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**BOARD OF WATER SUPPLY**

**COUNTY OF MAUI, STATE OF HAWAII**

**THURSDAY, FEBRUARY 23, 2006**

**REGULAR MEETING**

Held at Council Committee Room, Seventh Floor, Kalana O Maui  
Building, 200 South High Street, Wailuku, Maui, Hawaii,  
commencing at 9:00 a.m. on Thursday, February 23, 2006.

**ATTENDANCE**

**BOARD OF WATER SUPPLY**

**REGULAR MEETING**

FEBRUARY 23, 2006

CHAIRMAN: MICHAEL P. VICTORINO

VICE CHAIRMAN: KENNETH M. OKAMURA

BOARD MEMBERS: KENT M. HIRANAGA

GINNY PARSONS

CARL M. HOLMBERG

STACY HELM CRIVELLO

RALPH JOHANSEN

DIRECTOR: GEORGE TENGAN

DEPUTY DIRECTOR: ERIC YAMASHIGE

DEPUTY CORPORATION COUNSEL: EDWARD KUSHI

BOARD SECRETARY: MICHELLE SAKUMA

ENGINEERING STAFF: ALVA NAKAMURA

BOARD OF WATER SUPPLY

REGULAR MEETING

FEBRUARY 23, 2006

TRANSCRIPT OF PROCEEDINGS

CHAIRMAN VICTORINO: We will call this meeting to

order. In attendance today -- well, first of all, good

morning and welcome to the Board of Water Supply regular meeting for Thursday, February 23rd, 2006.

Board members in attendance at this time are Carl Holmberg, Kent Hiranaga, Kenneth Okamura, Ginny Parsons and myself, Michael Victorino.

Announcements, there's a number of announcements.

First of all, as you can see, A, the American Water Works Association, Hawaii Section Meeting is going to be held May 9th to the 12th at the Renaissance Ilikai Hotel, which I think they've been using that for a number of years, yeah.

So there's a whole bunch of stuff in there about that. If

you need any further information, there is a number that you can reach, or I think there's a website also, yeah, isn't there a website? So you can pick up information from there.

Let the record show that member Ralph Johansen has graced us with his presence. Good morning, Ralph.

MEMBER JOHANSEN: Good morning.

CHAIRMAN VICTORINO: Second, B, the National Water Works Association annual meeting is June 11th to the 15th in San Antonio, Texas. And this year we are only going to send what, four, George? What did we agree upon, four?

MR. TENGAN: We didn't agree to any number. I just requested that the Board restrict its number.

CHAIRMAN VICTORINO: Due to some financial

constraints, Mr. Tengan, Director Tengan asked me if we'd look at just maybe only sending four. And in the past generally we only had four or five members. But I think last year was the largest number we had, I think we had seven. So we will look into that matter and get back to you at our next meeting in June.

Attached here is also a layout and some of the expositions, some of the seminars that are available. Like Carl, those of us who have gone for a number of years find it very, very enlightening, because you get to go to many seminars. But in my point of view, and everybody has a

little different take on it, but I think the biggest thing I get out of it is the interaction with other municipalities, and finding that whether they're large or small we share a lot of common problems.

And some of the solutions or some of the methods they're using to solve these problems have been able to be transferred, or at least brought to the attention here on Maui. So it's a good interaction. Okay. So anyhow, there's information here, and at our next meeting in February -- I mean in March, excuse me, in March we will discuss this more.

And also let the record show that our member from

Molokai is present. Good morning, Stacy.

MS. CRIVELLO: Good morning.

CHAIRMAN VICTORINO: So if I'm not mistaken, we have a full quorum as far as members on our Board of Water Supply.

Any other announcements? I think, Ginny, you had a couple about upcoming events. Would you like to share that with us, please?

