

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR BOARD MEETING
THURSDAY, JANUARY 27, 2005

Held at the Kahului Shopping Center Conference Room,

65 West Kaahumanu Avenue, Unit 29, Kahului, Maui, Hawaii,

commencing at 9:05 a.m. on January 27, 2005.

REPORTED BY: Rachelle Primeaux CSR No. 370

A P P E A R A N C E S

VICE-CHAIR: KENNETH OKAMURA

BOARD MEMBERS: DOROTHY R. PYLE

RALPH JOHANSEN

KENT M. HIRANAGA

MICHELE McLEAN

SALLY RAISBECK

STACY HELM CRIVELLO

CORP COUNSEL: ED KUSHI, ESQ.

DEPUTY DIRECTOR: JEFFREY PEARSON

BOARD SECRETARY: CATHY HOWARD

STAFF:

ALVA NAKAMURA

BOARD OF WATER SUPPLY

TRANSCRIPT OF PROCEEDINGS

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VICE-CHAIR OKAMURA: Will the meeting please come to order. Welcome, everybody. Thank you for being here.

Today's meeting of the Board of Water Supply on January 27th, 2005, is being held at the Kahului Shopping Center.

Present are Stacy Helm Crivello, Michele McClean, Kent

Hiranaga, Dorothy Pyle and Sally Raisbeck, Ralph Johansen

and myself Kenneth Okamura.

Sometimes Mike starts with announcements, so are there any announcements today?

BOARD MEMBER RAISBECK: Yes.

VICE-CHAIR OKAMURA: Sally.

BOARD MEMBER RAISBECK: Thank you, Mr. Chair. I would like to announce that the new Water Resources Committee will be holding its first meeting on February 2nd. They are going to take up the question of Pookela well and also the water rates study. Michelle Anderson is the Chair, and it's a seven-member committee. I would also like to

announce that the attendance of the Molokai public hearing on water rates was ten. The attendance at Wailuku was three. And point of order, Mr. Chair, I would like to at some point when it's appropriate ask the Corp Counsel whether or not it's not required by the State in the Sunshine Law that the minutes include the votes yay or nay on every motion. I believe that is true, and I would like to check it out with the Corp Counsel.

VICE-CHAIR OKAMURA: Okay. Where would we put

that on the agenda, towards the end? Should we just answer

it now?

MR. KUSHI: Why don't you put it at items for future agendas, and we can discuss that.

VICE-CHAIR OKAMURA: Okay. Is that all right?

BOARD MEMBER RAISBECK: Yeah, that's fine.

VICE-CHAIR OKAMURA: Okay, thank you. Okay. Next item, are there any testimonies from the public?

BOARD MEMBER RAISBECK: Excuse me, are we going to approve minutes?

VICE-CHAIR OKAMURA: Okay, I'm sorry, fair enough.

Thank you. Is there a motion to approve the minutes?

BOARD MEMBER RAISBECK: I'll move to approve the minutes, although in discussion, I have a couple of changes.

BOARD MEMBER McLEAN: Second.

VICE-CHAIR OKAMURA: Thank you. It has been moved and seconded that we approve the minutes of the December 21st, 2004, Board of Water Supply meeting. Is there any discussion?

BOARD MEMBER RAISBECK: I noticed a couple of misprints, but actually, I only got to write down one. Page 5, Line 19, it says that "threads" where it ought to say "threats". And someplace else, which I can't refer to

exactly at the minute, it refers to Councilman Mattos, and that should be Councilman Mateo, M A T E O. I don't have those references written down here.

VICE-CHAIR OKAMURA: Okay. So noted. Are there any other additions or corrections? Okay. If not, all those in favor of approving the minutes, please signify by saying "aye".

(A chorus of ayes.)

VICE-CHAIR OKAMURA: Opposed, same sign.

(None.)

VICE-CHAIR OKAMURA: Motion carried. Thank you.

Okay. So the next item would be testimony from the public.

Is there anyone who wishes to address the board? Okay,

thank you. Great.

Next item, other business, Page 2, Number 4. Item

A, the verbal updates and discussion of public hearing by

the State Commission on Water Resource Management on the Iao

Aquifer Water Use Permit Applications attended by Jan Lovell

on November 16, 2004. According to the Corporation Counsel,

Jan Lovell will be here or will try to make it here, so she

asked that it be put towards the end or as the last item on

this section. Is that okay? Are there any objections?

BOARD MEMBER RAISBECK: No objections.

VICE-CHAIR OKAMURA: Okay. Item E, verbal update on the Pookela well. Alva Nakamura.

MR. NAKAMURA: Mr. Chair, as far as Pookela well is concerned, as you know, the bid amount for that project came in at \$2,369,162. We gave the notice to proceed to Maui Master Builders on January 5th of this year. And from what I understand, the application is in. It's been set up by individual agencies and the permit is pending final review and the contractor has been instructed to follow up

with DSA.

The contractor will be submitting a construction schedule for this project by tomorrow. And once we get that, we will schedule a preconstruction meeting and move, you know, proceed on this project. As you know this project is scheduled to be completed sometime about the first quarter of '06 mainly because it's going to take about a year once we've placed the order in for the pumps for it to arrive here on Maui. So just looking at how things are going, we hope that we will be able to get an order in for the pump probably next month and get that procedure going.

The contractor can't order the pumps right now because they still have to do an alignment check of the well and do a few checks, which he has not been able to do yet until we have approved for these plans to do it. So this is in the works right now. I've been in contact with Maui Electric Company to take a look at the power line that's going to be feeding the well.

And as you know, since we changed the size of the pump requirement from 1,000 horsepower down to 600, Maui Electric has determined that they will now no longer need to upgrade the power line that will service the Pookela well.

