03-12. I'm speaking in support of the waiver and I've submitted testimony regarding my feelings regarding this

waiver that Mr. Cutler is asking. I'll read in part, from all of my 22 years on Maui as a builder/realtor and coach, my experience with Maui County's departments of Building, Planning, Parks and Water has been that the County does not penalize its people without first trying to bring an existing conflict into compliance through dialog, cooperation and common sense.

Regarding this waiver, the burden of economic hardship has always been the fundamental criteria for the basis of a variance or a waiver or an appeal. In this case,

this application for a waiver wishes the Board of Water Supply to consider the possibility of a burden to the applicant in the magnitude of \$500,000. The waiver also considers that there is an inherent unsafe nature in a water line project bringing 5,000 feet of ductile pipe down a twisting, winding and narrow Piiholo Road with giant eucalyptus trees, huge root systems in the bank and under the roadway itself as well as the disruption of water to the consumers along the way. If any of you have ever driven Piiholo Road, you'll remember the blind sharp turns with no road shoulders and few pullouts. Is the danger and

disruption to the public safety equal to the burden?

It is unfair to place this burden on one party in regard to the water line project that is required by the Board of Water Supply. What also should be considered here is an already existing water meter that is adequate to supply the needs of the buildings in the application. This meter was given by the Water Department to the subdivider owner in consideration as compensation and as a trade for a Kula transmission water line easement to the County over the subdivider's land. The use of the water to this one parcel does in no way affect the existing consumers for they

receive their water from another separate Piiholo water line and have for years.

This is how all of Piiholo residents have been living for a long, long time. The water that serves the applicant's property comes from the 18-inch Kula transmission line. There is an existing functioning fire hydrant on Piiholo near the home on the property. The will of the burdened party to seek a fair solution can be considered in this waiver.

Number one, install an adequate water storage tank system and fire storage facility entering into a fire

protection waiver with the applicant. All over Haiku and Maui, fire waivers are granted for fire protection requirements. Allow the applicant to use this as an alternative water and fire protection system. Number two, remove the plumbing from the existing 500 square foot building and turn it into a farm storage shed with the existing corral. Or number three, dedicate the present old County tank area with an easement to the County Water Department for storage and mixing purposes. And number four, examine a suggestion from the former Director of the

Water Department David Craddick that the applicant improve only that portion of the water line, which is equal to the applicant's land fronting Piiholo Road.

Homes on agriculture zoned lots all over the Piiholo neighborhood have a home and a cottage. They all receive their water from the same source, the Piiholo Road water line. There has been no burden placed upon the County to have given the subdivider water from an 18-inch Kula transmission line as it exists now, and this has resulted in no subsequent burden to the Piiholo system. It is arbitrary and capricious to require the applicant to suffer such

hardship and burden as mentioned at the beginning of this letter when none is caused to any party or would result from granting the applicant of waiver. The granting of a waiver in this application is a just and reasonable use of the board's discretionary powers to grant waivers. There are unique and unusual conditions existing on the property and in the neighborhood. Strict compliance with the provisions of the Water Department would prevent reasonable use of the applicant's property. Strict compliance would also be an intrusion and potential safety issue affecting the neighborhood.

Enormous economic hardship would affect the applicant by not granting this waiver. Housing is in great demand. There is an extreme shortage of land, and it would be a tremendous help if the Water Department with the cooperaton of the Board of Water Supply would begin the use of alternative water systems, codes and new policies to affect change with the goal of alleviating the economic hardship the present housing crisis causes Maui's residents today. Thank you very much. Lance Holter.

CHAIR HIRANAGA: Any questions for Lance?

I have a question, Lance. On your first page, you

say the burden of economic hardship has always been the fundamental criteria for the basis of a variance for a waiver or an appeal. Could you expand on that statement?

MR. HOLTER: Variances and appeals and waivers, one of the basis for that appeal is the economic hardship, which would be applied to the applicant if they were mandated to fulfill a certain action. In this case on the Piiholo Road system, there exists and preexisted a water meter. That water meter served the house. The existing water meter has a five-eighths inch size meter service, and

the fixture units in the house that is built and the existing cottage is close, I think is within the 31 fixture units criteria to require a \$500,000 water improvement for the -- a water meter that does not even come off that water line I think is an economic hardship.

CHAIR HIRANAGA: Thank you. No further questions.

Sally.

MS. RAISBECK: Yeah. Thank you. So this is two acres. It has a 500 square foot cottage on it; is that correct?

MR. HOLTER: Yes.

MS. RAISBECK: They are in the process of building
a 2,000 square-foot residence?

MR. HOLTER: They built a residence.

MS. RAISBECK: It's all finished?

MR. HOLTER: It's completed, yeah. And they got a
plan review waiver -- this is all in the documentation,
Mr. Chairman -- they got a plan review waiver that puts the
burden on the architect to see that the County regulations
are enforced, correct?

MR. HOLTER: That's right.

MS. RAISBECK: Okay. And also the agreement that

is provided in our documentation here with the original

subdivider that nothing would be built, that was recorded?

MR. HOLTER: That was part of the deed, yes.

MS. RAISBECK: So that the title search company

should have informed the new buyers about that agreement; is

that correct?

MR. HOLTER: They were provided the title search,

and they were provided the title documents by the title

company.

MS. RAISBECK: And that restriction, was that

restriction in the title documents?

MR. HOLTER: Yes.

MS. RAISBECK: So the fact that there was a plan review waiver so that the Water Department didn't get it from -- before the building permit was issued, that is sort of an artifact of the rules of the Planning Department that they can, or the Land Use and Codes, right?

MR. HOLTER: They -- I think they had about six months worth of building on the house, and then it was discovered that there was the issue with the Water Department regarding the water improvement. I'm not sure

why the architect didn't pick up on it, but it was part of the title report.

MS. RAISBECK: Okay. And one of the things that is being proposed to the Department is that the existing 500 square foot cottage would be turned into a shed by removing the plumbing and that then this would be the first dwelling on the property?

MR. HOLTER: Well, then it wouldn't become a dwelling any longer. It would become part of the corral that's down there.

MS. RAISBECK: Oh, okay.

MR. HOLTER: There is enough fixture units between the two buildings that it would fall within the 31 fixture units required by the County or very close to, so that the dwelling would then be changed to the main house that was built and the existing cottage would be turned into a farm storage building.

MS. RAISBECK: Thank you.

MR. VICTORINO: Thank you, Sally. Mr. Holter.

MR. HOLTER: Yes.

MR. VICTORINO: Again, this reminds me of so many other incidents that have come before us where prior

agreements are made, and again, you guys want to enter into different agreements putting in fire protection or water storage and whatever needs to be done. But these agreements are entered in with this owner. Then the next owner comes along, either isn't informed, doesn't find out about it until afterwards or whatever and then comes running in to us, in to the Board of Water Supply to say, hey, now you've got to help us out. Again, I don't fault anyone, nor yourself, sir. The problem that really comes to mind is too many agreements are made, too many waivers are given, too many changes are made to help somebody. And then it's not

informed to the next party coming behind them whoever buys the property, so they're stuck with that situation.

Then they come to us so we make the change for that one. The next one comes along, now they're going to build another cottage, put in another fire protection; in other words, it's an endless process, and I don't know why other than the fact that I think a lot of people don't do their diligence when they do the research. Whether it's the architect, whether it's the realtor, whomever, you or the land owner ends up getting stuck with the problem and

then we're here to solve the problem for them.

And I don't think that's fair because there are a lot of people out there that want water meters and we can't issue water meters because we don't have the sources to issue water meters. We don't have the capacity, or we have a moratorium. Is it fair to give A and not B? I don't know. But that's what appalls me in many of these circumstances is the fact that somebody didn't do their homework and now we've got a problem because of a prior agreement. And there are many, many prior agreements out there that we end up getting stuck with. So no offense to

you, Mr. Holter, or your client. I'm not faulting you for this, but again, for us to solve the problem and be unfair to somebody else that maybe has a justifiable situation again just continues to create more problems for everybody else. What is justifiable? What is fair? And that's where I'm having a real difficult time.

No offense to you or anybody in this situation, but we've seen very similar situations come before us and someone didn't do their homework or somebody made an agreement to get the land sold or bought or whatever, and now we're stuck with it. And I'm just having a difficult

time again because I took at this historical background, and as you pointed out, Sally, and there's been many agreements agreeing nothing else is going to be built and all that, and, bang, six months later, the house is nearly completed and then we find out about the problem. Is it our fault, is it Planning? I don't know, but that's another governmental issue.

But the problem we realize is too many agreements are made, and then we're stuck trying to resolve the problem thereafter. And I'm sorry, I'm having a difficult time with this. And it's nothing against you personally or the land

owner. It's a real challenge to face sometimes.

MR. HOLTER: May I comment?

MR. VICTORINO: Sure.

MR. HOLTER: I agree it's a big mess. In this case, I think the difference is that there was an existing water meter that comes from the 18-inch Kula transmission line and that it's not burdening the existing Piiholo water system. Now, had I been involved in getting the building permit for this property, I would have done it a different way. I would have approached the County. I would have made

these four proposals to begin with; however, I wasn't representing the builder in the house. I'm only trying to come in after the fact and trying to correct an issue that I think would have been correctable had it been done properly in first place.

But the issue to me is that this five-eighths meter comes from an 18-inch Kula transmission line. It has no impact on the Piiholo water system. All over the neighborhood are homes and cottages that are on ag land that exist on the Piiholo system today that come -- their source is the -- is the Piiholo line. And yet this lot, the source

is the transmission line. And I think it's a different situation, and I wish that they had used me to try and get their building permit. I would have approached it from my four-point position here. But unfortunately, it didn't happen that way, so I'm coming in, stepping in trying to provide a solution to rectify the issue so that we can move on and finish this problem which has been going on now for about three or four years. And I'm volunteering here. I don't have any relationship with the applicant other than I wanted to present solutions.

CHAIR HIRANAGA: Yes, Ginny.

MS. PARSONS: I know that we had problems at Piiholo because I have a lot of friends that live up on Piiholo, and they've had leaky pipes, low water pressure system. We've got a lot of problems up there, and I think that you probably -- it would probably be best to ask the Department to give us maybe an overview of all the issues that they've had to address over the last couple of years up in that area. I know we had one where Jack Freitas was calling me because we had water running down the highway and they had very little water pressure. And we had to go find the leak, so that was just recently, so maybe we need to

look at Piiholo a little bit closer before we make a move on this.

CHAIR HIRANAGA: Okay. Just for the Board's information, Lance Holter is not the applicant. He's just providing public testimony. The applicant has not come forward yet, so before we start going on tangents.

MR. JENKINS: I'm the attorney for the applicant.

CHAIR HIRANAGA: I know that. Brian Jenkins is representing the applicant, so before we start getting into the agenda item, Lance is just providing public testimony.

MS. PARSONS: Okay.

CHAIR HIRANAGA: Anymore questions for Lance?

Anyone else that wishes to provide testimony regarding this agenda item? Seeing there's none, we'll close the public hearing and hear from the applicant.

MR. JENKINS: My name is Brian Jenkins. I'm the lawyer for Mr. and Mrs. Cutler. And, you know, one of the -- and I was listening to Mr. Holter's testimony, and I agree with what he was saying. But, you know, one of the problems in this case is the requirement that's been placed on the Cutlers, which is to put in 5,000 feet of 6-inch

ductal iron pipe, standpipes, pressure reducing valves,
basically taking care of the entire neighborhood within a
mile of their home for the privilege of building a
single-family home. Now, this seems to be an undue burden.
Your lawyer, the corporation counsel who advises you, will
tell you there needs to be a rational nexus or a reasonable
relationship between the burden that the Cutlers' project
will put on the County system and the obligation the County
can put on them.

And to have them, require them to put in a million

dollars of infrastructure at least for the privilege of just having a single-family home really seems to be -- there isn't a real rational relationship. Why should they fix the problems for the entire side of the mountain for their particular lot? We are willing to, you know, improve the system in front of our property. We have wanted to offer to give space for a water tank at the base of the property that's owned by the County, anything that would have a rational relationship between their impact.

But it doesn't seem at all fair to say, okay,

Mr. and Mrs. Cutler, retired corn farmers from Elsie,

Nebraska, gee, you happened to buy the boobie prize, and now we want you to put in -- we want you to fix the problem for the entire neighborhood a mile up the road without anybody else putting in a dime. And they will have the right to develop their property, subdivide, do what they want. And I guess that's the main point I wanted to make is what is the relationship between their impact and what the County is asking from them. That's what I have to say.

CHAIR HIRANAGA: Any questions for Brian?

MS. RAISBECK: Yeah. Could you expand upon what

Lance was saying about the -- does the existing water meter

come off the Olinda line?

MR. JENKINS: I believe their existing water meter -- they actually had two water meters initially, and the one on the Piiholo line was removed. That's my understanding. Their water meter they want to use is on that big 18-inch Kula transmission line that goes along the makai boundary of their property.

MS. RAISBECK: So they're not asking for water from the Piiholo line; is that correct?

MR. JENKINS: No, they just want to be able to build their house and have the water meter that they

currently have.

MS. RAISBECK: And the -- what the Department is asking them to do is improve the or extend -- improve or extend the Piiholo line?

MR. JENKINS: Right, and not only just in front of their house, but almost a mile up the road. If you can imagine this project with flagmen and digging up Piiholo Road and putting in 6-inch ductile galvanized pipe and pressure reducing valves and fire hydrants. I mean, yes, the neighbors would love it, but why should my guys be stuck

with fixing a historically inadequate system for just the privilege of building their home? It doesn't seem fair.