MEMBER PARSONS: I left everybody a little press release on Mark Edwards coming to speak Upcountry at Hannibal Tavares Center on March the 8th at 6 pm. Dr. Pang

from the Department of Health had frozen samples during the chlorine burn that we did in August of 2004, and Dr. Edwards and Dr. Falkingham have cultured and found DNA of certain pathogens in the water, and he's coming to speak about that.

And it has to do with the lead leaching and with some of the possible medical issues Upcountry.

On Sunday, April 30th we are going to have the first Upcountry Maui Safe Water Fair. We are inviting vendors that are in filtration, water, the fire department.

And it's just an awareness program of what you can do to keep your home line safe, what's going on Upcountry. It's going to have a lot of games for the keiki, food. It's

going to be more of a fun atmosphere, music, we are going to have music and entertainment. And some people speaking about their products, what they have that can help with keeping your own house safe.

So I'd encourage anybody that knows anybody that has anything to do with water, filtration, even pool, chlorine pools, products, et cetera, let them know about the fair, and if they're interested they can give us a call. We only have a limited number of booths, so the sooner the better. It's one day from 9:00 am to 4:00 pm.

CHAIRMAN VICTORINO: Thank you, Miss Parsons. Any other announcements? Seeing none, I'll move on to item

four, approval of minutes, the regular minutes of the  
December 22, 2005, which were provided. Any corrections,  
additions or deletions to the minutes of the December 2005  
regular board meeting?

If not, could I have a motion to approve as  
submitted the December 22, 2005 minutes?

MEMBER OKAMURA: So moved. I move, I so move.

CHAIRMAN VICTORINO: It has been moved by Member  
Okamura.

MEMBER PARSONS: Second.

CHAIRMAN VICTORINO: Seconded by Miss Parsons.

Any discussion? Hearing none, I'll call for a vote. All

those in favor say "aye."

(A chorus of ayes)

Opposed?

(None)

Thank you. Okay, moving to item number five,

public testimony.

Michelle, do we have any public testimony at this

time?

MS. SAKUMA: No.

CHAIRMAN VICTORINO: None, okay. We will still

reserve the right, if any subject matter comes up and

anybody wants to testify specifically on that particular

subject matter, we will allow them to speak on that matter.

Moving on to number six, communications.

Communication 06-04 letter from Michelle Anderson, Chair,

Council Water Resource Committee requesting the Board's

review and comment on the merits of "A bill for an ordinance

amending Title 14, Maui County Code, relating to a water

conservation plan."

You will find that on pages 4 through 6. I was

hoping Michelle might be able to attend, but she's not here.

Are there any comments? I will open the floor to comments

and discussion on this communication. Member Okamura.

MEMBER OKAMURA: I was wondering whether the department would have the resources available, meaning mostly the staff that would be able to do this within the time constraints that are set forth in this ordinance?

CHAIRMAN VICTORINO: Director Tengan.

DIRECTOR TENGAN: That's a question to me?

CHAIRMAN VICTORINO: I would imagine, yes, sir.

MEMBER OKAMURA: I'm sorry, I should have maybe addressed the question.

MEMBER HIRANAGA: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

MEMBER HIRANAGA: It states Board of Water Supply,  
not Department of Water Supply. That's what it says here.

CHAIRMAN VICTORINO: Yes, it does, Board of Water  
Supply. So I was wondering where were you going with that  
question.

MEMBER OKAMURA: We are not going to do it, the  
public, it will end up with the staff having to do it.

MEMBER HIRANAGA: Then they've got to change the  
wording.

MEMBER PARSONS: Can I ask a question?

CHAIRMAN VICTORINO: Go ahead, Miss Parsons.

MEMBER PARSONS: Mr. Kushi, I know you reviewed

this. Does this have anything to do with the private communication from their attorney with regards to the Department of Water?

MR. KUSHI: Member Parsons, what communication?

MEMBER PARSONS: The private communication between the County Council and their attorney with regard to the powers.

MR. KUSHI: Oh, you mean the Special Council? I don't believe so, but I would never put it past the Council. But I really don't believe so. I believe this is just a revolving development by the Council to put in some sort of conservation plan. I don't believe there's any

recommendation by their Special Counsel to institute this.