Instead, all they need to do is install some transformers and things to provide that. In talking to them this morning, they think that they probably will be able to do something for us and have service available by October of this year, and that, again, is going to be subject to a number of things.

One thing is that we have this pipeline that we're going to start work on, bring the pipeline down to Makawao Avenue down to Olinda Road. And that pipeline is going to be going right through the driveway that leads to Pookela

well. And, of course, once the trenches open, you know, if they want to get in there, they might have some difficulties accessing the property, so we're trying to kind of coordinate this so it will minimize the chance of disruption and delays by not only our general contractor, but also by Maui Electric, so these are some issues that we're dealing with right now.

VICE-CHAIR OKAMURA: Thank you. Are there any questions for Mr. Nakamura?

BOARD MEMBER RAISBECK: Yeah, Alva, you said that the contractor hasn't been able to -- I forget your exact

phrase -- but a check on something he needed to check on.

MR. NAKAMURA: No, he needs a do a well alignment check, look at the alignment of the well before they can go ahead and order the pump. And he has not been able to do that yet pending our approval, but he's planning to do it. This is still in the process of getting approval from us.

BOARD MEMBER RAISBECK: I'm just curious as to why he hasn't been able to do it yet. Is it he's too busy?

MR. NAKAMURA: I think he's just tied up. But we've been on his back, and I've instructed my staff to call him every week to find out what the status is so he's on top

of this thing. So we talked to him again yesterday, so I believe he's now back on track again, and the important thing is we get this construction schedule from him so we know where the major events are going to occur on this project. And if we see him falling behind, we'll get back on him and bring him back on line again to be sure we get this project completed on time.

BOARD MEMBER RAISBECK: And the other question is the pump that you're intending to order is 600 horsepower, not 1,000 horsepower?

MR. NAKAMURA: Yes.

BOARD MEMBER RAISBECK: Did that change the capacity of this pump?

MR. NAKAMURA: Yes, it's going to go down to 1.4 million gallons per day from the 2 million gallons per day that the 1,000 horsepower pump would be able to provide.

BOARD MEMBER RAISBECK: So we've gone back to the smaller pump?

MR. NAKAMURA: That's correct, and for good reason. The larger size pump, you know, we didn't have any experience with regard to the pump. It runs at a higher

RPM, so, in essence, what that does is it probably creates more of maintenance problem because it's running higher RPM's. The one that we selected is one that we've had experience with, and it's a much, much more reliable pump than the 1,000. So after much discussion and going back and forth, we decided to go with a smaller pump. This also saved Maui Electric from having to upgrade their power lines as well.

If we went to a bigger sized pump, there's a good chance that this whole project could have been delayed by two to three years. Because they would have to have brought

in their transmission wire to service that pump, so it has multiple effects in terms of the size of the pump.

BOARD MEMBER RAISBECK: Okay. So if we go down to the smaller pump, then the effective product of the well, the production of the well will be approximately half?

MR. NAKAMURA: About 980, whatever that amount is.

BOARD MEMBER RAISBECK: I thought the rule of thumb was 45 percent of the well pump capacity.

MR. NAKAMURA: Two-thirds, two-thirds.

BOARD MEMBER RAISBECK: That's 45 percent.

MR. NAKAMURA: That's right, 45 percent.

BOARD MEMBER RAISBECK: So that would be less than 700,000 gallons from Pookela well, is that correct, of actually effectively usable water?

MR. NAKAMURA: I thought I calculated about 980. I will go back and check it again.

BOARD MEMBER RAISBECK: Okay. Well, maybe give me a call if you have a different figure or something. Thank you. Thank you, Mr. Chair.

VICE-CHAIR OKAMURA: Okay. Thank you, Sally. Any further questions?

BOARD MEMBER PYLE: Yeah, I just have another

question I guess about the pump issue. Are there other pumps in the County in the Water Department that are of a similar size?

MR. NAKAMURA: I think this is about one of the largest that we have.

BOARD MEMBER PYLE: My question I guess is that what kinds of provisions may or may not be being made for not maintaining, but being sure this pump stays on line? If there are no similar pumps and then there's no way to actually raid parts from other ones if this one fails or

something, will there be any provisions made for a backup?

Because if this pump goes on line, and then for some reason, it doesn't work for a while, what happens to all that water capacity? And I'm just wondering what kind of provisions there are for problems in the future.

MR. NAKAMURA: Well, my understanding is, you know, when this well first got started working on it, the intent was to use this more as a backup to the surface water production. You know, that was the intent.

BOARD MEMBER PYLE: I know.

MR. NAKAMURA: So how operations decides to

operate it, you know, I don't think that really has been determined yet. Because, you know, if you use this pump to produce, it's going to be very costly to pump, you see. So I think what they'll probably do is, and again, I can't speak for operations, but they will probably have to look to see what would be the most economical way to operate the system and use the well accordingly.

BOARD MEMBER PYLE: And I'm not sure you're not in a place to answer any of these questions, but doesn't it seem like we've been reading in all kinds of things about meters being given out based on the amount of water that's

going to be coming out of this well? So that doesn't seem like it's a backup. It seems like it's actually consumption, so this could create a future issue. I'm just bringing this up as something to think about. Okay.

MR. NAKAMURA: I'll let Jeff answer.

MR. PEARSON: Mr. Vice Chair, I think that it's always -- I shouldn't say always -- but from a long time ago, the Pookela well was left as, I don't know if the word is backup, but to increase reliability. So the Pookela well will not run continuously as Alva suggested. It will run when we're near drought situations or our reservoirs are

becoming lower, so it's going to be, I don't know if backup is the right word, but it's going to be to enhance the reliability.