MS. RAISBECK: And what do you know about what was in the -- what Lance provided that said that the already existing water meter was given by the Water Department to the subdivider owner as compensation for -- for a water line easement, do you know anything about that?

MR. JENKINS: I haven't ever researched that particular issue.

MS. RAISBECK: Could we maybe ask the Director about that, Mr. Chair?

CHAIR HIRANAGA: Yes, go ahead.

MS. RAISBECK: George. Excuse me, George.

MR. TENGAN: Yes.

MS. RAISBECK: In here it says that the existing water meter which comes off the Kula transmission -- the 18-inch Kula line was given to the subdivider owner as compensation for a water line easement to the County. Is that your memory of that transmission?

MR. TENGAN: I'm not familiar with how the meter was installed for this line, but I do know that David was pretty much a proponent of not hooking up services to

transmission lines. If it is, it is. But I'm not aware of how it -- I'm not sure of how that came about. Anyway, this isn't -- well, in response to -- I need to make one thing clear about what Mr. Holter said. Although -- let's assume that it is coming off of that 18-inch line, although it's not a source problem for Piiholo, we have people on the list further down the system that we would be depriving water of, you know. In other words, if we grant a meter, an upsizing of the meter, somebody down the road would be deprived of water, and that person would be on the list, so it is a source problem. But the big issue here as I understand from

the engineers is fire protection.

MR. JENKINS: If I might respond. Two things;

first, it's not a matter of issuing the meter. The meter is

there, so it's not a matter of will we issue a new meter.

The meter is there already. As far as upgrading the meter,

we're not seeking an upgrade of the meter. A five-eighths

meter is fine. That's also not an issue. With regard to

fire protection, we have already made engineering studies

and requirements to put in a chemical sprinkler system sort

of fire protection system. And I think that's really within

the purview of the Department of Fire Control anyway, but we're working with them and we have and we're intending to install a chemical fire suppression system.

MS. RAISBECK: Thank you.

CHAIR HIRANAGA: I have a question for staff. So there was an existing 500 square foot cottage,

MR. CHANG: Yeah.

CHAIR HIRANAGA: And they're proposing to build a 2,000 square-foot residence?

MR. CHANG: According to the agreement that was made back in the mid 1990's when this parcel was subdivided

and with this subdivision written into this agreement, they deferred fire protection requirements, et cetera, which is now triggered by this proposal. The subdivision would never have happened if they had not entered into this agreement, which was deferred temporarily. The water system improvements required providing fire protection and upgrading water services, so the issue here is fire protection. And to answer your question, Mr. Hiranaga, according to the plan map, it was the -- it shows the existing cottage. And the subsequent permit that was applied for in, let's see, 1999 or 2000 was for a second

dwelling, which I believe is the main dwelling.

CHAIR HIRANAGA: So is it the Department's position that if they were to come in for a building permit to enlarge the 500 square foot existing cottage that we would also deny that request or oppose that request?

MR. CHANG: Correct, the agreement that was entered into when the subdivision was made for this lot owned by the Cutlers, it covers any type of building permit. Residential classification would trigger the deferred fire protection requirements, and all the other subdivision requirements, that was deferred.

CHAIR HIRANAGA: Thank you. Kenneth.

MR. OKAMURA: So they are allowed to build a 500 square foot cottage because it's a small building, is that the reason?

MR. CHANG: When they applied for the subdivision, the building was already there.

CHAIR HIRANAGA: Yes, Sally.

MS. RAISBECK: Mr. Chairman, yeah, this is more discussion than questions, so perhaps are we in discussion on this item? We have closed public testimony. We're in

discussion?

CHAIR HIRANAGA: Yes, we closed public testimony.

MS. RAISBECK: Yeah?

CHAIR HIRANAGA: We closed public testimony. This
is the applicant.

MS. RAISBECK: What troubles me is I don't see any
reason -- we know that there are many people who would like
to subdivide land where water isn't available for whatever
reason and they want to subdivide for the purpose -- well,
family subdivisions so that they can transfer title. I see
no reason if any of those are granted that subsequent owners

who -- who buy the land shouldn't go for a plan review

waiver from Land Use and Codes, build a house and we will be

faced with the same situation many times.

On the other hand, this does seem to have elements of uniqueness in that what they're being asked to improve is not the system they're going to get their water from, which is different. And I would like to know more about whether the easement they gave the County -- essentially the previous water director traded them a water meter for that easement. I mean that's another sort of unique circumstance. So I find this very troubling, and I'm not --

and I think it's a failure in our rules that they require --
that they require applicants to build. And I guess the
rules do not yet compensate them if they build say a mile of
line and other people join onto that line.

Do our rules -- can I from George or from Ed find
out do our rules yet exist in a form where if they build a
mile of water line and other people then attach to that,
they get compensated?

MR. CHANG: There is a provision in our rules and
regs that allows the Department to get what we call it a
main line extension refund, whereby a subdivider if he does

like a mile of pipeline that people can hook up to, he will be reimbursed 50 percent of the construction cost of the pipeline. And it's like a five-year 10 percent increment, so five annual payments. If I could mention something else.

MS. RAISBECK: I'm sorry.

MR. CHANG: You mentioned something about this property will be served by a different system. The intent of the deferred water system implements was to place this property on the upper Kula system because of the -- there was a preexisting condition where the meter was already on

the lower system, which I believe was moved to the upper system a few years back when the Piiholo treatment plant came in. I can't confirm that, but I believe they were on the upper system, which is the system we're asking the owner to improve.

MR. JENKINS: May I? I have an observation. You know, we -- the original subdivider, Mr. Bolton, did grant an easement in favor of the County of Maui through the Department of Water Supply on August 8th of 1980. It's recorded in the Bureau of Conveyances Book 14930, Page 114. It's an easement for water system purposes. That's the

easement that we're talking about. And in exchange for this grant of easement that Mr. Bolton, who is my client's predecessor in title, he then obtained a water meter back in 1980 as a result of that swap as it were.

MS. RAISBECK: Did that water meter come off that 18-inch pipeline?

MR. JENKINS: That's my understanding.

MR. CHANG: The change in conditions were we put in a brand-new water tank and treatment plant, and through the operational requirements, we had to switch over the meter to the upper Kula line.

MS. RAISBECK: Mr. Chairman, could I move that we defer this item for further information from the Department? I would always rather like to see information on paper rather than, you know, sort of elicited verbally, because I get confused if it's all verbal. Well, I would like to make a motion to defer.

CHAIR HIRANAGA: Okay, there's a motion on the floor to defer. Is there a second?

CHAIR HIRANAGA: No second. Motion dies.

MR. JENKINS: I would like to make one other comment if I could with the Board's permission is that

Mr. Bolton was the original owner of this property. After he subdivided it, he then sold it to people named Delperdang who were from Mississippi. The Delperdang's sold to my clients, the Cutlers. Now, under the agreement with the Board of Water Supply, Mr. Bolton within ten days of the conveyance had to notify the Board of Water Supply of the conveyance so the Board could take appropriate action.

There wasn't any such notice. The Delperdangs had the same obligation, notify the Board within ten days. Nobody notified the Board.

My guys, the corn formers from Nebraska come and buy this thing. All these other people are smelling like roses. Boy, they've made a ton of money. They've subdivided. They've sold their land. And my guys come along, and there's not even a penalty for their predecessors in title, the ones who actually made the agreement with the County, the ones who made all the money and are making out like bandits. And my guys come along. They're the only honest ones who actually are applying for all the permits. And it's like they get the boobie prize. Here, put in a mile of, you know, pipeline. Fix the problem for the whole

upper part of Piiholo Road, Mr. and Mrs. Cutler. I mean

it's just an incredible situation.

CHAIR HIRANAGA: Yes, Dorothy.

MS. PYLE: I absolutely hear what you're saying,

but what we actually come back to right down from the very

beginning of this whole thing is responsibility. The

Boltons, maybe I've got the name wrong, weren't responsible.

The next people weren't responsible. The architect wasn't

responsible. And here we are with the expectation that a

board here, which is trying to support our Department of

Water Supply is now supposed to fix this for all these

irresponsible people. You know, I really feel very sorry for your clients, but where was their attorney when they bought this property? Where was the realtor? Where is the responsibility on that level that didn't check out what all these permits and all of these requirements were to start with?

I'm sorry, you know, I think it's irresponsibility and what can we do about it? If we give everybody a waiver who comes in and says, oh my goodness, before me, somebody wasn't responsible, we're going to be giving permits to everybody.

MR. JENKINS: If I could respond. In response to your comments, which I agree with, I will represent to you that a civil action has been filed. And actually, we're in the mediation section, which is one of the reasons why we're here. Judge McConnell, as our mediator, said try to go back to the Board, see if you can work something out. But yes, we're in hot litigation because we're saying we got defrauded, okay.

But the other thing I have to come back to is what the law is. There has to be a rational nexus, a reasonable

relationship between the burden that this extra single-family house is on the Piiholo system, the upper Kula system and the obligation the County can put on them. So, yeah, there's responsibility. But is there a reasonable requirement or relationship between this additional single-family house and a mile of pipeline that's fixing a historic problem? That is the problem. The requirement is too high.

It's a matter of law. This type of thing has gone up to the United States Supreme Court because counties are doing bizarre things saying, hey, you're going to build a

house, how about putting up a new elementary school, because after all, our existing infrastructure isn't there. You can't do it. It's against the law. There has to be some reasonable nexus relationship, and a mile of pipeline with fire hydrants and pressure reducing valves and a million dollars of infrastructure is not reasonably related to the burden that my client's little dinky single-family house is going to have on the Piiholo system.

And that's what we're asking. You know, even if we're saying, okay, we're responsible, you got us, is this requirement rationally related? I would suggest to you that

it's not.

CHAIR HIRANAGA: Yes, Ginny.

MS. PARSONS: With regard to the fire flow issue,

I agree with you. I don't think the one family -- one

family should have the burden. I do agree with Dorothy

there's a lot of issues, and you have a civil issue behind

you. It was my understanding, George, maybe correct me,

didn't we have the fire department making these decisions on

the fire flow, what protection they would grant as they

would like sign off on?

MR. TENGAN: We have our own standards that we

follow.

MS. PARSONS: But didn't we hand that back over to the fire department and they have to sign off on these things as far as fire department issues?

MR. TENGAN: They sign off on the building permits.

MS. PARSONS: So if they're happy with what the customer is willing to put in for fire flow, that takes our issue of the fire flow out of there, even though I know that we need to get Piiholo taken care of and lot of other areas

the CIP needs to be done. But if we're out of the fire flow aspect of this thing and now it's just a matter of can they use the meter that's on the property.

MR. TENGAN: I don't think in all cases the fire department signs off on the building permits.

MS. PARSONS: But could they?

MR. TENGAN: They could if they're brought into the loop on residential building permits.

MS. PARSONS: Because I know that sometimes when you go in, you can have them, they look at the plan and maybe that's an area that we look at from the fire flow. My

other question is if they already have a 500 square foot building on the property, if they were to make an addition on that rather than a new structure, would it fly then, would their building permit fly then if they were just going to make some additions on there?

MR. TENGAN: I think the key there is the 216 agreement, the family subdivision, the Rule 216.

MS. PARSONS: Do you have it in there so I can review it, is it in our packet?

MR. TENGAN: It's described in our staff report.

MS. PARSONS: Here it is on Page 21. So why was

that -- tell me what that does.

MR. TENGAN: It basically allows families to
subdivide land so that they can transfer titles to their
successors, to their descendants.

MS. PARSONS: But how does it affect this
property?

MR. TENGAN: This property was subdivided under
this rule here and this rule requires that when structures
are to be built and the system has to be upgraded.

MS. PARSONS: But if they're just going to add on
to an existing structure, would that necessarily fall into

this category?

MR. TENGAN: If the existing structure had to come before us prior to construction, we wouldn't have approved the structure.

MS. PARSONS: Say that again. I didn't understand that.

MR. TENGAN: We don't always see the first and second building permits on every property for some. Maybe Herb can explain that process.

MR. CHANG: We're kind of evolving on this. When

the Department sees building permits, those kind of permits, the current situation is if the applicant has an existing structure and say existing building for a dwelling and he comes in for a second dwelling, I think back in the mid Nineties, we may not have seen these permits. But under the current permit processing, we do see these second dwellings now. And we have -- because I have found this agreement also, it has the same kind of residential structure. It triggers this improvement that needs to be complied with.

MS. PARSONS: That's for a second dwelling though,

not for addition to the first?

MR. CHANG: The way this agreement is written,

it's -- no residential building permit for additional

dwelling requested by a subdivider for the subsequent

grantee.

MS. PARSONS: Additional. What I'm saying is if

the owner were to add on to the house that they currently

have.

MS. PYLE: They've already built the second house.

MR. JENKINS: Right, they have a stop work order.

MS. PARSONS: You're in the middle of it, I'm

sorry.

MR. JENKINS: It's actually close to being finished.

MS. PARSONS: You're in the middle of building this house.

MR. JENKINS: So we're willing to make that initial house a storage house, you know, anything. It wouldn't be ever used.

MS. PARSONS: How did they -- how did you get that far along? I mean --

MS. PYLE: The architect didn't do his job.

MR. JENKINS: There was a process called a plan

review waiver; whereas, they get the approvals as it went along. There is a problem. I don't know if the County still does that anymore, but down at one of the beaches in Makena, there's a big problem with that as well. And also in this particular case where, you know, a building signs off, all sorts of departments sign off, and all of the sudden it gets to the Board of Water Supply, and they say, hey, we have this agreement.

MS. PARSONS: Who was your contractor?

MR. JENKINS: Mr. Stiller I believe from Pacific

Pole Homes.