MEMBER PARSONS: All right.

MR. KUSHI: And again, responding to the comments,

Mr. Chair, although it does say the Board, Council wanted

input from the Board to start this thing rolling. And any

legislation will be by the Council, of course. The comment

is correct that it is the Board. The Board is staffed by

the department. So in essence, if you say something that he

doesn't like it, the department would have to support you.

CHAIRMAN VICTORINO: So in other words, if this

was enacted and we were required to get this necessary

information and transmit reports within 180 days of the

ordinance being passed, then we still have to go back to the department.

MR. KUSHI: Well, you would request the department to do the write-up. The Board is staffed by the department.

CHAIRMAN VICTORINO: So with that comment, Mr. Tengan, I go to you now, because now it does fall back to them. Could you have the staff to be able to accomplish these requests by the Council?

DIRECTOR TENGAN: Yes, Mr. Chair, we do have staff assigned to a conservation program that's within our planning division under Ellen. So it is a continuing effort

on the part of the department. However, I don't believe we have any formal written plan with goals and objectives. So this would be a plan that would require the department to set its goals and objectives in developing a water conservation plan.

The one concern I have is the time that they're allowing for this plan, the 180 days. I would hope that that time could be extended somewhat to give the department adequate time to do, you know, thorough planning in this area and give the matter more consideration as far as what we really want to accomplish and how do we get there.

CHAIRMAN VICTORINO: What would you think an

adequate time frame would be? Because again, I guess what they're looking for are some specific time frames in which they can anticipate a report.

DIRECTOR TENGAN: Well, the Council needs to realize that if this plan is being required or being asked of the Board, then the Board would have to discuss this matter also with staff. That might be a lengthy process. So I would think minimum one year would be good.

CHAIRMAN VICTORINO: Okay. Any comments on Tengan's, Director Tengan's comments on the time frame? Miss Parsons.

MEMBER PARSONS: I agree we've got to have more

time, but I'm just wondering how Council and the Planning Commissioners are going to handle this not being done for a year with a lot of things out there that this would be addressing.

DIRECTOR TENGAN: Well, we do have, like I said earlier, we do have ongoing efforts in water conservation. But as I stated, I don't think we really have our goals and objectives stated in this program here. So that's something we need to do. And even though we cannot just sit down and just hastily write down our goals and objectives, we need to do some analysis. We may even need to bring some outside help in the development of this plan.

MEMBER PARSONS: Is that something that you'd like to look into and we could discuss at the next meeting, who you might want to bring in to help if that would assist?

DIRECTOR TENGAN: Let me discuss this with staff and come back with a recommendation as to -- and make some kind of timetable as to how much time we expect something like this to be developed.

CHAIRMAN VICTORINO: I would only request that if possible, and you know, because again she's asking for some written formal response by March 1st. And with that time frame put in front of me, I'd like to say from what I'm

gathering, and we can discuss this further, that most of us like the idea of the ordinance. I guess the biggest question is the time frame.

And so unless you guys want to discuss the matter further, if I was to respond to Michelle by saying we agree with the ordinance, however the time frame, the 180 days we still have to, you know, work on that number and get back to you by April 1st, because then we'd have our meeting in between.

DIRECTOR TENGAN: You can state the staff is recommending a minimum of one year.

CHAIRMAN VICTORINO: One year, okay, okay. I mean

that's fair enough.

DIRECTOR TENGAN: Then it's up to Council whether they want to grant it or not.

CHAIRMAN VICTORINO: Is that all right with the rest of the board members? I mean it's just to say conceptually we agree, but the Board and the staff would like at least a year, not six months, to be able to put a thorough plan together.

DIRECTOR TENGAN: I would expect that this water conservation plan would be part of the Water Use and Development Plan also. But that's something I need to discuss with Ellen to confirm. But in my mind, if we are

going to do a Water Use and Development Plan it should include a conservation element in it.