BOARD MEMBER PYLE: But then why does it seem like the public is being told that when Pookela well comes on line, there will be more permits available and more water available when that isn't apparently the truth?

MR. PEARSON: There will be more water available because we have the capacity to provide more water and we have a greater reliability with Pookela well, so with a

greater reliability and a greater sense of comfort, I guess you could say, then we can provide more meters because we'll have that greater reliability. As I said, if the reservoirs start to go down, we may not panic as early because we have Pookela well as a backup, if you want to call it that.

BOARD MEMBER PYLE: Okay.

VICE-CHAIR OKAMURA: Any further questions? Kent.

BOARD MEMBER HIRANAGA: So it appears it's taken two years to get to this point since the test well was drilled. So is the Department sure now that it's not going to change its mind on the type of pump they're going to

specify because they were looking at 1,000 horsepower pump for what, two years, and now you're going to 600? Are you sort of final now in the decision?

MR. NAKAMURA: Mr. Chair, I can assure you that it has been set, and there will be no more changes.

VICE-CHAIR OKAMURA: I had a question. Anybody else? Okay. The cost you said was 2 million, and how is this compared to what was budgeted for the project?

MR. NAKAMURA: I think it was overbudgeted, so we had to do some adjustments to the budget.

VICE-CHAIR OKAMURA: It was originally \$900,000.

MR. NAKAMURA: I don't have the number in front of
me.

MR. PEARSON: It's under budget.

VICE-CHAIR OKAMURA: It is under budget?

MR. NAKAMURA: I couldn't --

VICE-CHAIR OKAMURA: Thank you. Are there any
other questions? If not, thank you, Mr. Nakamura and Jeff.

BOARD MEMBER RAISBECK: Oh, one question.

VICE-CHAIR OKAMURA: Sally.

BOARD MEMBER RAISBECK: Since the -- since the

Council on Water Resources Committee is going to be taking

up Pookela well on the 2nd of February, would you be willing -- anything that you send in written form to the Council, could the Board of Water Supply receive that in the mail?

MR. NAKAMURA: Sure. In fact, Michelle Anderson had called me to ask if I could talk about Pookela well at the next meeting. So I'm not sure if she indicated to me just a verbal report or I need to submit something in writing, but if I do submit something in writing, I will see that the Board gets a copy.

BOARD MEMBER RAISBECK: Thank you. Thank you.

MR. NAKAMURA: Okay.

VICE-CHAIR OKAMURA: Okay. We'll move on to C,

verbal report from -- oh, excuse me.

MR. KUSHI: Excuse me, Mr. Chair. Jane Lovell is

here if you can just put her back on.

VICE-CHAIR OKAMURA: Okay. Are there any

objections to that?

BOARD MEMBER PYLE: No, that's fine.

VICE-CHAIR OKAMURA: Okay. Thank you.

MS. LOVELL: Thank you. Good morning. I'm sorry

I couldn't be here right at 9:00. I had a court appearance this morning. According to the agenda -- first, for the record, my name is Jane Lovell. I'm the Deputy Corporation Counsel, and I provide advice and assistance to the Department of Water Supply in connection with the water use permit applications for water drawn from the Iao Aquifer.

According to the agenda, you wanted a verbal update and discussion on the public hearing by the State Commission on Water Resource Management on the Iao Aquifer water use permit applications held on November 16th, 2004. Now, there was a public hearing here on Maui on that subject

on October 28th, 2004. Then that hearing was reported on at a meeting of the Commission on Water Resource Management held in Honolulu on November 16th, and I attended both events, so I don't know where it's your pleasure for me to start. Would you like me to report on both?

BOARD MEMBER PYLE: Sure.

MS. LOVELL: Or just the followup?

VICE-CHAIR OKAMURA: I guess we want to hear the whole story, so thank you, if you don't mind.

MS. LOVELL: Okay. No, no problem. At the hearing on October 28th, 2004, that was held here on Maui,

there were a number of people in attendance from the Water Department to those from the community and Ms. Raisbeck was there as well. I don't know if any other members of the Board were there. George Tengan attended. My colleague, Ed Kushi, attended. Jeff Pearson was there and so forth.

The hearing held on Maui was conducted by a subcommittee of the Commission on Water Resource Management. They sent two commissioners, Commissioner Dr. Miike, and also Commissioner Frasier, who is from the Big Island. And they heard public testimony and then reported back to their

colleagues of the full commission. The hearing was really only the start of the proceedings. The hearing did not close.

It was specifically not closed at the end of the testimony that was given here on Maui, so that the time within which to -- for anyone to request a contested case would not begin to run. And I interpret that as meaning that the Commission on Water Resource Management hopes to avoid a contested case if at all possible. Two commissioners, particularly Dr. Miike, who sat as the hearing officer for the ten-year Waiohuli ditch contested

case, which is, in fact, not over today, suggested that it would be a good idea to avoid ten years of intense and expensive litigation over the Iao Aquifer if that could be avoided.

So I think with that in mind, what they did was they came with a preliminary subcommittee to take public testimony, find out more information to carry it back to their colleagues on the commission. The meeting was very well attended despite the fact that it was held on a weekday during working hours. Not only did a number of applicants for water use permits give testimony, including George

Tengan on behalf of the Department of Water Supply, but also a number of members of the public gave testimony. There was quite a contingent representing the Native Hawaiian community as well as certain groups within that community.

Some of the public testimony dealt with issues that the testifier had personally, perhaps their own taro farm, that sort of thing, but there were other statements made and presentations made by members of the Hawaiian community regarding concern over stream flow. I'm not really sure from the technical standpoint whether those concerns are best addressed in connection with the Iao

Aquifer which has to do with ground water.