MS. PARSONS: You know, this is an issue that needs to probably go before Planning, and I know this has been done in the past because they do it sometimes in Hawaiian Homelands. I sell package homes, so I'm pretty familiar with how they do it. And they kind of jump the gun before the final permits are issued. And there's a rule in there that says that you pay double the cost of your building permit in order to do this. There is a rule that allows people to go forward. But this is an issue I think that needs to go back to Planning and Planning needs to deal

with how they're going to handle this. And maybe if they don't want that rule to exist that's in there that allows people to go forward, that they need to put some kind of penalties up against the contractor for jumping the gun or the homeowner. But I don't think this is our issue. I think they've allowed them to go forward. We are planning to make some decisions on how they're going to handle this because they do allow this to happen. And the fact that it didn't get cleared from us, like Dorothy said, they were remiss. But Planning has allowed them to move forward, so it's a catch 22. I think we defer it to Planning and maybe

that's the motion that needs to be made until they can come up with some objectives to get this cleared.

MR. JENKINS: If I might make a comment with the Board's permission. Again, I need to stress that I would suggest the Board figure out what is a rational relationship between what my client's burden should be and because of the impact on the water system. So should they be forced to do a whole mile of line, or should it be something less?

There's nothing in the family subdivision agreement that says if you get a building permit, you have to put in a mile of line. That is the discretion of the Water Board. This

is where we have to get to what is a rational relationship.

Should they have to improve the entire upper portion of

Haleakala for their permit? What is rational?

And that's what I think the Board has to come back

to and say, yeah, we would love to have a mile of pipeline,

but come on, you guys, what is the rational relationship

between this house and what we can basically get out of

improvements? And so, as I said, my guys are willing to put

in improvements in front of their property. Apparently, the

County also needs this little water tank on the makai side

of the property redone. We're willing to give an easement so the County can upgrade its infrastructure. We're willing to do all kinds of things, but it just seems so egregious to ask for this huge mile of pipeline. That's the real problem here. And this is totally within your folks' discretion.

CHAIR HIRANAGA: Mike.

MR. VICTORINO: I'll defer to Dorothy. I'll let Dorothy go ahead, and then I'll go after Dorothy. Okay, Dorothy.

MS. PYLE: I actually think what you're saying has lots of merit to it, but if you want something to move

forward fairly quickly for this Board or even perhaps for the Department, to come up with those kinds of ideas about what is fair or just is going to have to take a lot of research. Because it would seem to me that there are probably a lot of examples of exactly what you're talking about that have happened in the past 10, 20, 30, 40, 50 years of what's happened in the County of Maui. And we would probably need to see how has this been handled in the past? Have other people been required to do this also, and at what burden has it been to them, what percentage of their property values if those are the kinds of things that you're

looking for. We don't have that kind of information.

And I don't think that we would be in any way keeping with what we should be doing if we just jumped the gun and shot from the hip and said, oh, this seems impossible. So if you want us to do the research, you're going to have to wait for it.

MR. JENKINS: Okay, I would like to make one other comment. Initially, this property had two water meters, one on the Piiholo system and one on the 18-inch line. The one on the Piiholo system has already been removed. That in and of itself has reduced the burden on that Piiholo system.

MS. PYLE: Who removed it?

MR. JENKINS: Not us. It must be you. Because it certainly wasn't us. And that in and of itself has had a positive impact on everybody else who uses that upper Piiholo system. So, you know, what is fair? What is rational? Yeah, you could do a huge study and hire the Rand Corporation and various think tanks or you could just say, come on, what is fair? We gave up our water meter on the Piiholo system. That's a huge impact right there. We have a water meter on this monster 18-inch transmission line that

was given quid pro quo in exchange for an easement that the County needed.

MR. VICTORINO: May I? I deferred. I didn't say it was your turn. My turn. Sometimes you have to be real patient, let everybody say something and then you say what you need to say. Mr. Jenkins, Mr. Holter, I appreciate your presentation, excellent, very well thought out. But again, I go back to my original point. Wrongs were done, and now you're coming to us to correct the wrongs, okay.

Whether you're a corn farmer from Nebraska or some fat cat from Beverly Hills, it doesn't make a difference in

my mind. Who did right, who did wrong really doesn't fall onto us, and you have legal action, so maybe that's what also I would like to say. Get your legal action done and then come back to see us. Maybe that's what needs to be done. Studies need to be done. We can't arbitrarily and capriciously decide we're going to do it for you because we've had other people walk in and we've said no to them.

It's not in offense to your owner or the previous owners, but this is the way things have been done too long. And I think the present administration is making a tremendous attempt to correct it. You also made that you

came up and told the truth and that's why you got caught.

Well, you built a house, and that's what all this brought up. Had you not built a house, none of this would have been brought forth, am I correct, Mr. Jenkins?

MR. JENKINS: That's correct.

MR. VICTORINO: So with that in mind, whether it was done because the architect didn't do his studies or whomever did not do their do diligence, you come back to us and ask us for a solution even if you're just referring to the fact what is proper and right and fair, I still can't answer that question because it is too broad.

And I agree with Dorothy and I agree with Ginny
and I agree with all of our people here this is a cumbersome
problem. And if we say yes to you now, we open the
Pandora's box. We open the road for everybody else to come
charging in and say, well, I have a similar situation.
We've got to make a stand somewhere and say, no, we can't do
this. We've got to do it right so that in the future, we
have, in your case, like one lawyer would say, you have a
case study to go back to this is what we've done in the past
and this is fair and equitable to all.

Whether you're a corn farmer from Nebraska, no offense, or some fat cat from Hollywood, it doesn't make a difference again in my mind. We've got to be fair and I think deferring the thing, I don't know what we want to do at this point. I cannot take action because there is too many gray areas and too many people responsible or did not take responsibility for the action that has left your client, excuse me for being honest, your client holding the bag.

MR. JENKINS: And if I might respond, it's not that we're trying to say, hey, give us a break, let us off

the hook. We're just saying what is reasonable? Is a mile of pipeline, because this is not a new thing. You guys are bound by this. It's been up to the United States Supreme Court. Your corporation counsel will tell you this is established law. This is not anything new for you, and so would it be fair to say we would like another couple of reservoirs about the size of the Kahakapao reservoir in exchange for this? Well, how about a mile of pipeline? Well, you know, so it comes down to, and this is what you're already stuck with. This is not anything I'm coming to you and saying please give to me. You're stuck with it. I'm

saying is this reasonable, and I suggest to you that it's just patently unreasonable.

CHAIR HIRANAGA: Yes, Dorothy.

MS. PYLE: It just seemed that this also is a reflection on the fact that we're becoming more populated and there are more houses and so on. I don't know the fact of this. I've lived on Maui nearly 35 years. Some people have lived here all their lives. I don't know the fact of how Piiholo and Olinda really developed, but I do know from my own personal experiences that other people in Kula have had to put in very extensive water systems to build their

houses and when Olinda and Piiholo were first being developed, my guess is those houses were pretty darn far apart and they had to put the water improvements in.

So I think that there's some really interesting historical things to consider here, but now just because people live 50 feet from each other, a mile seems really inappropriate. But when people lived five miles apart, a mile didn't. So we have to think about those things from other points of view.

MR. JENKINS: But the other thing is already the

Water Department has taken my client's second water meter.

Okay. Now, what does this mean? Will they give it back to us pending an outcome? Because if it was taken for no compensation, that doesn't seem fair either. And we had two water meters. Now we have one.

MR. VICTORINO: Are we finished in discussion because I would like to make a motion?

MS. PARSONS: I'll be quick I promise.

MR. VICTORINO: Okay. Go ahead.

MS. PARSONS: Your issue isn't the missing water meter. Your issue is the requirements for the subdivision.

And I'm still perplexed at whether it's an addition to the house or in addition to the residence that this is falling under, and it may be simple for you to attach that dwelling with beams on the new house to the old cottage and that become an addition. It may be that simple, but I think you need to go back to Planning and get them to give you the -- to clarify this issue. Because you can attach a whole dwelling with a beam, so the roofs match. And it's just an addition to the original dwelling.

MR. JENKINS: Unfortunately, these two structures are on almost opposite sides of the two-acre parcel, so a

breezeway would not be a solution here. But if there is research that you folks want to do in order to make a decision based on all of the facts, I would encourage you to do that research before just making a decision.

CHAIR HIRANAGA: I feel procedurally to allow the Department to provide their side of the issues. At this time, does the Department wish to add any additional comments to their staff analysis?

MR. TENGAN: I guess we stand by our staff report and our recommendation.

CHAIR HIRANAGA: Thank you.

MR. VICTORINO: Mr. Chair.

CHAIR HIRANAGA: Yes, Mike.

MR. VICTORINO: I would like to make a motion, but before I make that motion, I would like to make it clear to Mr. Jenkins and Mr. Holter that this motion I make is to bring some conclusion to today's discussion and not preclude that if studies or other things can be brought forth and brought some justification or some cost analysis can be made that we would not reconsider at that point. But I'm going to make a motion to deny this waiver, the waiver, I'm sorry.

I move that we deny the waiver.

MR. OKAMURA: Second.

MR. VICTORINO: Yeah.

CHAIR HIRANAGA: So the motion is to deny the request. Is there a second?

MR. OKAMURA: Second.

CHAIR HIRANAGA: Seconded by Kenneth. Any discussion? No discussion. Calling for the vote. All in favor to deny the request indicate by saying aye.

(A chorus of ayes.)

CHAIR HIRANAGA: Any opposed?

MS. RAISBECK: No.

CHAIR HIRANAGA: Let the record show that Sally voted in opposition to the motion, but the motion does carry. Thank you.

MR. JENKINS: Okay. Thank you.

MS. PYLE: Just a question. What is the status of our rules about whether we can actually make any decision right now?

CHAIR HIRANAGA: It's not on the agenda. Let's talk about that later. You can put that as a request for the next agenda item.

MS. PYLE: I'm not sure what we voted on.

CHAIR HIRANAGA: You're not sure of the motion?

MS. PYLE: I'm not sure that the Board has the authority to make a decision saying we deny a waiver. I think we can make a recommendation. I don't think we can deny the waiver. It's not within our purview to do that.

MS. PARSONS: I agree.

MS. CRIVELLO: Recommend.

CHAIR HIRANAGA: Mr. Corporation counsel, should we amend our motion to say we recommend to the Department that the request be denied?

MR. KUSHI: Yes, Mr. Chair, maybe that should be in order. As I understand this matter on the agenda, it's under communications. It's a letter from Mr. and Mrs. Cutler. It's not an appeal per se according to the rules. Even if it was, your decision on any appeal would be a recommendation. So in this case, I guess it's a motion to -- a response to the letter from the Cutler's motion to deny the request for a waiver.

CHAIR HIRANAGA: Recommend?

MR. KUSHI: Recommend to the Department.

CHAIR HIRANAGA: We include the word recommend?

MR. KUSHI: Yes. That being the case, I think a motion is in order to amend, to reconsider your previous motion.

MR. VICTORINO: I move we reconsider the previous motion.

CHAIR HIRANAGA: Is there a second?

MR. OKAMURA: Second.

CHAIR HIRANAGA: Moved by Mike. Seconded by Kenneth.

MS. PARSONS: I would like to make one more -- if

we're going to have some discussion here.

CHAIR HIRANAGA: Let him state his motion first.

MR. VICTORINO: Well, I would like to do it the right way so that we change the word to have it properly as a recommendation.

CHAIR HIRANAGA: To include the word recommendation?

MR. VICTORINO: To include the word recommendation.

MS. PARSONS: And since we've opened it back up, I just want to make one point. I know you were pointing out

to me about the building permit was the issue in here. But I go back to this application. It's a waiver in there, but it got this far along. I don't even think we can recommend to deny anything until they go back to Planning. I mean this -- the first part of the two-part series there; one was no water meter. One is no building permit has already been -- it's already gone through. I think you need to go back to Planning and have them give us an issue and then we make a decision whether we recommend or deny. That's what I think the motion should be.

CHAIR HIRANAGA: My understanding of the plan

review process is that the architect represents that all conditions will be met before the occupancy permit shall be issued. So at this point, the architect failed to discover that a building permit should not have been applied for initially. I believe the responsibility goes back to the architect for initiating the process or allowing the process to continue under the plan review waiver.

MS. PARSONS: I agree with that, except for the fact that I've seen cases where you've gone in to get a permit and then the Planning Department has denied because

they've done their research. So the Planning Department doesn't just give you a permit not looking at TMK's and not looking at conditions on CC and R's and everything else. They look at what has to be there. And if they've gone this far, they've done it. They're supposed to have done their job, so they know what this piece of property was.

MS. PYLE: Supposed to.

MS. PARSONS: They're supposed to. And they do it in other cases. I've seen things denied because people haven't followed and they don't even get to this process. Somehow they got to this process. It needs to go back to

Planning. It's pretty clear to me it's not our decision right now. Planning has got to tell us how they got to this and what they want to do about it and give us a letter on how they got to this point, and then we make a recommendation to deny or to proceed. But Planning has already violated the first part of this agreement.

CHAIR HIRANAGA: Yes, Brian.

MR. MISKAE: Mr. Chairman. Brian Miskae for the Planning Department. For the record, the Planning Department does not administer the building permit section or the plan review section. It's the Department of Public

Works and Environmental Management, so the reference should be to them and not to the Planning Department.

CHAIR HIRANAGA: Thank you for the clarification.

MS. PARSONS: So be it. I agree.

CHAIR HIRANAGA: Any further discussion? If not,

I call for the vote. All in favor of the vote.

MR. KUSHI: My understanding, Mr. Chair, is you're deliberating on a motion to reconsider your previous action?

CHAIR HIRANAGA: Right, so we're just voting on whether to reconsider.