CHAIRMAN VICTORINO: Definitely. Any other comments to this ordinance?

MEMBER HIRANAGA: Mr. Chair?

CHAIRMAN VICTORINO: Member Hiranaga.

MEMBER HIRANAGA: I'm just wondering, since the Director says the department already has a conservation, water conservation plan, are we --

DIRECTOR TENGAN: It's not -- if I may correct you, it's not a plan, it's a program.

MEMBER HIRANAGA: Water conservation program. Is

this ordinance really necessary? We already have a program.

I'm just wondering if this will just create more work for

the department that could be used more effectively

elsewhere. When you create an ordinance it's law, right?

And so it doesn't evolve, it's a static document, so I'm

just kind of wondering -- where program is evolving,

depending upon the needs of the community.

It's the responsibility of the department to

provide water to the community, so I'm just wondering if

this is time well spent by the department.

CHAIRMAN VICTORINO: Member Okamura.

MEMBER OKAMURA: From what I can gather, what the conservation plan of the department right now includes, like passing out water-saving fixtures, very basic stuff. And I think maybe the Council is looking at things like maybe other ordinances or more far reaching things maybe. Maybe what the county departments can do to save water. Or maybe, you know, like maybe have a water conservation plan for the county itself as one part of it, which would include things like water fixtures, I don't know, incentives for conserving water, for the homeowner to conserve of water.

But I would think that they're looking at something more broad and covering more levels, from the

homeowners to government to private business, or whatever a conservation plan would include.

CHAIRMAN VICTORINO: The take I get from talking with some of the Council members and reading this, I think it's long term, long reaching. They want to have a plan from which this county can start moving forward. We have evolved from an agricultural to a more of a residential, industrial, visitor type industry, so a lot of this stuff needs to be incorporated in a plan.

The program, you're right, Mr. Hiranaga, it's evolving. It can change as time goes on. But even a plan can be changed. It may not be quite as simple, but a plan

with maybe some enforcement, maybe even some means of insuring things get done are maybe what really Michelle and the Council are looking for and asking us to kind of put together.

So I think it's time that somebody takes this and gets this plan together. We've not really had a plan, although the department has worked very diligently on their programs. And there are some very good conservation programs out there, but there's so much more that can be done. I think this is what this is all about, to make something where we have some enforcement also when we put these things together, that there's some methodology of

enforcing what we're asking.

DIRECTOR TENGAN: Mr. Chair, it might help the department if the Council can provide some direction as to what its objective is with regard to this ordinance, you know, what is the Council trying to achieve.

CHAIRMAN VICTORINO: In my letter to them then I will ask for their specific direction, what are they trying to achieve in this area. Okay, that's fair enough. So two things. What they're looking for, what they're trying to achieve. And secondly, changing it from 180 days, asking for one year, and that would be my response to them. And is

that all right, is that okay with the members here? Okay,

thank you.

Moving on, unfinished business, none. Treasurer's  
report, none.

MEMBER HIRANAGA: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

MEMBER HIRANAGA: I thought we had a standing  
request for at least a verbal report on the progress of  
Po'okela Well or the status of Po'okela Well.

CHAIRMAN VICTORINO: I was going to put that under  
Other Business, but that's okay. Since Member Hiranaga has  
brought that subject up, Alva, would you like to give us a

quick update on the Po'okela Well?

And may the record show that standing under

Unfinished Business the update on the Po'okela Well has to

be incorporated. Mr. Nakamura?

MR. NAKAMURA: Mr. Chair, the status on Po'okela

Well. At the current time, I don't know if I mentioned this

the last time, but the pump and motor is in Honolulu

awaiting shipment to Maui. In talking to Duane Ting of Maui

Master Builders last week, they just got through pouring the

concrete pad that would support the well pump and motor, and

that is currently being cured. You need a 28 day curing

time. So by the middle of next month, in fact, a week or so

before the middle of next month, they would be up at the site assembling the pump and motor, and getting prepared to install the pump and motor into the well.