I think the theory that the speakers were going on is that if you pump from the aquifer, that will invariably have some impact on stream flow. And I'm not sure if the science and information is really there to establish such a proposition, particularly when many, if not all, of the streams in question are the subject of large scale diversions for agriculture. And in my view, at least I would look first at the agricultural diversions, at their impact on stream flow if we're worried about whether or not

a well several miles away was having an impact on the stream.

But in any event, those issues came up. They were thoroughly presented. Everybody got a chance to have their say. People who were not able to make their whole presentation within the time limits allotted were allowed further time at the end of the hearing, so I think that what came out of it was the commissioners got more information on some of the specific applications that had been made. They went back to Honolulu with a little bit better understanding of some of the issues.

Then they reported back to the full commission on November 16th, and I attended that meeting of the commission at Director Tengan's request. Interestingly enough, the person who reported on the hearing was Deputy Director Yvonne Isu, who had, in fact, not attended, and therefore, as you can imagine, her remarks were rather brief. But then Commissioner Miike and Commissioner Frasier did add, and they indicated that they thought the hearing had been very well attended. Commissioner Miike thought that future hearings shouldn't take place on evenings or weekends or a time that would allow more working people to participate.

Commissioner Frasier disagreed somewhat. He

thought that the meeting was extremely well attended and

that the time and place and manner I guess of the meeting

were just fine. Both commissioners reported that they felt

that they had a better understanding of some of the specific

issues particularly as relates to one of the applicants,

which is Living Waters Foundation that had made a

presentation. They also noted the trust purpose, the public

trust purpose of using waters of the State for, among other

things, Native Hawaiian tradition and customary practices

such as gathering and also taro farming.

Commissioner Miike asked a question, which he really admits he has no answer to, and that is on who has the burden of proving that a particular application does not harm in any way Native Hawaiian rights. This is a difficult point because in the recent Molokai Ranch decision by the Hawai'i Supreme Court, they say that it's up to the applicant to prove the negative, namely that any particular well or ground water use will not harm Native Hawaiian rights. And it's stated so broadly in the opinion that it suggests what I would think of as almost an impossible

burden on any applicant for a water use permit; namely, to have to figure out in a vacuum what the rights might be and then how to address them.

Dr. Miike's thought out loud was that people asserting such rights would have some duty to come forward to alert the applicant to the existence of such a right, and then the applicant could respond to it and demonstrate how their proposed use would not harm that right. I think that's a legal issue that's still very much up in the air. And that was about all that happened at that commission hearing on the 16th of November. There was in particular no

discussion about the two competing applications for the Wailuku shaft, which remains an issue before the Commission. They just didn't bring that up at all at the November 16th hearing.

VICE-CHAIR OKAMURA: Thank you. Are there any questions for Jan Lovell? Dorothy.

BOARD MEMBER PYLE: I'm hoping that you can just shed a little light on this. Then, of course, most of the information that I have in my head comes from what was recorded or reported in the Maui News, which may or may not be accurate, so I'm saying that to start with so you

understand where I'm coming from. It did seem that the Maui News statement said and that the County's application had been incomplete at the time of this. And I'm just wondering if that is in any way correct, if that in any way has an impact on this mandate of the County before the Water Commission and what impact that may have in that dual application for the Wailuku shaft.

And then I have one other question, and that is that it was almost seemingly reported that the requests for water from Iao Aquifer exceeded the limit that the Water Commission had indeed stated as the limit for the aquifer,

and how do you deal with those things? Thanks.

MS. LOVELL: Well, to try to answer the first question first, the Commission has actually deemed virtually all of the application incomplete in one way or another. And, you know, they may be right about that. Certainly the Department of Water Supply's applications provided all of the information that was requested on the form that was provided by the Commission for applicants to fill out, but unfortunately, the form does not reflect some of the pronouncements of the Hawai`i Supreme Court in the various

Waiohuli ditch decision and the most recent Molokai

additions. And so in a way, just about everybody was caught offguard.

One of the reasons they held the hearing in Maui, and I expect they'll have further hearings, is to get more information. Most, if not all, of the applications have also been objected to by a number of groups. The Office of Hawaiian Affairs has filed formal objections. Earth Justice has filed formal objections, not only to ours, but basically everybody's. So at this stage in the proceedings, all applicants are in the process, if they haven't done so

already, of providing further information or responses to objections.

Department of Water Supply put in their responses quite sometime ago. And to my knowledge, we have not been asked for any further or additional information. And with respect to the competing Iao -- the competing Wailuku shaft applications, the Commission staff takes the position that Department of Water Supply's application was incomplete because it lacked the land owner's signature at the time it was submitted.

They then go further and say that because it was

incomplete, in that respect, it was late. And because it was late, therefore, it must be treated as a new use application as opposed to an existing use. The Department of Water Supply filed, after trying to get clarification from the Commission staff over a number of months, eventually filed a petition for a declaratory ruling that the staff's interpretation of their own regulations and of the Water Code was incorrect and that our application was not late. It was filed on time. It did lack the signature; however, that signature was provided later. But that was beyond the control of the Department of Water Supply.

And then in any event, the Water Code itself does not require the land owner's signature. It requires only the land owner's name. And we made a couple of other legal arguments also and pointed out that if it had been late, if we had filed late, that the consequence of that is a presumption that we had abandoned the use. And I pointed out to the Commission that, of course, we haven't abandoned the use. We've never abandoned the use. We are the existing user. We are the only existing user, have been for some 13 years, and that if the Commission wants to make a

finding that we've abandoned the use and that Kehalani Mauka is the existing user and we are a new user, that that stands both the law and the facts completely on their head, and it would be utterly nonsensical.