MR. KUSHI: Correct.

CHAIR HIRANAGA: So the motion is all in favor of
the motion to reconsider the previous action, all in favor
say aye.

(A chorus of ayes.)

CHAIR HIRANAGA: Let the record show it's
unanimous. Now you wish to amend your motion?

MR. VICTORINO: Well, no, I make a new motion,
right?

CHAIR HIRANAGA: New motion.

MR. VICTORINO: Make a new motion, yeah. I move

that we recommend to the Board --

CHAIR HIRANAGA: To the Department.

MR. VICTORINO: To the Department I should say, to

the Department to deny this waiver being requested by -- the

Holters?

CHAIR HIRANAGA: Cutlers.

MR. VICTORINO: Cutlers, excuse me, I've got so

many names in front of me, I can't remember. By the

Cutlers.

CHAIR HIRANAGA: Is there a second?

MR. OKAMURA: Second.

CHAIR HIRANAGA: Seconded by Kenneth. Discussion?

No discussion. Call for the vote. All in favor of the motion, please so indicate by saying aye.

(A chorus of ayes.)

CHAIR HIRANAGA: Opposed.

MS. RAISBECK: No.

MS. PARSONS: No.

CHAIR HIRANAGA: Let the record show that Ginny

Parsons and Sally Raisbeck voted in opposition, but the motion does carry. Thank you.

The next agenda item is unfinished business

regarding Mark and Denyse Collins. Does the Department wish to add to the staff report?

MR. TENGAN: No, Mr. Chair, we don't have anything to add at this time.

CHAIR HIRANAGA: Mr. Collins, do you wish to provide testimony?

MR. COLLINS: Okay, my name is Mark Collins, and I want to thank the ladies and gentlemen of the Board and employees of the Department for this opportunity to present. To start off, I'm just a little bit perplexed that the Department doesn't have a criteria for remote meter

installation because this is what was to be the next step.

And, you know, I've been put on the agenda as unresolved,

unfinished business, and I was here on May 22nd of this

year, and this was -- I was expecting that. The Department

was going to do a criteria.

And then we would see, you know, from that, you

would be able to make a determination or a recommendation

regarding our request for this remote meter installation.

With that, let me also say that we're under a bit of a time

fuse. When you -- when we reserved the meter, there's a

two-year period that you are to move forward with installation of the meter. And so further delays puts more pressure on us in that regard. I also understand that the Board is -- would be the people or the -- if we were to request an extension, which is possible under the original rules on a reserved meter, you go before the Board, but it's not clear whether the Board has that jurisdiction anymore.

So I can have a tendency to be longwinded and I can, you know, make this very complicated or we can make it relatively simple. We'll see how it goes. I believe you have the handouts that pretty much lay out the situation and

what we are requesting is the same rights and privileges that our adjacent neighbors have; that is, to have their water meters on a remote site on Olinda Road. And the current situation is that the Department is saying, no, we don't really want to do that for you, allow that. We want you to make a main line improvement. Of course, in their wording, they say it's a main line installation, but in reality, it's an improvement because there is a two-inch PVC line that is the responsibility of the Department to maintain, and it was there.

They have a role in this because they put in this

two-inch line. So they're saying to us as the lot owner, put in 800 feet of 6-inch ductile steel, and we will allow you to hook up your meter adjacent to your property. And this is we see as an unfair burden to us as the land owner. Because let's think for a moment what a public utility is about. Public utilities are set up to share the costs and to make services available at reasonable costs to the property owner.

And this is not what, you know, this isn't fitting within that -- that type of role that a public utility has.

So now to cut to the chase, how do we come to a reasonable

resolve on this? How do we stay within what is within one of the rules regarding installation of a new water service? There is a Section 3-5 that says all meters shall be installed along the property boundary or where reasonably feasible. So we in a letter to David Craddick asked what we think is reasonably feasible, and this is what we're asking the Stiles to do, our immediate neighbors to do and to use the remote meter.

Now, I've had discussions with the current director and his staff, and I understand their concerns

about remote meters sometimes thinking they can get unwieldily and in the past, they have caused some problems for the Department. So my proposal is given that there is this two-inch line that's over 30 years old that is the responsibility of the Department, that there is an existing CIP project that's been put on hold to replace the line, that the Department allowed us on an interim basis be able to hook up at the remote site that our immediate neighbors have. And when the time comes necessary for the Department to do this capital improvement on Alaluana that at our expense we would remove the remote meter and then reinstall,

pay for the installation adjacent to our property when that capital improvement project takes place. So that's it in a nutshell.

Just to give you a little more background on why this is an appropriate way to deal with this is that when we -- when the Department gave us the opportunity to purchase or to reserve a meter, this was done as a decision by I believe -- my understanding is corporation counsel and their recommendation to the Department that there is a certain reliance that they have for these owners of old lots that are in older subdivisions to provide water service.

And this is -- this is why a certain number of property owners were given this opportunity to reserve meters, and it turns out to be a two-step process. You reserve the meter. Then you work out, you know, how you're going to get it installed.

But also keep in mind as you review this is, because we've paid for the reservation, that amount of water for a single-family residence has been set aside in the -- in the planning. You know, the Department says, yeah, there is adequate water for this. Also the Department has said in their most recent recommendation to deny this remote meter

request an issue regarding fire protection. My contention is that it is not an issue. It's a nonissue for a number of reasons. One is that we have an existing home, and this doesn't represent new development. We receive -- you know, our home is legally permitted and it did, you know, it was approved by the fire department. And we are on water catchment. We have a 35,000 gallon catchment system.

The County recently in 2001 adopted a new standard regarding fire protection in rural areas. It's a document that's very hard to get your hands on, but you can order it

on line for \$30. And I've done that, and we meet the standard by having that large of a catchment system. And, in fact, should there be a fire in the neighborhood, the fire department is going to look to our system as -- and we would be happy to do that to provide backup water for the pump or trucks. So I see this as a nonissue. We meet that standard.

So once again, what I'm asking for is your recommendation to say, hey, on a temporary basis until the capital improvement project takes place, allow these folks, allow this lot owner, we already have a reserved meter, to

set up at the remote site.

CHAIR HIRANAGA: Thank you, Mr. Collins. Any questions for Mr. Collins? Yes, Sally.

MS. RAISBECK: Yeah, thank you. Do you -- that map that you showed has the lot in question in yellow and the ones outlined in red would be adjacent lots that do have remote meters?

MR. COLLINS: That's correct, and so there is an existing water meter easement going out to Olinda Road.

MS. RAISBECK: So that would run along sort of the joint property, the back of the properties?

MR. COLLINS: The back side of the property, and
it only represents one easement, only one property.

MS. RAISBECK: I see. And do you happen to know
when those three lots got their permission to install their
meters remotely?

MR. COLLINS: I believe -- I hazard to guess. I
believe the last one was in -- you know what, I shouldn't
really say because I'm not sure.

MS. PYLE: Five years, ten years, 15 years?

MR. COLLINS: See, there was a sale of a property,
and this lot here would -- is about five years in the

exchange from one owner to the other. And I'm not sure if that's when that meter was improved, so I'm not sure. I know that the -- these homes like the home that is here and the home that is here, this would be a more recent one, and that is probably in the mid '80s when that house was built.

MS. RAISBECK: Mr. Chair, might I ask the Director, George, can you explain the reason why the three adjacent properties were allowed to use a remote meter but this property is not? What's the rationale for that?

MR. TENGAN: In the past, the Department used to

install remote meters; however, in the recent years I believe because like four or five years ago, the Department was instructed by the Board not to install anymore remote meters and to comply with the rules strictly.

MS. RAISBECK: So in your knowledge --

MR. TENGAN: So since then, we haven't issued any remote meters.

MS. RAISBECK: Thank you, Mr. Chair.

CHAIR HIRANAGA: Go ahead, Clark.

MR. HASHIMOTO: So you said there was going to be a CIP project?

MR. COLLINS: My understanding, and is Ellen here?

I think one time I asked you about that. She might be able to elaborate on that, that there is a plan to improve, a CIP plan to improve the line on Alaluana.

MR. HASHIMOTO: Do you know the date for that?

MS. KRAFTSOW: It's not -- it's not currently in the five-year schedule, so it would be in the unscheduled projects section.

CHAIR HIRANAGA: Yes, Dorothy.

MS. PYLE: Is it possible to ask the Department to give us their perspectives on the request from Mr. Collins

to do this as a temporary project or a temporary possibility?

MR. TENGAN: We would definitely have to take a look at that because then, you know, like you said earlier, there may be other similar situations and it would impact a lot of people and impact the system significantly. So we could take a look at it, but I don't think much would come out of it.

MR. COLLINS: Could I respond to that? I don't understand the aspect of impact the system. We have a reserved meter, which means that the Department has set

aside, you know, a certain amount of water for this meter.

So this is not -- doesn't fit within the aspect of impact to the system as far as the availability of water.

MR. TENGAN: There are other situations where the requesting or have been requesting remote meters, and so far, we've denied these requests. Following this round of issuing meters, when Pookela comes on line, there will be a lot more requests for remote meters or situations where people -- in similar situations where people could ask for remote meters, and our system would continue to be

inadequate to serve them properly.

CHAIR HIRANAGA: Yes, Kenneth.

MR. OKAMURA: I wanted to ask the rules state that there should be no remote meters installed; what do the rules say?

MR. TENGAN: As Mr. Collins was saying --

MR. OKAMURA: What section?

MR. TENGAN: 3-5 Paragraph G. It says, "No service lateral water mains will be installed by the Department in any private" -- wait a minute. Okay. At the end of that paragraph, second to the last sentence, it states that all

meters shall be installed along the property boundary or where reasonably feasible unless the Department because of operating necessity installs the meter elsewhere.

MR. OKAMURA: What would operating necessity mean?

MR. TENGAN: It could mean a whole lot of things, accessibility to the meter and items like that. I guess it's left to the discretion of the Department, you know, whether these situations would be allowed or not.

MS. PARSONS: Mike.

MR. VICTORINO: Are you finished, Kenneth?

MR. OKAMURA: Yes.

MR. VICTORINO: Ginny.

MS. PARSONS: I go back to the same thing over and over and over again. Once the Planning has put together a subdivision and we've done the subdivision and you have owners, property owners, our job is to provide the water and the water source. That's our job. That's the job of the Department. If there are other meters in the back back there, one more meter the meter reader is going to have to read, he's got to go back there anyway to get to the meters. Our job is to provide the water. Our job is to provide the CIP's. Our job is to get the fire flow fixed. That's our

job. And the fire department, we've said this before, they're the ones that are in charge of the fire. We gave it to them I don't know how long ago, and they are the ones that sign off. And if they're happy with your tank, that shouldn't be a preventive.

And if the subdivision is there and we're already reading meters back there, there shouldn't be a reason not to. Now, my question is if they've reserved the meter and they paid for the meter, did your number come up on the list and that's how they got it, or so they're not jumping ahead

of anybody, right?

MR. TENGAN: I presume he's on the list and we got to him as far as the number, you know, the people.

MS. PARSONS: So just looking at that, his number is on the list, his number came up. There's other meters back there. And he's willing to sign a release or an agreement that when such time to do the improvements, he'll move the meter himself at his own cost, I don't see any reason we should deny this. We should recommend that he be able to have his meter. Our job is to provide water.

CHAIR HIRANAGA: Yes, Clark.

MR. HASHIMOTO: So on this map, where would you have to do the improvements, on what, on Alaluana Road?

MR. COLLINS: I need a little more clarification. To do the remote meter you're saying?

MR. HASHIMOTO: To put the meter on your property, where would you get the water there?

MR. COLLINS: There is the line of adequacy is on the corner of -- this is Piiholo right here, and there is -- that's the point of adequacy to then make the replacement, and that's what the key word here is, replacement of the existing two-inch PVC line, that is the responsibility of

the County, it would be approximately 800 feet and our burden to bring it to the front of our property.

MR. VICTORINO: And what would the cost be involved?

MR. COLLINS: It would be prohibitive for us, but it's in the neighborhood of \$60,000 give or take \$10,000 or so. Also keep in mind that there are I believe four meters servicing five homes downstream, none upstream where we would be ending the improvement. And so, you know, we would be doing what a public utility should be doing, which is, you know, making the improvement.

MR. HASHIMOTO: Is there a possibility of your neighbors chipping in to make the improvements?

MR. COLLINS: They are living with slow flow, but they're willing to do that versus come up with the money. Also keep in mind, because this is not a subdivision request, we don't fall under the possible agreement with the subdivider that the County reimburse 50 percent over five years. When I met with the Department head, the Director, he was not clear and could not promise that if we were to make this improvement that we would be able to do what a

subdivider would do and that is get 50 percent reimbursement.

So we would -- we would have to do this with full financial responsibility, and it's prohibitive.

CHAIR HIRANAGA: Yes, Kenneth.

MR. OKAMURA: I think we've got to follow the rules and be consistent. Originally, I guess the Water Department was making exceptions and allowing meters to be placed off of the property, but as of, you know, the last request by the Board was that all meters be placed on the property. So now we're going to go back and we're going to

change back, so we should be consistent. I think we've got to either change the rules, and if we do allow this request, before we do it, we should ask the Director to see what kind of impacts it would have on those that we denied previously.

MR. COLLINS: I would just respond that, you know, in the rules, there is the phrase where reasonably feasible, and that is one of the main points of our request. And this is where the Department -- I could see where they would be a little hesitant to make a judgment call, and this is where -- this is where the Board can come in and feel more comfortable about making that type of judgment call about

whether this is a reasonably feasible request or not.

CHAIR HIRANAGA: Yes, Kenneth.