Everything else is ready. The electric motor control center, as I understand, is all installed. And in essence, the major job right now is to get the pump and motor installed, and that should be done about the second week or so of March. Once that is installed, then of course they've got to do testing and all that.

So we anticipate that they will probably have the well running probably at this point in time about the first week of April. And at that time, once it starts running,

then they'll have to take water samples of course and submit that to the Department of Health for approval. And once that gets approved, which we anticipate will probably take a couple of months, the well should be ready to go on line.

CHAIRMAN VICTORINO: So your best estimation as far as running?

MR. NAKAMURA: I would say probably say June 1st. We will use that as a possible date. Again, it's a function of how fast we get a response from the Department of Health.

CHAIRMAN VICTORINO: Okay, any questions for Mr. Nakamura?

MR. NAKAMURA: So we're almost there.

CHAIRMAN VICTORINO: It's been a long process.

MR. NAKAMURA: A long process.

CHAIRMAN VICTORINO: Would you kindly -- I guess

if it's all right with the Board, and you have a moment,

email us when the motors are in and you do your first pump,

your first test. I'd just like to know. I mean maybe

before a meeting or after a meeting, but just so we all know

the pump is in and it's been run, and then we will go from

there. Is that all right board members? Just FYI, just for

your information, yeah.

MR. NAKAMURA: Okay.

CHAIRMAN VICTORINO: Any other questions? No?

Thank you. Thank you, Member Hiranaga, for reminding us.

That will be put on the agenda as a standard item until

completion.

Okay, moving on to Other Business, summary report

of the January 25, 2006 Upcountry Oversight Water Advisory

Committee meeting, including an overview of the Boyle's

briefing.

Eric, are you going to handle that? The Deputy

Director will handle that. Why don't you sit over here?

Oh, you need the board, okay. Would you introduce yourself

just for the purpose of --

MR. YAMASHIGE: Eric Yamashige. Thanks, Mr.

Chairman, Board Members. First of all, I'd like to

apologize if I cough, because I'm kind of getting over the

flu. And second, I'm not as smart as Ellen, so I hope I can

make you understand what I'm trying to say this morning.

To start off, there is a table in your packet,

which I'll get to in a little bit, but I wanted to give you

a brief introduction as to what this is all about.

Balancing our compliance with so many rules out there is a

real balancing act for the department. Primarily on one

side, and I'm sure you are all familiar with the lead and

copper rule. And this one, if the PH is high, which is an

indication of the acidity, the higher the PH, the less acidic the water is.

If the PH is high, the less acidic, the less leaching of the lead out of the brass fixtures and things that will get into the water. So we try to keep right now a PH at about 8.8.

On the other side of this is you see disinfection by-product rule. In this case the simplified equation is TOC, which is total organic carbons that are in the water, plus free chlorine, which is a very effective disinfectant, will create your disinfection by-products. And again, this

is simplified. There's a whole lot of other stuff that goes on.

Okay, as a catalyst to help this actually occur, you have the temperature of the water, something we cannot control. And the higher the temperature the more this happens, so we want to keep the temperature down. The other thing is the time. The longer these things stay in the system, the more this occurs. So we want to keep the time down. And we can have some influence on this by flushing the system, which is what we do quite regularly.

And then the last -- or, well, another item is the PH. The higher the PH, the more this occurs. So we really

want to keep the PH down. But you will notice that keeping the PH down here negatively effects the lead and copper. So when you look at this, that's supposed to be a sword blade. We're really balancing compliance with the lead and copper rule, and compliance with the disinfection by-product rule on a real thin thread.

And I hope you appreciate this. So this is George balancing the two. And as long as we can keep George happy, then we're all right. So with that in mind, we can look at this table. In a nutshell, this is what Steve Duranceau from Boyle Engineering discussed at that Oversight and Advisory Committee. What we asked him to do was identify

what was being done before the EPA study. What is our current condition based on the recommendations from both Edwards and Boyle.