I made that argument before the Commission at their hearing on December 16th or thereabouts, 15th, whatever the meeting was in December. The Commission gave us a very full hearing, a full I would say respectful hearing. And then they decided that they needed more information and legal interpretation from their own staff and from the Deputy Attorney General, Lynn Chou, who was

advising them, so they recessed that hearing and indicated that they would reopen it at a later time when they had gotten this further information.

I had frankly expected that they would have renoticed it then for the January meeting and was somewhat surprised to see it was not on the agenda for the January meeting. I don't know if it will be on the agenda for the February meeting, but I'm fully prepared to address that further. And I think it's fair to say that if we get a ruling that we continue to see as completely nonsensical, if that were to occur, I think we would appeal. And I think we

would have very strong legal arguments. If that comes to pass, I think that would tie this whole thing up for years unfortunately. I don't think we would get a very quick ruling out of the Hawai'i Supreme Court. And in the meantime, it's -- we continue to be able to use the Wailuku Shaft.

And there was the second part to your question, which I have in the meantime forgotten.

BOARD MEMBER PYLE: That it did seem, at least according to the report in the paper, that there were more requests for water from the Wailuku aquifer than in reality

the Water Commission was willing to allow.

MS. LOVELL: Well, you know, they haven't yet told us what they are willing to allow, which is going to be kind of an interesting question. Is it going to be 80 percent of their estimated sustainable yield? Is it going to be 100 percent? Is it going to be less than 80 percent? They haven't told us that. But I think if you add up all of the applications and those applications are available on the web site of the Commission on Water Resource Management, you can at least see who has applied and what the numbers are.

They probably do add up to more than 80 percent of the sustainable yield.

There were a couple of applications by other parties that were truly late, and also there were a number of applications by the Department of Parks of the County that were late, but they don't really go to the ground water issue. Those are all cap rock wells, which will be considered a completely different way. There's a real question in everyone's mind as whether they even had to apply in the first place, but I don't think those are really a concern.

But if everybody does still seek all the water they put in applications for and if the Commission decides to allow 80 percent of the estimated sustainable yield or less, then, yes, there will have to be some allocation.

VICE-CHAIR OKAMURA: Thank you. Ralph.

BOARD MEMBER JOHANSEN: In regard to Native Hawaiian rights and the placing the burden on the applicant to establish that those rights have not been impacted, I read the two ditch decisions. I haven't read the other decision, and I'm not familiar with this in any depth, but I just had a question. If what the applicant seeks to do is

come in and alter historic rights, is it not the burden of the applicant to establish that he is not -- they are not deleteriously affecting historic rights and rather than have the Hawaiian community engage counsel at their expense and seek to defend this historic right? That's my question.

Thank you.

MS. LOVELL: Yes, and I think in part, it depends on what those rights are and how well defined they are. Obviously, under our Constitution as well as the Water Code and any number of other laws, there are protections, very strong protections for gathering rights, access rights,

rights to -- kuleana rights, for example, and all of those are very well established.

I think the problem becomes when we are dealing with actually quite a large aquifer where we're dealing with ground water sources, which are located at some distance from anyplace where we know of Native Hawaiian rights having either been exercised in the past where people who wish to exercise certain rights at present or in the future, and the question becomes whether it's a burden on the applicant to, for instance, search, research and determine land titles

over a very large expansive land to see if there are any outstanding kuleana rights, which aren't a matter of clear public record. It's that kind of thing.

I don't think that anyone is suggesting that where there is a well established use or where there is a request for a particular use and a particular source that the applicant wouldn't have the burden of addressing that issue. It's where it becomes murky and you can't tell what rights are or are likely and are possibly going to be asserted that you get into this gray area where it's difficult, if that answers your question.

BOARD MEMBER JOHANSEN: It does.

VICE-CHAIR OKAMURA: Any further questions?

BOARD MEMBER RAISBECK: Yeah, thank you.

VICE-CHAIR OKAMURA: Sally.

BOARD MEMBER RAISBECK: Thank you, Mr. Chair.

Welcome, Jane. Good to see you. And I was glad you mentioned land ownership, because one of if things that I heard at that hearing in, I guess it was October, was several -- several testifiers who were taking the position that up in that area, Waihee, Waiehu, West Maui in general, the land titles are all defective because of the overthrow

of the Queen basically and cannot be traced back through the five years of Republic back to the land ownership before the overthrow.

So I realize that nobody wants to touch this unless it, you know, becomes a court case. But I just do feel in that area, not necessarily other areas, but in that area particularly, questions are being raised by a number of people that I'm wondering if you had any statement about at this time.

MS. LOVELL: Well, again, it kind of depends on the piece of property that we're talking about. And I think

that most of those questions are being raised concerning property that's actually outside of the Iao Aquifer, but in any event, I know that Mahealani Oliver was one of the people who most vociferously raised those objections. She has been involved in any number of lawsuits sometimes involving the County, sometimes not, in an attempt to have title declared either to herself or relatives or other people. And she has certainly alleged in those lawsuits, and there's any number of them, I think five or six, that the present people who believe they have title to the land

are not entitled to it. However, at least at the Circuit Court level, she has lost every one of those lawsuits.

With respect to a couple of lawsuits against the County, the County has been awarded its costs and attorneys fees against her, although we have not taken steps to collect at least as of this time. She has appealed to the Hawai`i Supreme Court, and I suppose eventually those issues will be straightened out. But at least as legal matters stand now, every legal challenge that she has brought has not been in her favor at the Circuit Court level.

BOARD MEMBER RAISBECK: Thank you. I did have one

more question.

VICE-CHAIR OKAMURA: Are there any other questions on this side? Okay. Sally.

BOARD MEMBER RAISBECK: Yeah, you know, I find your report extremely interesting and -- but not timely. In other words, I would like to have, if possible, that when you deal with the Commission on Water Resource Management, whatever it may be, if it involves water at all, which it would if you're dealing with the Commission on Water Resource Management, that the Board could get a timely report like within a week as to what went on and what the

issues are and whatever happened at the meeting and what the ongoing problems are really.