MR. OKAMURA: I would be concerned about those that have been denied prior to this after the Board said that they would, you know, ask the Department not to allow anymore off-property meters. And we should look into that first, you know, and then if we find that, maybe we should just change the rules or something like that. But it would be hard to make a decision today on this now.

CHAIR HIRANAGA: Yes, Mike.

MR. VICTORINO: Mr. Collins, again, you heard the

discussion in the prior case. Again, I feel that somewhere along the line, somebody didn't do their do diligence in this whole equation. If we let one go again, for whatever reason, we open up the door for others to do it the same way. Whether you have a reservation or not is not the issue at this time. The issue is we have denied in the past and more recent past doing offsite water meters, and I think we want to continue that to be fair to everybody. Secondly, a \$60,000 -- \$60,000 for improvements, I would admit that's a lot of money, but the prior one was looking at something

like a million dollars, which really in my mind is very cost prohibitive. Not to say \$60,000 for you is not cost prohibitive. But where do we draw the line? Where do we draw the line? And that's where I'm trying to get to a point where we stick to our rules that are existing, and we use them. Maybe today we don't have all these problems. When you got your building permit and you built a house or you bought this property, and how long have you owned this property may I ask?

MR. COLLINS: Three years.

MR. VICTORINO: Three years, okay. You bought it

three years ago. Were you aware of all these situations, or did you buy it not understanding all of this?

MR. COLLINS: We were aware that there was a pending decision by the Board, so we were provided with the documents, the history of the request for a meter. And so we, you know, because this -- this prior effort stays with the lot or the lot owner, you know, the fact that it changes ownership, you're really dealing with, you know, the current property owner. And any decision that's made is tied to the lot, not necessarily a benefit to that particular owner. In other words, when it changes, you know, I don't need to

explain that anymore, but let me just say that there is a very distinctive difference between the folks that came before myself and what we are presenting. One, we are not developers. We are not subdividers. We're not looking to do this with a proper motive. Also, we have not done anything that represents a mistake in the building permit process. Everything that we've done is legal.

And if you need more, you know, it sounds like some people are kind of going on the fence on this. And I need to clarify what Ms. Parsons said and what the Director said. We didn't gain this right to reserve a meter based

upon being on the -- our number coming up on the list. This came out of the -- the upcountry water meter ruling that occurred in October of 2002 I believe. And I can -- you know, do you remember when Jacky gave her presentation May 22nd and she explained about the whole history of upcountry water? I have a portion of her presentation to you.

And she says, so I quote, "Now the rule allows this 60-day time for the purpose of allowing applicants with a premises without water service that are not on the priority list that have any preexisting rights to water or

have expended funds in reliance upon official government assurances dated before the priority list dated November 2nd, 1994, to come in and pay for or reserve an allocation of service capacity."

MR. VICTORINO: Okay.

MR. COLLINS: So this goes back into reliance.

When the subdivision was improved back in 1915, there was a certain reliance that water service would be provided. We are -- it's turned into a two-step process. We -- and, you know, the first step is we've reserved the meter. And to follow through with this reliance, there is -- it's

incumbent upon the Department to work with us to allow us to utilize it. And so this is the -- we were told at the time you either get the meter now, you have a 60-day period to reserve the meter, or you go to the back of the list.

MR. VICTORINO: Right.

MR. COLLINS: So keeping this concept of reliance, this is an old subdivision, 1915. We're just asking to let's follow through on step two, and let's do it in a way that's reasonable; that is, this remote meter won't be there forever. This two-inch line is not going to last forever. The Department has got to replace it at some point.

MR. VICTORINO: Okay. So all said and done, you knowingly bought this property with all the challenges that were forthcoming, right?

MR. COLLINS: We're happily living there right now.

MR. VICTORINO: You're living in it right now. So again, the bottom line in this to me is, again, with the knowledge of what was occurring, you had knowingly bought this thinking that may or may not happen, and that improvements will come forth; when the improvements come forth, then you can get your meter?

MR. COLLINS: Well --

MR. VICTORINO: Yes or no?

MR. COLLINS: Well, we have reserved a meter.

MR. VICTORINO: Yes, but with the improvements

either you're going to put in or whoever is going to put in.

George, maybe I'm getting ahead of myself.

MR. TENGAN: Mr. Collins is correct. As I recall

now, this -- they did apply for or put in his reservation

under the 60-day period within which people could apply for

meters. And I believe in doing those reservations no water

system improvements were placed on the reservation. Am I correct?

Basically, I guess we communicated to Mr. Collins that there would be certain requirements that they would have to meet. Exactly what those requirements are, I don't recall at this point in time, but he was -- we took his reservation under the 60-day period rather than being on the wait list. I just wanted to make that correction and confirm what Mr. Collins said.

MR. VICTORINO: Okay. So using that as a premise,

Mr. Collins, did you understand what the requirements would

be to put in the water meter? When you -- they took your reservations, right, and you did state, George, that using your words again?

MR. TENGAN: I'm having senior moments, but I'm recalling some of the things. Initially I guess when Mr. Collins and I or when Mr. Collins approached us and he was wondering whether to put in for his reservations or not, we talked about the possibility of remote meters, and correct me if I'm wrong.

MR. COLLINS: Well, there was also a period -- yeah, there was, you know, the Department said here is what

we would like for you to do, you know, put in this main line improvement.

MR. VICTORINO: So it was told to you?

MR. COLLINS: Okay. But also keep in mind, you know, that's just one isolated aspect. We went, you know, we started off this process because those of you who have been here for a while have known that over two years ago we came in. We did that because it was progress. You know, in other words, with our concept of reliance, there were, you know, we've got 60 days to make this decision. We're making some progress here because originally we went in and said we

want water service to this whole lot.

Then, you know, we get like half of it. You know, we're making some progress here. We can reserve the thing now, so let's do that and let's move forward with this concept of reliance. And that's where the letter to David Craddick where I point that out, yeah, there's still a responsibility for these older lots, for these older subdivisions to provide water.

MR. VICTORINO: Yeah, go ahead, Ginny.

MS. PARSONS: On Page 32, there's a receipt for

Mr. Collins' purchase, \$6,030. It says accepted subject to approval of reservation pursuant to Rule 16-8, funds will be returned if reservation is not accepted. Now, we've defined what reservation is. We've defined this in subsequent meetings, and when the Commission was here, we determined what reservation is. And reservation is basically a water commitment because that's what we are doing with Wailuku Country Estates. We've established that.

Now, he has a reservation. He's paid for it, his reliance. And I think the terminology, the legal terminology is detrimental reliance. Am I right, Mr. Kushi?

MR. KUSHI: I've heard it before.

MS. PARSONS: And when we do, when we look at these cases, we have a responsibility personally as well as a body and if we recognize the issues and we don't do something about it, we become personally liable, so if you're uncomfortable with not letting him proceed and you need legal opinion on this, then I would say we recommend that we need legal opinion on where Mr. Collins stands before we make some type of decision that could put us all in some kind of personal jeopardy.

MR. KUSHI: Mr. Chair, I need to respond to that.

That is not a correct statement. You are not personally liable. You are a board. And anybody who has a reservation, whether it's Mr. Collins or anybody, means once you get a reservation, you're not entitled to a meter installation unless you comply with the other rules and regulations and requirements of the Department. A reservation is a commitment, correct, but it's not a guarantee of installation of meters. But you are not personally liable for any recommendations you make to the Department, so please don't feel constricted.

CHAIR HIRANAGA: Just to expand on what

corporation counsel just said, I believe that a reservation allows you to reserve capacity. It does not mean that it is the responsibility of the County to ensure the distribution line fronting your property is adequate to accept another meter. The purpose of reserving a meter is to allow you time to bring the system up to adequacy so that your meter can be installed. It's reserving of capacity. It's not -- that's what it is. It's a reservation of capacity. It's not the order to install a meter. You're not paying for the order to install a meter.

MS. PARSONS: Yes, you are. Yes, you are.

CHAIR HIRANAGA: That's my understanding. Also, in the past, there have been other people who have come before the Board for outside meters on Piiholo and Olinda Road, so again, there is a danger if you agree to recommend that Mr. Collins receive an outside meter, you will be receiving additional requests I'm sure in the future from these other people who have been denied.

This has been a longstanding problem. But also prior to the charter amendment, the Board did grant offsite meters to -- I remember at least one case to someone, an

offsite meter. That was by Board vote, but at that time, we did have authority to do that. We don't have that authority anymore. So it's never been an easy issue to contend with. It was some geographical requirement that the Board for some reason voted to grant this one applicant an offsite meter. That was prior to the charter amendment.

MR. COLLINS: I would like to comment on those two points. The later one, during the approval by the Board for a remote meter, that occurred during the same time period that we were contemplating paying for our reservation, so it looked like to us that the Board was favorable and there was

evidence of that to approving a remote meter. And we just felt like this was a very simple case; whereas, that one was not that simple, you know, given that adjacent neighbors have that.

The other point about the -- when you reserve a meter, yes, you're correct, it -- that in itself, a meter reservation does not make it incumbent upon the Department to make the improvements. My point is that the reason why we were given the opportunity to reserve a meter was based on this concept of reliance on these old subdivisions and it was where the Department was cleaning up the problem that

they had.

And that's why our argument is that there was a reliance on that, and the wording, every time that the Department would talk about reliance, they didn't say water meters. And this is why I brought up that quote by Jacky. She says rights to water, so this reliance is reliance for rights to water. You have to be able to turn the tap to get it.

CHAIR HIRANAGA: Yes, Dorothy.

MS. PYLE: Can I ask you, Mr. Collins, on this map

that you have, you have made in red the ones that are on this remote system. How about the other ones, where do they get the water from?

MR. COLLINS: This lot does not have a house on it, but it's owned by these folks. It's too hilly to really be buildable, so they own both. That's one of the old lots. That's the original Alaluana house that dates back to the Camerons. These properties are also owned by the Murdocks, and it's in trust, so there's no nobody there.

MS. PYLE: But is there nobody in the Murdock house?

MR. COLLINS: Yes, there is. That's this one.

This is it, so this one is unbuildable. This one is on catchment actually. We're on catchment. But we, you know, we're right on this line here. This property estate, it's a little lot here that's actually -- it's rather complicated, but it's attached to this lot, so in actuality, it's not a separate TMK. All of this is State land, and it's these lots down here that are utilizing the two-inch line.

So there's -- if we were -- if this line was approved up to this point, there would be no property owners interested in getting involved with that project because

it's either --

MS. PYLE: Unless, of course, the remote meters were removed for all of them. And so I guess my point here is to think about this from the point of view that you said originally, perhaps I heard you wrong, that you believe that that water line is about 30 years old or more.

MR. COLLINS: That's kind of a guess based on the age of the homes.

MS. PYLE: So if it was about 30 years old, it seems this was done in a time where the upper areas of Piiholo Road were quite remote, and there probably were

reasons for it to be done the way it was done for that period of time. But it's like saying that, you know, 30 years ago, we got a building permit to build a house, and we built it according to the possible ways of building a house on Maui 30 years ago, which probably have changed considerably to the present time. And probably at this point, if we were to ask for a building permit to build our house the way we built it 30 years ago, we probably wouldn't get one because the standards change, and the way things are constructed and the reasons why things are done change over

time and they improve.

And my guess here, my view is that to continue to add more remote meters to an area that is really not up to standard isn't the best service for anybody, even the other people that are on this line. And I think that we need to think about it from that point of view, too. If we add you and your necessities, what's going to necessarily happen to the other folks on that line as well? And we haven't heard from them.

MR. COLLINS: Let me just remind you that we are already built. It's not new development.

MS. PYLE: And you have water.

MR. COLLINS: And we have water, and what we would like to do with the additional water is make full use of the fact that it's an agricultural lot and be able to put in an orchard and grow things.

CHAIR HIRANAGA: Ginny.

MS. PARSONS: Just a clarification, Mr. Director.

When we have a payment for a meter for a reservation, what do the funds go for, can you give me the breakdown?

MR. TENGAN: Well, the reservation is just a deposit. If we're talking about the water system

development fee, the breakdown is for a five-eighths inch meter, \$2,040 with source.

MS. PARSONS: I couldn't understand that. What was that?

MR. TENGAN: For a five-eighths inch meter.

MS. PARSONS: So part of this money does go for the meter itself, the tangible meter?

MS. PARSONS: Not as a deposit. Only when it's converted as payment is for the water system development fee.

MS. PARSONS: How much is that?

MR. TENGAN: It goes into a CIP fund.

MS. PARSONS: So how do you come up with \$6,030?

MR. TENGAN: Well, there's other elements to this.

Transmission is \$2,850, and storage is \$1,140.

MS. PARSONS: So part of this is for the meter?

MR. TENGAN: What's the question?

MS. PARSONS: Part of this is for the meter then,

\$2,000-something is?

MR. TENGAN: No, it has nothing to do with the
meter. It's to get the water up to the property.

MS. PARSONS: But you said for a meter. It was
the first thing you said.

MR. TENGAN: Well, the payment is based on the
size of the meter. It's not for the meter.

MS. PARSONS: Okay. So they pay additional for
the meter?

MR. TENGAN: Yes.

MS. PARSONS: So in addition to the \$6,000, how
much more does he pay for the meter?

MR. TENGAN: He would have to pay for the
installation cost of the meter.

MS. PARSONS: Okay, thank you.

MS. RAISBECK: Mr. Chairman.

MR. HIRANAGA: Yes.

MS. RAISBECK: I have a question based on

something you said, which is that the Board did approve a

remote meter as recently as I presume last November --

October November, December. Within the 60 days that he was

applying, the Board approved --

CHAIR HIRANAGA: A year, the past year, prior to

the charter changes.

MS. RAISBECK: He received his meter on November

13th, and that was the 60-day rule.