Ultimately, in the far right-hand corner, far right-hand column, is where we want to be, you know, what we want to do to really take care of all of this stuff. And then in the interim if we are not able to comply, if George falls off on one side or the other, what we have to do.

You will notice that on the far right-hand column the answer to a lot of our problems is the reduction of this total organic carbons. If we can reduce this, we can maintain our free chlorine, which is a very good

disinfectant, to satisfy, to comply with the Chloroform

Rule, and we can reduce the disinfection by-products. So in

the years to come that's where we want to be.

In the interim, if we are not able to maintain the

system and there's a lot of outside influences on it, what

Boyle is recommending is the introduction of his

ortho-polyphosphate, which is a blended inhibitor. I don't

think anybody wants to go there. There may be really no

relationship between what happened a few years ago and if we

introduce something like this, but the public perception is

there. So we are doing whatever we can to avoid going to

that second to the last column.

But I wanted you to understand that it's a real tight balancing act that we're going through right now. And we've been able to balance it by a lot of effort, taking care of the time. And our field operations or operations groups are keeping a real close eye and monitoring the system and doing what we can to stay in compliance.

Okay, so in a nutshell, that's what Mr. Duranceau said, and I hope -- it was simple enough for me to understand. When you start throwing in all the other stuff it gets a little complicated. But it is a very complicated issue.

CHAIRMAN VICTORINO: Well, again, the bottom line is the safety of the drinking water, and then the public's perception is important you know. The realization is they've had problems for many, many years. So when you say -- you throw this in and the public perception sees that, you cannot blame them for that fact. And they've had ill effects from these things. So again, we've got to be cognizant of that.

Before we dump anything into it, hopefully we have really researched it, and hopefully when Dr. Edwards comes hopefully he will give us some answers and ideas. But I'll open the discussion, and I apologize to the Board Members.

Questions? Let's try to keep it in the basic matter, but go ahead. Miss Parsons?

MEMBER PARSONS: As we discussed, the primary issue that we think it still is within the home, is that correct, the home fixtures?

MR. YAMASHIGE: The thing with the Lead and Copper Rule -- understand that I've been here seven months or so -- I could never understand why we as a utility had to worry about what is actually occurring at the tap. We have no control over what happens there. But that's where this lead and copper, the numbers come from. We ask our residents to take a bottle, and the first draw out of your kitchen faucet

in the morning is the water that you're supposed to take, which we test for the lead and copper levels. You can imagine, there's very little control on those samples.

We have heard comments that they forgot to take the first draw so they felt bad, and they went down to the second, third, fourth bathroom that hasn't been used for weeks and took the sample there, and of course the level will be elevated. At the same time, if they don't take the first draw and then they take the sample, the levels will be lower. So when we get these numbers we're really not sure where you're at.

MEMBER PARSONS: But we think it's the fixtures,

correct?

MR. YAMASHIGE: We went through a big discussion

about this last night in the committee meeting, and any time

there's brass -- brass has lead in it, okay, and there's new

brass, and we can go through all of that. But that's where

you are going to get the lead. We don't have lead pipes in

our system. But maybe the meter. Primarily I think

fixtures in the home, and the fancier your fixture in the

home is, if you have one of those European pretty fixtures.

I guess Europe has a lot of lead, that's why you get those

nice crystals. But anyway, those are not the best things to

have.

MEMBER PARSONS: So given that, that we think it's still in the home, could we look at some other options, before we ever get into the discussion with the community about adding another additive, of maybe recommending that we put together some kind of replacement program and use -- like the solar, like what they used for the solar program a couple years ago where the County basically gave you the solar and then charged it back on your bill over a period of time. They lent the money out for you to put a solar unit in.

And if we could do that, I mean faucets aren't

that expensive. Make that available. Or look at the County Ordinance that would say by July of 2006 all new buildings, all new construction has to comply under certain rules. I mean can we do some proactive things along that line before we even consider another additive, and see if we can hold things down?