And I wondered if somehow we could work it out that rather than, you know, hearing about October and November now and January 27th, if there could be a system worked out where you could write a little report after your contact with them and that could be distributed to the entire board like by E-mail. Is there any reason that could not happen?

MS. LOVELL: Certainly every time I've ever been invited to report to this body, I have cheerfully done so

and would continue to do so. I also wrote a memo to Director Tengan on November 17th regarding the November 16th meeting. So, you know, I do try to stay on top of things. Maybe it's a question of having the Department work out with the Board getting you some more information in a form that's usable to you. I certainly have lots and lots of paper on this subject. It's kind of a question of how much you want, but I have no objection to providing whatever assistance you reasonably request.

BOARD MEMBER RAISBECK: So could I possibly ask

Jeff Pearson if that -- if we could work out a system whereby if Jane or any other County attorney dealing with the Commission on Water Resource Management, we receive maybe a week later some kind of report on that through E-mail so that it's timely? Why would that not be possible?

MR. PEARSON: I'll defer to Ed as far as communicating with the Board through E-mail.

BOARD MEMBER RAISBECK: Could I ask Jane?

MR. PEARSON: Or Jane.

MS. LOVELL: Well, I would defer to Ed on matters of the Sunshine Law, but it's my understanding that E-mail

is not the appropriate way for the Board to communicate as a board.

VICE-CHAIR OKAMURA: What if we were to ask the director or the deputy when they do get reports on this particular issue, that they would, you know, let us have the information or the reports, copies of the reports? Because I hear that you're actually making reports to the Department as time goes on, right?

MS. LOVELL: Right. I guess the only caveat I would put is that to the extent that I'm advising the Department of Water Supply on legal issues where there's an

attorney/client privilege attached; namely, if we're talking about strategies, for example, then before that would be shared with the Board, I think we would have to ask for an Executive Session.

So it might constrain the way I write those reports. But if a request is made, I will certainly do my best to comply with the request. We have a means in our department of requiring departments or boards who request certain legal services that they be in writing and delivered to us. That goes into our statistics, which is part of our budget process and so forth. So it's a formality, but

certainly, I'll do anything that's legitimately requested.

VICE-CHAIR OKAMURA: Okay.

BOARD MEMBER RAISBECK: Okay. I would like to

explain the reason I'm asking this is that I think I and

possibly other members of the Board suffer greatly from a

lack of information from the Department, that we sometimes

read about things in the newspaper that we have not been

informed about and sometimes they're very critical and

crucial things. So I am looking for ways that we can

receive information about important aspects that we have no

other way of knowing about unless it is put in the Maui

News, and not everything important is put in the Maui News.

So I would perhaps request the Chair to request the director that a means be worked out. Now, E-mail cannot be used, nor can telephone communications be used to discuss a matter among the Board. We do receive through the mail and through E-mail announcements from the Department that don't seem to contravene the Sunshine Law. I do not see why an informative report from you a page long about what happened, why sending that to all the members, not just to the director, but to all the members of the Board, I do not

see why that should contravene the Sunshine Law.

VICE-CHAIR OKAMURA: What if we were to maybe bring this up at the next meeting, make it an agenda item, discuss that issue of information, requesting information?

BOARD MEMBER RAISBECK: Thank you. That would be fine.

VICE-CHAIR OKAMURA: Thank you. Any other questions? If not, we'll move on to our last item, next to the last time, the verbal report from Jeff Pearson.

BOARD MEMBER RAISBECK: Thank you, Jane.

VICE-CHAIR OKAMURA: Yeah, I'm sorry, Jan Lovell,

thank you very much for coming.

MS. LOVELL: You're welcome.

MR. PEARSON: Mr. Chair, this verbal report,

actually, there's it's a written report that was provided in

an earlier agenda, but I think due to time, this was

deferred until this meeting. I think Cathy handed it out at

the beginning of the Board meeting, so I'm not going to read

through this whole thing. You can read it. There was a

conference that was held in San Antonio, Texas, and you're

all aware of the AWWA conference, the annual one, that's

kind of a bigger deal and more supplies and more displays

and vendors and the whole bit, but this one was much smaller attendance, I guess about 1,400 participants.

It dealt with more technical issues, a lot more detail to specific chemicals and additives and so forth.

Some of it was a little over my head. I don't know if I was the best person to attend. I learned a lot about the

disinfection byproduct rules and their changes that are

coming up. I shared those with our lab. One of the lab

persons also attended. I think it was good for her. We

never attended the same sessions because she had a little

bit different direction than I did.

At times it seemed like it was a little over my head because there was a lot of professors that like to toot their own horn and show off their findings and some of the items weren't even pertaining to Maui. I think it's probably good, and I think next year we should most likely send someone from our treatment plant and someone from the lab. Like I said, I was able to bring back information, so what I didn't ingest, I could still share. I wrote at the end here, there's a disc that was provided for all the topics of the conference, so you've got to kind of wander

through there, but there's a lot of information in there.

So if there's anything technical, most likely it would be on

that disc. So that's about all I have to say on the matter

unless there's any questions.

VICE-CHAIR OKAMURA: Okay. Are there any

questions? Okay. Thank you very much. Okay. We'll move

on. I think that's it for the other business section. The

division reports. Thank you. The last item is the receipt

of board member's request for agenda items to be placed on

future agendas.

So far, we discussed two items. One was the issue

discussed for more timely information and more information from the Department. Would anyone like to add anything more to that specific one? That's one. And the other one that came up earlier was the -- Sally, that was your request.