CHAIR HIRANAGA: Year 2002.

MS. RAISBECK: Yeah, 2002. So it isn't true that no remote meters have been approved by the Board in the last five years because one was approved by the Board last November, true?

CHAIR HIRANAGA: Most requests for remote meters have been denied.

MS. RAISBECK: Who was approved, who was the applicant for that meter?

CHAIR HIRANAGA: I believe his name was Judge.

MS. RAISBECK: Judge?

CHAIR HIRANAGA: In Kula, Omaopio.

MS. RAISBECK: My reason for inquiring is that

when we're asked for waivers about things, I want to be
crystal clear that any decisions are based on criteria that
are applied equally to everybody. So for me, I will need to
see the, you know, the rationale for giving that remote
meter before I would want to refuse this remote meter.

Thank you.

CHAIR HIRANAGA: I have a question, Mr. Collins.

So you're currently utilizing rain catchment?

MR. COLLINS: That's correct.

CHAIR HIRANAGA: And you say it's not meeting your

desired needs, that you want to expand the use of your

property?

MR. COLLINS: That's correct.

CHAIR HIRANAGA: And you can't enlarge your

catchment system?

MR. COLLINS: It's so large now that we've never

had to have water trucked. But given the size of our home

and the amount of roof catchment there is, it's at a level

where we have -- like last year, it didn't top up, you know, during the rainy period. The first year it overflowed, but the second year it didn't, so I don't know if that answers your question. What we would really need to do to upgrade would be to build more roof to provide more catchment capacity.

CHAIR HIRANAGA: Do you have a second dwelling on this property?

MR. COLLINS: No.

CHAIR HIRANAGA: Question for the Department. If someone is on a catchment system, is there a fixture count

criteria that comes into play when you're looking at building permits as far as fire flow or -- I know when you're a County meter, there's a fixture count requirement or limit. Is there a fixture count limit on a catchment system?

MR. TENGAN: I don't think we review the plans of private water systems.

CHAIR HIRANAGA: Are there anymore questions for the applicant? If not, I open the floor to a motion.

MR. OKAMURA: Mr. Chairman, I move that we defer this matter, this item until we can get more information as

far as what Sally wanted, the reason for the previous exemption and then --

CHAIR HIRANAGA: Requesting copies of the minutes?

MR. OKAMURA: Or just a synopsis or a summary why that that one was given and the impacts it would have if we approved this.

CHAIR HIRANAGA: I think whether than rely on the interpretation of the Department, probably you could request the minutes so you could hear exactly what was presented, what was argued and what was decided.

MS. HOWARD: Mr. Chair, I recall that the one time that the -- the one time that you did while I was Board Secretary that you agreed for a remote meter was a private road issue where the property was down a private road, so it had to do with that part of the rule. So they would not be reading the meters on a private road or be accessing those meters down that private road.

CHAIR HIRANAGA: That's not my recollection.

MS. HOWARD: No? I can get to the minutes on that.

MR. VICTORINO: I remember something like that,

but I don't remember specifics.

CHAIR HIRANAGA: So there's a motion to defer. Is there a second?

MS. RAISBECK: Second.

CHAIR HIRANAGA: Any discussion?

MR. HASHIMOTO: What was that information?

MR. OKAMURA: One was what Sally was requesting was the reason for the previous approval, exception, and also I know the Director was concerned about the impacts it would have on previous denials and future requests or, you know, denial that you would have to honor, possibly honor,

or what problems it would present anyway in regards to past denials.

CHAIR HIRANAGA: It sets a precedence. Are you requesting copies of the minutes from that particular --

MR. OKAMURA: Yeah, the minutes from the approval for the waiver, when the waiver was approved.

CHAIR HIRANAGA: Meaning the decision to grant the outside meter, you want the copies of the minutes?

MR. OKAMURA: Yes.

CHAIR HIRANAGA: Call for the vote. All in favor of the motion, please so indicate by saying aye.

(A chorus of ayes.)

CHAIR HIRANAGA: I guess we'll have to have a hand count. Okay. Dorothy, Stacy, Ginny, Clark, Sally and Kenneth in favor.

All opposed? Mike Victorino in opposition. So this matter is deferred.

MR. COLLINS: Thank you for your time.

MS. RAISBECK: Mr. Chair, might we have a short recess?

CHAIR HIRANAGA: Yes, reconvene at 11:15.

(Recess taken.)

CHAIR HIRANAGA: I would like to call the meeting back to order. The next agenda item is update on water rate increase review.

MR. TENGAN: Mr. Chair, I just have a short report. The consultant committee has met and made its recommendation to engage the services of R.W. Beck out of Seattle, Washington. R.W. Beck is a rate consultant firm and management consultant firm that's involved in the State of Hawai`i. They're presently engaged in or have done studies for the City and County of Honolulu Board of Water

Supply, Kauai County Department of Water and Hawai`i County Department of Water Supply, so they're very familiar with all issues that are within the State.

And we're presently working with the scope of services, and we will be discussing the fees. We will have that sometime in the near future, and I will report back to the Board.

CHAIR HIRANAGA: Any questions for the Director?

MS. RAISBECK: Yeah, Mr. Director, will you be providing the consultants with say how long a CIP plan that needs to be funded, will you be providing them with that?

MR. TENGAN: That will be part of our discussions where we will be discussing long-range financial plan, which would include a CIP also.

MS. RAISBECK: And the long-range financial plan will be based on a long-range water use and development plan?

MR. TENGAN: I don't know if we can go that far into the future. Because to go more than four or five years as far as your financial plan is concerned, you're really guessing as to what the growth is, what the demand will be. So I would rather have the consultants spend their time and

energy on our immediate needs and project the future as close as they can without putting too much effort into that.

MS. RAISBECK: Mr. Chair, I would recommend that the Department realize that any proposed rate increase will have to be passed by the Council, so it behooves us to try to sound out what needs the Council will have in order to approve any changes in rate structure. Thank you.

MR. TENGAN: Mr. Chair, we do have to bring the consultants in to discuss with the Board the strategies in approaching the rate study to take into consideration the

concerns of the Board, the Mayor and possibly the Council
also at that time.

CHAIR HIRANAGA: Thank you. Any further
questions? Thank you. The next agenda item is the update
on the Sunshine Law opinion by corporation counsel.

MR. KUSHI: Yes, Mr. Chair, Members of the Board,
as you recall, we had this discussion about the Sunshine Law
and the issue about E-mails. I referenced -- you should
have in your documents several correspondence to summarize
my letter to the Board dated August 28th, '03, which I tried
to set forth the issues that was brought forth, and that

letter basically said that I would then draft a letter to the Office of Information Practices State of Hawai`i for a formal opinion.

Subsequent to that, just by chance, we had occasion to have a conference with all the other County corporation counsels, Big Island, Maui, Kauai and Oahu. And through meetings with our colleagues, we did discover -- and there was a conference topic on the Sunshine Law, and we did discover several letter opinions issued by the Office of Information Practices, I'll call it OIP, which we felt after reviewing kind of addresses the issues and questions quite

on point. That being the case, I did secure copies of the letter opinions from OIP. You have before you my October 20th, '03, transmittal to the Chair and the Board, which I attached a copy of the letter opinion from OIP dated September 11th, '03, to Romy Cachola of the City and County of Honolulu councilmember. In that letter opinion, which is quite exhaustive, eight pages, it addresses various issues, but the main one is found on Page 2, which is entitled Electric Communications and Telephone Conference Calls. I won't repeat what the letter opinion basically says, but it confirmed our initial position that E-mail communications

amongst board members are prohibitive and should not be --
will be violations of the Sunshine Law.

In that September 11th, '03, letter opinion, it
did make a reference to another letter opinion dated
September 2nd, '03. I got a copy of that subsequently and
my last correspondence to you, Mr. Chair and the Board dated
October 22nd, I did attach a copy of the September, 11th,
September 2nd, '03, opinion from the OIP to the same
councilmember Cachola. I believe this letter opinion is
more specific. It addresses various questions we had

wrestled with.

Specifically that September 2nd, '03, letter
opinion responded to questions as follows. May a member of
a board send an E-mail to all other members of a board on a
matter of official business before the Board? I won't read
the response, but to summarize, they say no. Secondly, may
two members of a board communicate by E-mail between only
themselves on a matter of official business before the
Board? Summarized or the response, OIP says, yes, they may
E-mail between two members themselves. They did reference
the Attorney General's opinion or interpretation saying the

Attorney General's office would say no. However, OIP says, opines that that would be allowed; however, in their response, OIP basically says, and I quote, "We note that even under our interpretation of the statute, boards cannot communication serially."

I believe when they say serially, and they say, in other words, one board member cannot separately E-mail the same message to other board members and similarly down the line. The next question they respond to is may two or more or less than a quorum of members of a board communicate by E-mails amongst themselves on a matter before official

business before the Board? Again, they respond no.

Lastly, they respond to a question may members of a board numbering more than a quorum communicate by E-mail among themselves on a matter of official business before the Board? Again, this seems repetitive, but they respond in the negative. Again, I preface -- I note and I preface the comments on behalf of OIP is that they respond to issues about communications regarding official business of the Board. Likewise, if it's not official business, they know it's not a matter of the Sunshine Law.

With that, Mr. Chair, I will try to entertain any

of the questions, but we believe that based on these letters and that issuance from the OIP, which office administers the Sunshine Law, the matter has been concluded, and this issue should be filed.

CHAIR HIRANAGA: Questions for corporation

counsel? Yes, Sally.

MS. RAISBECK: As I remember, when this matter was deferred for you to communicate with the OIP, the understanding was that the letter that you had provided to us, I believe it was August 28th, that I would have the

opportunity to add questions to that and that that -- the joint letter would be cleared with Kent and sent to OIP. Is that your understanding of what the last time we dealt with this project was?

MR. KUSHI: Mr. Chair, Member Raisbeck, that is correct, and I recall meeting with you and I recall accepting some documents from you; however, subsequently based on our discussions with OIP and our fellow colleagues from the other jurisdictions, I felt that these opinion letters issued by OIP addresses the matter. If you feel that it doesn't, please steer me in the right direction. I

will need to discuss this with my supervisors. In the event -- and the Board. And in the event the Board and my supervisors still require me to submit your questions, so be it. If they don't, again, you have the opportunity as an individual to submit a request to OIP.

MS. RAISBECK: I understand. Thank you. I would like to, for the Board, for the sake of the Board go through the questions which I felt were relevant to the E-mails I had sent the Board. And there were six questions. And the first one was can a member send an E-mail to the Chair requesting an agenda item and CC other board members? And I

provided some examples of E-mails I had sent to the Board that did that, that requested an agenda item from the Chair.

Can a member send an E-mail to the Chair and CC board members with information that has already appeared in the Maui News; for example, news articles about water issues, editorials, meeting times for County Council committees or times that Akaku will show certain programs? And I provided a couple of E-mails with that as the example.

Three, can a member send an E-mail to the Chair and CC board members with other information that exists as a public record; for example, agendas of Council committees,

agendas of other County commissions, agendas of State boards and commissions or information from publications or websites of these agencies? And again, examples.

If a member has a relevant conversation with a nonboard member and wishes to inform the Board of the content of that conversation, can the member send an E-mail to the Board informing them? And I sent an example. In all or any of the above cases, if the member includes newspapers on the CC list with the obvious intent of informing the public as well as the Board, is this still a violation of

the Sunshine Law?

The final question, if the Board's secretary were to keep a public file at the office, the Department office and any communications sent to the Board by anybody including board members were available publicly at the Department headquarters, would that make it permissible under the Sunshine Law for a board member to CC the whole board?

So those were specific questions based on specific E-mails that I had sent to the Board, and I have respected the Board and the corp counsel sufficiently that I'm not

recently sending E-mails to the entire board. But I would like to read the preface to the Sunshine Law, purpose, declaration of policy and intent. "In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest."

Therefore, the legislature declares that it is the policy of this State that the formation and conduct of

public policy, the discussions, deliberations, decisions and action of governmental agencies shall be conducted as openly as possible.

Now, I feel that for the corporation counsel to provide us with 16 pages of legal argument and provide it at the beginning of this meeting so that we do not have an opportunity to review it before it's discussed and the public has no opportunity to review these memos before we discuss this issue, I feel that that in itself violates the Sunshine Law because it gives the public no opportunity to know what was -- what items were -- and this has happened a

number of times previously that material we have received from the corp counsel has arrived sometimes even as we take up the agenda item rather than in sufficient time in advance so that we can read it, understand it and comment on it.

I also feel that I passed out this morning a memo to all of you listing some of the items which the Department is working on and considering and which are available to the public. They are part of the public record and documentation from other agencies, and these are very important issues that the Board has not heard about. And

let me list them. Well, of course, first we learned about the designation of the Iao Aquifer from the newspaper rather than from the Department. I learned about the plan of the Department to build a water treatment plant in cooperation with A&B or rather A&B will build it and turn it over to the County, and we had not heard that from the Department.

The well that will be drilled or has been drilled by Maui Land & Pine close to our Pookela Well I learned about through the Land Use Commission, not through the Department. Kapalua Mauka, 960 acres above Kapalua including two of our County wells within that development,

again, Land Use Commission is hearing that application today and tomorrow. We have not heard about it.

Lastly, the exploratory well at the Iao tank site.

I read about this at the Kahului Library, but I haven't

heard about it from the Department. Now, how can we

possibly advise anybody, whether it's the Mayor or the

Department or the Council, how can we advise them when we

know absolutely nothing about what is going on? That is a

much greater violation of the Sunshine Law. If we don't

learn about it, how can we expect the public to know about

it? And the whole point of the Sunshine Law is so that the

public will be able to know what's going on and effect policy. So I will send to the Office of Information Practice my memo that I provided to Mr. Kushi that contains those six questions with a little bit of background and the E-mails that I sent to this Board which Mr. Kushi does not believe should have been sent.