MS. HOWARD: Mr. Chair.

VICE-CHAIR OKAMURA: Yes.

MS. HOWARD: With recording yays and nays on the votes that was required by Sunshine Law.

VICE-CHAIR OKAMURA: Okay, right.

MS. HOWARD: Corp Counsel opinion request.

VICE-CHAIR OKAMURA: Okay, so we put that on the

agenda as an agenda item for the next meeting.

Mr. Kushi.

MR. KUSHI: Yeah, Mr. Chair. Clarification. Can

you explain the question? I mean recording the minutes, as

I understand, the minutes to reflect a motion and the

recording of votes for what committee, for what agency?

What is this about, for this body?

BOARD MEMBER RAISBECK: This is for this body.

VICE-CHAIR OKAMURA: Could you clarify?

BOARD MEMBER RAISBECK: Yes, I would be glad to

clarify. I was not present at the December 21st meeting. I read the minutes from the December 21st meeting. The votes on -- I mean these were some fairly important issues such as whether to accept the budget, whether to accept or approve -- whether to approve the budget, whether to approve the Stakeholder's Committee. These were important issues, and the vote went against the motion to approve. But the names of the people voting yay and nay were not recorded. It was merely one, two, three, four, five, you know, or one, two, three, four and two against. It didn't say who was for and who was against.

I believe it is true, but I'm subject to correction if I'm wrong, I believe it is true that in the State Sunshine Law where it gives how voting must occur, it says specifically that the minutes must record those in favor and those against. And if I'm wrong, so be it, but I believe that's correct. And that's State law, and it's also repeated in our rules I believe, so I just would like to bring up the issue that I think it's a valid thing because I read the minutes, but I really couldn't tell from them who voted yes, who voted no on two very important issues.

VICE-CHAIR OKAMURA: What I can do is I'll just

put it on a list for the Chairman for future agenda items,
and if he requests that, if he sees that fit to put it on
the agenda, maybe he'll get in contact with you.

MR. KUSHI: Yeah, Mr. Chair, let me just say this.

I'll double-check again, but my understanding of
parliamentary procedure as it applies to boards and
commissions, Government of Sunshine is that -- and I'll look
and I'll report back to you at the next meeting -- when a
board or commission takes a vote, the Chair controls the
motion. The chair controls the vote. If it's unanimous,
the record is so stated unanimous. You don't need a roll

call. If it's disputed, I think the Chair then on a show of hands can say, four -- five for the motion, four against.

It is the privilege of any member to ask for a roll call. At that point in time, you go down the roll, but I'll check that again. But that's my understanding of voting procedures and parliamentary procedure, but I'll report back to you.

VICE-CHAIR OKAMURA: Okay. Thank you. Are there any other items for the next meeting? Kent.

BOARD MEMBER HIRANAGA: I would like to request a

verbal update on the H'Poko well. Also, I'm not sure if this is the time to bring it up, but I believe in the past, we used to receive copies of the director's reports to the mayor and activity report. I'm not sure if we're still getting those. They used to do like a weekly report. We used to get copies of that. I thought that was informative.

Okay. Thank you.

BOARD MEMBER PYLE: I have a list. And some of these are for future agendas, not necessarily all for the same time, but I just would like them all to be considered.

The first one is that several meetings ago, I asked for

information about the number of wells that we have on Maui, and I know that we got partial information concerning the Iao Aquifer, and I think it's really important that the issue of private wells be constantly on our radar screen because there are more and more and more of them all the time, and they obviously have to have an impact. And so I think this is something that the Board and the Department should be aware of.

The second thing is kind of along the same line.

At the last meeting, I know I brought up the question of the trucking of water to private residences and to private water

systems and asked a very, you know, open question, where is that water coming from? Are people using county resources for their own benefit I guess in a way? Are people, truckers charging money for water they're taking out of the County systems? And where are they taking it out of and how much? And I think that that's all something this is denying people permit -- meters because water is being used in this way to take it someplace else. I think we should be thinking about that. That's the second thing.

The third thing that I would like at some point, not necessarily at the next meeting, but very soon to invite

Michelle Anderson, who is now the Council Committee Chair for Water Resources, to come and meet with the Board to discuss what she considers to be important issues and for us to share with her what we think are important issues so that in the future we can have more coordinated and more open relationship with the Council. And the fourth thing is the ever ongoing issue of fire protection systems. And I really -- I don't know why we never get any information about this, but it is an ongoing issue. What are the fire protection requirements in this County? Who makes them, and

why are they not coordinated? Thank you.

VICE-CHAIR OKAMURA: Thank you. Any others?

BOARD MEMBER RAISBECK: Yes, Mr. Chair. I would

like to add to Dorothy's that I would like the Board

possibly to consider that the Rules Committee could examine

this issue of fire protection. We had -- in the December

21st meeting from reading the minutes, I see that is very

much a hot issue that the Fire Department approved a system

and the Department did not approve the same system, and that

then becomes the problem with subdivisions and so on. So

either the -- I would like possibly the Rules Committee if

we consider this today at the -- well, the February meeting is going to be pretty heavy with budget and stakeholder's committee. When the full board considers this subject, I would like them also to consider assigning the Rules Committee to look at this question and whether or not the two can be reconciled or else the responsibility for approving fire arrangements be left with the Fire Department rather than -- the Department is overworked as it is. And it would be possibly a relief to have the Fire Department take all of the burden rather than the Water Department.

And if I can say incidentally, the Rules

Committee, I will not request any meetings of the Rules Committee for February -- for January or February because of the press of other business, especially with the budget and the stakeholder's report. Thank you.

VICE-CHAIR OKAMURA: Okay. Thank you. Any other items? Okay. If not, we'll move on to division reports. Are there any questions or concerns regarding the division reports?