And I will hopefully several months from now get an opinion from them about whether those E-mails were proper or improper, and that's all I have to say. I think this business of us not having information is very serious. I think not getting information in such a fashion that we can

understand it and the public has access to it before we discuss it so that they -- what good is public testimony by the public if they've had no opportunity to read the documentation about a given subject? Thank you.

MS. PYLE: Can I say something?

CHAIR HIRANAGA: Yes, Dorothy.

MS. PYLE: I would like to refer everybody back to the minutes of our last meeting on Page 40 and 41. You don't have to really look at it, but at that point in time, there was a lot of discussion being held concerning possible

negotiations being carried on by the County Administration for water sources that would come from Wailuku Agricultural Business, and I was asking that the Mayor to come and discuss those things with us so we would have a clearer understanding, and I clearly requested that that happen, that we at least ask the Mayor to be present or to set a time when he could meet with us in executive session. I never got a response back, and I don't know whether the Department ever asked the Mayor to come. Was a letter ever officially sent to him? We never received a copy of it if any such thing happened.

And this is actually a follow-up on what Sally is saying. We are an advisory board. We can't advise if we have nothing to advise about.

CHAIR HIRANAGA: Does the Director wish to respond to that question regarding Dorothy's request for the Mayor's attendance?

MR. TENGAN: No, I have to apologize I didn't follow up on that. But the Mayor is planning to get -- we are planning to get together with the Mayor upon which time he would be making a presentation to the County Council. But like I said, I apologize for not following up on your

request.

MS. PYLE: Can we follow up and ask him to come,

please?

CHAIR HIRANAGA: We can invite him.

MS. PYLE: Well, we can ask him to come.

CHAIR HIRANAGA: Invite him. Yes, Kent.

MR. OKAMURA: I was wondering, do we have to act

in a concerted member? Can one individual board member make

a request of the Director or do we have to say, okay, I move

this Board request and we all act on it, or can just one

board member ask a department person for something?

CHAIR HIRANAGA: It's my understanding that any board member can contact the Director directly for questions, but if you want something to be placed on the agenda, I would suggest that you submit that.

MR. OKAMURA: But let's say you want to ask the Mayor to come down to clarify some matters for us. Is it better -- isn't it better if we acted in a concerted manner in terms of everybody agreeing saying, okay, that's a good idea, let's do it instead of one person. Not to pick on anybody. But I cannot see that -- let's say if I wanted

some piece of information and I was to -- and a staff member would have to go to a lot of work to do it, I cannot see -- like there's nine board members, and one board member asks for something that wastes a lot of time. It might present a problem.

CHAIR HIRANAGA: I think if you have a request for the Department, I would submit it to the Director. I would not go directly to the staff. Then he would determine whether he will accommodate your request or not, but as far as inviting the Mayor to this meeting, it's a prerogative that I believe of the board member if she wishes to make the

request directly to the Director, that's her prerogative.

MR. HASHIMOTO: Shouldn't the letter come from the Chair though, the Board Chair to invite the Mayor because this is a board meeting?

CHAIR HIRANAGA: Then would we have to have a vote on it to determine if there's --

MR. TENGAN: Mr. Chair, I would suggest in a situation like that, that the Board do a formal request as the Board rather than an individual board member; otherwise, we could end up with all kinds of individual requests and, you know, our agenda might be outrageous in terms of the

number of items we would have to cover. And I think it's a good idea that it be set by the Board Chair as far as getting items on the agenda.

CHAIR HIRANAGA: How about if I offer the Mayor an open invitation to meet with us whenever he deems it appropriate? Do you have a specific item you want him to discuss with you?

MS. PYLE: I want him -- I think from the last meeting what we were asking for was a discussion about the negotiations that are being carried on for water coming out of the Wailuku ditches. I'm sure that by the time the Mayor

has the time to come, even if it's in the next few months, as a board, we could probably put together a lot longer list of things we would like to ask him about. So to ask him to come or to invite him to come at his convenience is actually not going to be very beneficial to us getting very much information to act in an advisory way.

CHAIR HIRANAGA: My personal feeling is that the Mayor is a very busy person.

MS. PYLE: I understand that.

CHAIR HIRANAGA: May I finish? Thank you. So the

Director is his representative and I believe we should be directing our inquiries to the Director, and the Director should be responding to those inquiries. My experience on the Board, the Mayor rarely comes before the Board unless he feels that it's important for him to make an appearance. Requesting him to -- how often are you going to ask him to come before the Board?

MS. PYLE: Well, actually, I think we have a different mayor and hopefully one that will be responsive to requests of this type. In the last meeting when we were asking George questions about this, he indicated to us, and

I said in the minutes that George is trying to help us as much as he possibly can. He isn't privy to the information. So for us to say, okay, we need this information and then have to go back and have it be third-hand again and only then come back at a later time doesn't help us very much, so I think that it's opportune. We have a new mayor. We have a different functioning board. If we couch this in the correct way that as advisors we need help to understand the direction that the Administration is going in, then perhaps the Mayor will be very responsive. And unless we ask, we won't know.

CHAIR HIRANAGA: So your request is update on any ongoing negotiations regarding surface water or all central Maui source?

MS. PYLE: Let's start with surface water.

MS. PARSONS: And Pookela, upcountry as well. Did you write that one down, too, the two issues you can have him bring?

CHAIR HIRANAGA: Can we ask the Director if he can update on Pookela if he's able to? You're saying you don't want to direct inquiries to the Director?

MS. PARSONS: I think the Director is inundated

enough. I mean there are nine of us here. He's inundated with questions. I think the Mayor has a plan that, you know, he probably enjoys sharing with us.

CHAIR HIRANAGA: Pookela, the contract has been awarded. You want a construction update on Pookela Well?

MS. PARSONS: Oh, yeah.

CHAIR HIRANAGA: The Director is not able to provide that to you?

MS. PARSONS: You know what, you haven't attended the last four or five public meetings upcountry, and I have.

And every one of those meetings, public meetings, I have asked the Director when do you think Pookela Well will be on line? And we're getting different answers, and it's always two years. And six months later, it's two years. And six months later, it's two years. And I think it's time that the Mayor come in front of us and we talk about exactly when these things are going to happen and what his plan is and why.

CHAIR HIRANAGA: George, you want to say

something?

MR. TENGAN: Mr. Chair, I believe I've been

consistent with my response to that question. My response has always been at the end of 2004.

CHAIR HIRANAGA: That the well will be on line and completed?

MR. TENGAN: Yes, from the beginning of the project.

MS. PYLE: I have to leave.

CHAIR HIRANAGA: Does that satisfy your question, or you want me to ask the Mayor for a direct response?

MS. PARSONS: That's fine, 2004. Is there a reason it has to wait that long?

CHAIR HIRANAGA: Yes, Mr. Director.

MR. TENGAN: In regards to Pookela Well, the Mayor is not too involved in that project. We just provided him with updates. He's concentrating his efforts in the central Maui area. In my recollection, there hasn't been much discussion about the Pookela Well with the Mayor.

MS. PARSONS: Maybe that's a good reason to have him here.

MS. RAISBECK: Mr. Chair.

CHAIR HIRANAGA: Yes.

MS. RAISBECK: I would like to make a motion, not

dealing with Pookela Well, but a lot of information is in the public record, and there's correspondence between the Department and various State, County, Federal agencies. I would like to make a motion, the following motion, and then I would like to explain it. The motion is the Board of Water Supply requests the Director to send them copies of official correspondence from the Department to any other County, State or Federal agencies or from such agencies to the Department. And I would like to -- I would request a second for purposes of discussion.

MR. VICTORINO: Second just to discuss. Go ahead.

MS. RAISBECK: Thank you.

CHAIR HIRANAGA: Sally, before we go on to that, could we address the Sunshine Law issue, because we kind of left that hanging before we went off to something else?

MS. RAISBECK: Well, I believe this is related.

CHAIR HIRANAGA: Okay, go ahead.

MS. RAISBECK: As I said, the reason I think this is related to the Sunshine Law is that the purpose of the Sunshine Law is to make sure that the public is in on important policy issues. And if we don't hear about issues,

events, activities, plans, then how can the public possibly hope to hear about them? So it's a Sunshine Law issue that we get proper information. And I think there's a great deal of information contained in the official correspondence from the Department to the Land Use Commission, to the Planning Commission, to the Department of Land and Natural Resources, to the USGS. There's important information in that. And I would like to see us actually have access to that information as well as the public and the press should have access, not just once a month, but on an ongoing basis to that information.

It's ridiculous that I find out about the plan for the Department drilling a well by going to the Kahului Library to read an environmental assessment. I should know that before I see the environmental assessment form, so that is why I have made this request. It's a mere request, but I would like to ask the Board to support this request. Thank you.

CHAIR HIRANAGA: Does the Director wish to comment regarding this request?

MR. TENGAN: I would suggest that if the Board decides to go in this direction that they be precise as to

exactly what kinds of communications should we, you know,
distribute it to the board members.

CHAIR HIRANAGA: Does corporation counsel wish to
comment on this request?

MR. KUSHI: Yes, Mr. Chair, I'm not sure what the
scope and topic of what is being required or requested by
this motion. But I need to point out that, you know, Maui
County Charter, and looking at the Article 13, Section 13-2
of the Boards and Commissions, Paragraph 14, Subsection 14,
which says, except for purposes of inquiry and is otherwise

provided by charter or by law, no board or commission nor its members should interfere in any way with the administrative affairs of the Department.

Now, if what you are requesting of the Department, and the Department cannot -- cannot fulfill a request and it's a request not associated with the powers and duties of this Board, this section may come into play. And I think the intent of this charter information is not to have the board or a commission run the day-to-day affairs of the Department. Now, I understand what Member Raisbeck is saying. I understand what Parsons is saying. I understand

what you're saying. However, you must understand your role, your new role as the Board. You're to advise the Council, the Department and the Mayor on matters within the Water Department.

Now, do you have to advise everything, everything that goes on within the Department? I don't think so. Does every piece of paper that goes out to every applicant or every customer of the Department needs to come to this Board? I don't think so. So you need to have a scope and definition of what you're requesting; otherwise, the Department can't function.

CHAIR HIRANAGA: Okay, Sally.

MS. RAISBECK: Well, Mr. Chair, I distinctly said official correspondence from the Department to any other County, State or Federal agency. I'm not talking about letters to applicants. And I --

MR. KUSHI: About what?

MS. RAISBECK: And if I had the proper language, I would make it clear. I am talking about important matters such as an environmental assessment on the digging of a well. That is not manini. I am talking about important projects that would use sizeable amounts of water that we

are planning to cooperate with the applicant about. And
except a well, except a treatment plant. I am talking about
sizeable things here, and all of those things are -- have to
be told by the Department to other public agencies. That's
how many I found out about it.

Because they have to tell the Land Use Commission.

They have to tell the DLNR. There are probably things they
have to tell the State Water Commission. I'm not talking
about the day-to-day business. I'm talking about the major,
major items, and I think the Board should have a way of

knowing about them if the Department doesn't choose to tell us about them. So that's why I would like to see a public file so that the public -- we're only representatives of the public, but the public has a right to know these things.

CHAIR HIRANAGA: Yes, George.

MR. TENGAN: Mr. Chair, this is what I'm suggesting, that the Board be precise as to exactly what kinds of communications they would like to see so that we can whenever we come across these communications or provide communications to other departments, we would know that we would -- that at least send copies out to the Board Members.

MS. RAISBECK: Mr. Chair.

MR. TENGAN: And I think that if the determination has been made between board matters and administrative matters and that would be a big help.

CHAIR HIRANAGA: Personally, I don't want to receive all this correspondence to myself. Sally, I believe if you are interested, you may put it in writing specifically agencies that you're interested in that they direct the correspondence to you. And hopefully that will assist him in determining what correspondence he will copy you on. Because there aren't that many Federal, State and

County agencies.

MS. RAISBECK: That's what I mean. What I would prefer rather than having copies sent to me, because that's just one person, I would prefer to have a file open to the public kept by Cathy in our office that just routinely any major issue to the Water Commission, to the DLNR, to the LUC, to the County Planning Commission, anything to do with EIS's, that those things are routinely, which are normally sent out in about six or eight carbon copies to many agencies, that that be sent to the Board as well and Cathy keeps it in a publicly accessible file at our office.

That's my suggestion.

I don't want to receive tons of paper that are meaningless. I don't want any board member to have to receive that, but meaningful paper kept by Cathy at the office accessible by the public would meet the requirements of the Sunshine Law. Thank you.

MR. TENGAN: That's where we may run into difficulty is defining what is meaningful. What's meaningful to one board member may not be to another.

CHAIR HIRANAGA: I understand. Just a personal

comment. Prior to the charter amendment, this Board had the authority to run the Department of Water -- can I complete what I want to say? Thank you. Had the authority to oversee the functions of the Department of Water. The voters of the County of Maui decided that they wanted to take that authority away from the Board of Water Supply and they transferred that power to the Department and the Mayor. We're now advisory. I think it's up to the discretion of the Director if he wants to accommodate your request or not. I may be wrong, but that's my personal feeling.

Sally, when you come up with these issues, I would

suggest that you send them to me so I can put them on the agenda so they can be discussed at the Board meetings. That would be my suggestion for getting these items before the Board and the public. I personally appreciate the effort you have done in discovering these items. I personally don't have the time. But I think that would be the avenue in my opinion is that you request, we put these items on the next agenda or the next available agenda.