BOARD MEMBER HIRANAGA: Mr. Chair.

VICE-CHAIR OKAMURA: Kent.

BOARD MEMBER HIRANAGA: Just looking at the

report, number of services by meter size, I notice 42 meters, five-eighths inch meters were issued in the Makawao area. And I just wanted information regarding that.

BOARD MEMBER McLEAN: Page 17.

VICE-CHAIR OKAMURA: What page?

BOARD MEMBER HIRANAGA: Page 17.

MR. PEARSON: Mr. Chair.

VICE-CHAIR OKAMURA: Excuse me, go ahead.

MR. PEARSON: I can give you a general answer. I

can't give you a detailed answer. I know that we're still

working down the list. If you remember, originally 300,000 gallons was made available to work off the Upcountry system, and then subsequent to the light at the end of the tunnel with Pookela well and working with the Mayor, another 200,000 gallons was allowed to be worked on. I know they're working on that 200,000 gallons now. I don't know the details of where they are. Maybe Alva can give you maybe better insight.

BOARD MEMBER HIRANAGA: Is that like a brighter or a dimmer, the light at the end of the tunnel?

MR. PEARSON: Mr. Chair, I would like to say it's

getting brighter based on Alva's brief discussion today.

VICE-CHAIR OKAMURA: Mr. Nakamura.

MR. NAKAMURA: Mr. Vice-Chair, just one minor comment. As you know, as we are working down the priority lists, we've got to send letters out, wait for responses for the applicant to respond. And all of these kinds of things takes time. So it appears that, you know, our progress in getting water meters issued is slow, but it's because of this time lag that we have to allow them adequate time to respond. And sometimes some of them don't respond and we have to follow up again. And, you know, it's all these

kinds of things going back and forth that delays and does not allow us to speed up this issuance of meters. And so those are some of the issues that we are dealing with.

BOARD MEMBER HIRANAGA: Thank you. Just one additional question. Has the Department been able to calculate the number of meters that will be provided with the new decision to go to a 600 horsepower pump? Did they do a calculation of the number of meters, just the meters to be provided?

MR. NAKAMURA: I don't think we've done a detail to give you very specific to say exactly how many meters we

will be able to issue. However, we're looking at, in terms of the 800-plus that we have on the list, we are looking at possibly reaching into the 400 level in terms of the meter issuance.

BOARD MEMBER HIRANAGA: For the new capacity?

MR. NAKAMURA: For new capacity.

VICE-CHAIR OKAMURA: Okay. Thank you. Are there any other questions?

BOARD MEMBER HIRANAGA: One more. You say the list is now 800?

MR. NAKAMURA: The last that I -- the last time I saw it, the list was about 800, and we're slowly working our way down.

VICE-CHAIR OKAMURA: Okay. Sally.

BOARD MEMBER RAISBECK: Thank you, Mr. Chair. So you mentioned 300,000 gallons and then another 200,000 gallons. That would be 500,000 gallons. Is all of that water that is considered to be available because Pookela -- because of Pookela well?

MR. NAKAMURA: I believe so.

BOARD MEMBER RAISBECK: So even though Jeff said

it's really just a backup and for reliability, it's actually being used to give out meters?

BOARD MEMBER PYLE: Meters, that's what I said.

MR. NAKAMURA: That's correct.

BOARD MEMBER RAISBECK: Would you put on the agenda -- Mr. Chair, that I think the Board needs to discuss this more intensively because giving out meters if the water isn't going to be there is not a good idea. So the question of adequacy of supply based on Pookela well would be something I think the Board should discuss.

MR. PEARSON: Mr. Chair.

VICE-CHAIR OKAMURA: Yes, Mr. Pearson.

MR. PEARSON: Nine months out of the year

Upcountry, there's adequate water due to the surface flows.

The reservoirs are full. We have rain. We have --

everything is fine. So in those nine -- in those nine

months, if we didn't have any drought conditions, we could

have a lot more usage Upcountry based on our pump capacity

and so forth with what we have in the Upcountry system.

It's those three months, three or two, where

there's low capacity in the surface water that it's hard to

satisfy that assumed large quantity of water, so that's

where the Pookela well will come into, if you look at a graph of usage, you have a high peak in the graph. And then when you get low flows, you have a dip. Well, the Pookela well will bring the dip up. And based on where the dip is now, we look at the reliability issue as so many meters to flatten out that graph to allow meters Upcountry. So with the Pookela well, it provides higher flows, more flows, more available water in the drought conditions, therefore, we can allow to have more meters provided because we have Pookela as an increased reliability in those low flow times.

BOARD MEMBER RAISBECK: Does your projection also include not have to be in drought restrictions to anybody Upcountry once Pookela comes on line and the new meters are issued?

MR. PEARSON: There's no way I would ever say there's not going to be drought restrictions. You can't predict that, and right now with all this rain -- I was unable to attend a meeting that took place at 9:00 at HC&S. The EMI ditch that goes by our Kamole treatment plant is at less than 25 million gallons, which is about 15 percent of capacity. And if you wanted to try to say there's a drought

right now with it raining outside and with all the green grass in Kihei, people would call you nuts. But we have very low flows in the Wailua ditch right now. So you cannot -- so my point is there's no way you can ever completely design or plan for no drought.

BOARD MEMBER RAISBECK: Thank you, Mr. Chair. I would like the question of adequacy of supply and how many meters Pookela can support on the agenda.

VICE-CHAIR OKAMURA: I'll make a list and I'll give it to Mike for him to develop the agenda next week. Okay. Are there any other items? If not, I guess the

meeting is adjourned. Thank you, everybody.

(The meeting ended at 10:15 a.m.)

"By Water All Things Find Life"

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