MR. VICTORINO: Mr. Chair.

CHAIR HIRANAGA: Yes, Mike.

MR. VICTORINO: For the sake of, and no offense,

I've heard you, Sally, I agree, and I agree with Kent.

We're just beating a dead horse. Excuse me for being very

frank. I would like to call for the question so that we can

move on mostly because I don't think there's anymore

discussion. Everything has been said. I think we all

understand where you're coming from. We're in agreement in

many areas. I, too, don't want to receive everything

because I don't have enough time in my day. Getting the

public book or whatever, putting them on the agenda whenever

necessary or whatever, those options, fine. But I think I

would like to move on, because, Sally, no offense to you or

anybody, I've got things to do today that I've already given up half of my morning, in fact, all of my morning already, so unless there's something compelling, I'm going to call for the question. I'm calling for the question. Is there a second?

CHAIR HIRANAGA: Could you repeat the motion?

MR. VICTORINO: Everybody lost already.

MS. RAISBECK: My motion was the Board of Water

Supply requests the Director to keep a public file kept by the Board's secretary that will contain copies of official

correspondence from the Department to any other County,
State or Federal agency or from such agencies to the
Department.

CHAIR HIRANAGA: All in favor of the motion,
please so indicate by saying aye.

MS. RAISBECK: Aye.

CHAIR HIRANAGA: Opposed. Let the record show
Sally in favor and Stacy, Mike, Clark and Kenneth in
opposition to the motion, so the motion is denied.

MS. RAISBECK: Thank you.

CHAIR HIRANAGA: Thank you. Next agenda item --

the other thing I wanted to -- you said you were going to send a request to OIP. Would it suffice for corporation counsel to specifically address the six questions based upon the opinions he received?

MS. RAISBECK: I think I would sooner send them myself, thank you.

CHAIR HIRANAGA: The next agenda item is an update on EPA Lead and Copper Rule compliance for the upcountry water system.

MR. TENGAN: Mr. Chair, Jacky is going to be reporting on this.

MS. TAKAKURA: Good morning, everyone. I'll make this quick. I'll be going over Page 42 in your agenda. I'm just going to give you an update of where we're at. I'm going to first start with how we got there. Also attached is the agenda that we used at the last community meeting on October 1st, and that's on Page 43. Page 43 shows the results of the last round of lead and copper sampling that we did in August. This whole problem with the lead began back in the '80s. Lead solder was banned nationwide in 1986. States had two years to put this into effect, so it actually went into effect in 1988.

Then the EPA passed the Lead and Copper Rule in 1991. And what this rule said was that water utilities had to take samples in customers' homes, and out of those samples, 90 percent or more of homes had to have 15 parts per billion or less of lead found in the water. So 10 percent of homes could have 15 parts or more. This 90th percentile, that's the action level. That's the trigger. If you go over that, then you would have to do something, and they allowed four different things. They allowed treatment using a chemical. They allowed you to change your

water source. They allowed you to change the service lines if they're made of lead, and they also allowed you to do public education.

However, with public education, that would not be done by itself. It had to be done in conjunction with one of these other steps. Keep in mind, this is the only area in which the water utility gets involved after the meter. And most other issues, the water utility is only responsible up to the meter, because the lead is usually found in customers' plumbing.

Since the rule was passed, the Department of Water

Supply has been using various measures to control lead in the upcountry area. And the reason that this is a problem in upcountry and not in other areas is because of the water chemistry. In upcountry, you know, we use surface water from the streams in the East Maui watershed. And that water has a low pH and a low alkalinity. It doesn't have those natural minerals that you find in the ground water like you have that the central Maui system that forms that natural eggshell coating inside the pipes.

So the combination of this water and homes with lead plumbing has caused a problem for us not being in

compliance with this Lead and Copper Rule. So two years ago in 2001, the Department of Health Safe Drinking Water Branch, which enforces this EPA rule, said we're required to use a phosphate. They actually wrote in their letter all homes must receive the phosphate treated water, and we had to begin using it by June 2001. So we looked at all the different alternatives of phosphates. There's polyphosphates and orthophosphates and different manufactures. And we chose Calgon C-9, the zinc and the phosphorous. And we used that for about two years until April 2003. Based on our samplings, that was effective in

controlling the lead; however, as you know, reports of reactions started coming in, and that's why we stopped using it in April of 2003. And what we switched to was just the phosphate portion only, no zinc.

Since we had done the switch in April, we did the round of testing in August. And the Makawao system, which includes Pukalani, Haliimaile, Haiku and Makawao passed. And according to Page 43, the reading at the 90th percentile was less than five parts per billion. And also the lower Kula system passed. And that 90th percentile was 10 parts

per billion -- excuse me, 10.6 parts per billion. However, the upper Kula system failed. At the same time reports of reactions have decreased, but they do continue. So that's where we're at now. And looking forward, the things that we're working on is more water quality testing because every expert we've talked to, every scientist we've talked to says it can't be the phosphate. The dosage is too small, and it's something that's very commonly found and used by other water utilities.

So maybe there's something else that's going on that we're not aware of. So we're going to be doing some

water quality testing looking for nitrites and nitrates in the water and also working with the Department of Health and the EPA to do this GC/MS testing. And that's gas. The C stands for either chromatography or chromatograph or something like that. MS is mass spectrometer testing. And the way this test works is it -- it somehow removes the water and leaves whatever is left in the water and it gasifies it and puts it on a spectrum and you can see the peaks, and this machine can identify whatever it is that's peaking, so it supposedly can tell you everything that's possibly in the water or that's left.

Because, you know, we do a lot of water quality testing, you know, for all kinds of things that are regulated that we're required to, but perhaps there's something else that is not regulated that is in there or something. But we need to know that for sure it's the water or not the water that's causing the problem. We're continuing to work with the Maui District Health Office. Dr. Loren Pang is working on getting the patch test going to test for allergic reactions on some of the people.

And he's also looking at a lab test to check for an irritant reaction because apparently, there's two

different reactions that a person's skin has when it comes into contact with something. It can have an allergic reaction or an irritant reaction, and they're two different things, so he's working on that in the medical side. We've also been in discussion with him about providing water without phosphate to some of these people. And what we discussed with him is that he's currently taking reports from people who have reactions, photographical reactions. He's going up on his own time on Sundays in Pukalani and interviewing people and taking their pictures.

And he's going to get the 30 I guess worst cases and make arrangements with us to allow them to go and get water that's been filtered and chlorinated but doesn't have the phosphate in it. And they can use this water to rinse off or wash their hands or whatever they want to do with it. And he will photograph the skin or whatever the reaction is to see if this nonphosphate water causes the reactions to subside. But because he's the medical expert and we're not, he's going to be the one determining who is going to participate whether, you know, it makes a difference or not, so we're working with him on that. We expect to have the

list of participants by the end of this month. And this test would probably take place over November and December. It would just be a temporary thing. Also because the upper Kula system did not pass, we're looking at the addresses that where the homes had high lead and to see if we can improve our flushing program.

Because in order to comply with this rule, we need to do the phosphate and the flushing. They need to be working together for us to comply. One by itself doesn't work. And I would also like to ask Jacques Yamaguchi from Council Chair Dain Kane's office to come up and give you an

update on the federal funding we're hoping to get. Jacques.

And this is Council Chair Dain Kane's office who has been working with Senator Inouye's office on this.

MR. YAMAGUCHI: Good morning, Chair, Members of the Board, I'm Jacques Yamaguchi, Administrative Assistant to Council Chair Dain Kane. As most of you know, the Chair had introduced a resolution regarding the lead and additives in the upcountry water earlier this year and it was unanimously passed or adopted by the full Council. During this time, Chair Kane also made a visit to Washington, D.C. and met with Senators Akaka and Inouye, Congressman Case and

Abercrombie to discuss a number of issues and one of them was the water issue that Ms. Takakura just discussed. The Department of Water Supply along with our office worked with Senator Inouye's office, and Senator Inouye's office made a request for a \$500,000 appropriation to be used to help resolve these issues. This was appropriated recently by the senate committee.

It now must go to the full senate committee and then to a joint house and senate committee. At that joint house and senate committee, I guess a decision will be made

as to how much of this \$500,000 will be appropriated. It would then go to the President for its final approval. As all you know, Congress is now in recess. We asked Senator Inouye when he expects an answer or a decision as to how much Maui County will be getting in federal monies, and he said he really can't say. It just depends on when Congress will be meeting. Thank you.

CHAIR HIRANAGA: Yes, Kenneth.

MR. OKAMURA: Thank you. Jacques, what was the purpose of the money, the \$500,000?

MR. YAMAGUCHI: What is the purpose of the

requested \$500,000? You know, that may be more appropriate for the Department. There are a number of things that we could do. And, you know, if and when we get the money, and I think decisions would have to be made as to how to best use the money, but it may be a more appropriate question for the Department.

MS. TAKAKURA: One of the first things that we would do would be more testing to pinpoint the actual where the problems are.

CHAIR HIRANAGA: Yes, Sally.

MS. RAISBECK: Yeah, first of all,

congratulations, Jacky, and I think it's marvelous of Dr. Pang to be doing as much as he's doing. And it's wonderful that -- thank you, Jacques, thank Dain Kane for going after this money. Would there be any possibility of getting enough money that the upcountry houses that need fixing could get some kind of subsidy toward fixing their plumbing to solve the problem instead of, you know, putting in the chemical for everybody, any possibly of that?

MS. TAKAKURA: Well, the first thing I think would have to happen is testing to see the extent of the problem because, you know, we know that the lead is from customers

who have lead solder. And but we don't know if these homes are, you know, on a concrete foundation and would have to have, you know, substantial work to remove the lead or if it would be something simple. So it would be hard to say at this point if there would be enough money for that. We would really have to see the extent of the problem first and then we could make that decision.

MR. YAMAGUCHI: Thanks for the question, Sally. I

think it should be clear that these additives, they are mandated by the State Department Safe Drinking Water Branch

as well as the EPA's Lead and Copper Rule, so the County is mandated at this point to add these. With this federal money, my understanding is that is something that may be looked into. But once again, I guess they will be doing testing at that time. And if that is possible, I think that would be great. Something to look into or to consider.

MR. VICTORINO: Mr. Chair.

CHAIR HIRANAGA: Yes, Mike.

MR. VICTORINO: Again, Jacques and Jacky along with Dr. Pang, thank you. I think we're putting the cart before the horse. We don't have the money yet, so I think

trying to start deciding what we're going to do with money we don't have is the old cliché, the cart before the horse. And I don't want to spend all day -- again, it seems like I don't want to spend all day, but I really don't like to discuss things that I really at this point have no control of and really don't have the money to have control of, so if and when we get the money, and I hope Senator Inouye and our congressional delegation can continue to push, and please remind Councilman Kane that, you know, his help is greatly appreciated.

I think also I will talk with Dr. Pang when I meet

with him next week on another matter and thank him for that,
and maybe he can continue to push from the State's side, so
that we can get these monies to do the studies and whatever
retrofitting and whatever we get the monies to do. But I
think the good thing I see is we're making a concerted
effort not to leave the upcountry people hanging with this
problem. We are working very diligently, the Department and
all the associated agencies are, so I thank them very much
for that. And in concluding, I will say this. If we can
get the monies and rectify these problems however we can, I
would hope that the people there who live in upcountry also

know that part of the situation, especially when it's -- if it's determined it's their inner structure, their water system within their homes, that we could help but not be totally responsible, that they have to be willing to cooperate and contribute to the solution of the problem. I think that's important to be noted, but again, thank you very much for all you guys help. I appreciate it.

CHAIR HIRANAGA: Any other questions or comments?

Thank you. Other business. Receipt of board members'

requests for agenda items to be placed on future agendas.

MS. RAISBECK: Mr. Chair, I would like to request that our plans for a treatment plant for -- our plans to cooperate with A&B about a treatment plant, for Wailuku Ag be placed on the agenda, that the well that Maui Land & Pine is drilling or has drilled and that they expect us to accept that that be placed on our agenda, that the Kapalua Mauka plan to develop land that includes our two well sites above Kapalua and whether -- what their request is for water for that and how that might impact our future development of water for the west side. And I would like to place the exploratory well at the Iao tank site on the agenda, get a

progress report or a status report on that, and I would also like to place the trigger for designation of the Waihee Aquifer, which the State Commission will be considering next Wednesday, update on what their consideration of that trigger resulted in. Thank you.

CHAIR HIRANAGA: Are there any other requests?

Thank you. Division reports, I have a question. I noticed in September, 94 five-eighths inch meters were issued in Makawao. Could we just have a little detail on that? Were these meters coming off of the waiting list?

MR. VICTORINO: Ninety-four.

CHAIR HIRANAGA: Regular service meters, 94.

MR. VICTORINO: Issued, right on top of the page.

MR. TENGAN: Number of service?

MR. VICTORINO: Yeah, it says Makawao got 94.

CHAIR HIRANAGA: Meters issued.

MR. TENGAN: I would have to -- I would have to

check back with the engineers and see exactly what that
number represents.

CHAIR HIRANAGA: If you could. It just seems like
a pretty large amount, and I'm assuming it's coming off the
upcountry water list.

MR. TENGAN: We'll check, and I'll report back to the Board.

CHAIR HIRANAGA: Okay. The other thing was I had requested a capital improvements progress report so we could see how CIP's are moving along.

MR. TENGAN: We've been working on that. And I haven't gotten anything from engineering yet. And as soon as that's available, I'll distribute it to the Board.

CHAIR HIRANAGA: Okay, thank you. Are there any additional comments regarding division reports? Seeing

none, this meeting is adjourned. Thank you.

(The meeting adjourned at 12:20 p.m.)

"By Water All Things Find Life"

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