MR. YAMASHIGE: I am not prepared to speak to

that.

CHAIRMAN VICTORINO: That's an ambiguous question

to be asked of him. That will have to come really from the

Council and the other parties that need to have the power to

change some of these things. And I think the problem we

have right now is additives is the most efficient to get to

the most people at the quickest time. Grant you, I

understand what you're saying. And I agree with you that it

may cause more problems, but we don't know. In the

meantime, no matter what ordinance, even if the Council was

to move and act real fast, and people were to react real

fast, I don't see anything happening within the next year to

make anything change that drastically. And to change

faucets and all of that could get very expensive if you're

asking all of a sudden. Councilmember Johnson.

MEMBER JOHANSEN: Mr. Chair, could we have

restated what the vintage of the system is and how that

affects the likelihood that there's lead in the system?

MR. YAMASHIGE: I'm not familiar with the pipe

material, and I think that's what you are talking about.

MEMBER JOHANSEN: It was my understanding that at

some point lead in the water system, the homeowner system

was forbidden in construction.

MR. YAMASHIGE: Yes.

MEMBER JOHANSEN: And I wondered what that date

was, what the cut-off date would have been.

MR. YAMASHIGE: I believe that date was just after

I built my house, so I think I have lead solder on my

drains.

MEMBER JOHANSEN: When did you build your house?

MR. YAMASHIGE: That was in the early eighties.

MEMBER JOHANSEN: So my place is 1976. We're at

risk then.

MR. YAMASHIGE: At that point you did have lead

solder in the copper pipes.

CHAIRMAN VICTORINO: Maybe that question can be

addressed by Director Tengan. Do you know what years

specifically this was changed?

DIRECTOR TENGAN: No. I'm sure Ginny would know.

MEMBER PARSONS: 1992 to 1996 I think is when that

legislation was brought together. So I think there's some things that after 1992 were pretty much safe.

MR. YAMASHIGE: Wasn't it 1982?

MEMBER PARSONS: After 1992 I think the rule went into effect. It's on -- you know what it's on, George, it's on our fixture count. You know that fixture count that we use? I think it's on there. December 1992, I think, 1992 or 1993.

DIRECTOR TENGAN: The only thing that's important about the date is that the Department of Health required that we take samples from these homes that were built prior to that date, because they were more likely to have lead at

the tap. And basically that's what the test results that reported to or the samples taken are sent to the lab for analysis and reported to the Department of Health. That's the primary group that we looked at, the Department of Health looked at.

CHAIRMAN VICTORINO: Member Johnson?

MEMBER JOHANSEN: We don't have any way of estimating how many homes are at risk then, and if we require some kind of survey to do that. But until we know, we don't even know the extent of the problem, right?

DIRECTOR TENGAN: Well, we don't have a problem

complying with the Lead and Copper Rule, provided we can use

the --

MEMBER JOHANSEN: I understand, but I'm talking about the homeowner. If there's going to be a process of education and some kind of process of subsidy or something like that, we don't have any idea what the extent of it is.

DIRECTOR TENGAN: That's the purpose of the upcountry committee, and that's why I believe you're doing a water fair and all that, that's to educate the public. And it's been ongoing since the committee hired Pam Rossman --

MEMBER PARSONS: Grossman.

DIRECTOR TENGAN: Grossman. She's responsible to

get to the schools and get to, I guess, community organizations so that the community upcountry can be educated about the Lead and Copper Rule and all that.

CHAIRMAN VICTORINO: Would it not be, not simple, but a method of just going to the building department and finding all the homes that were built prior to 1992, wouldn't that be the best and simplest method?

MEMBER PARSONS: We identified at one point I think, George, about 3,000 homes that were affected initially up there. And now they're talking about the lead leaching out at a certain phase too. But I don't know if that's still part of the formula. But I think at one point

early on when we were talking about putting in the phosphates the first time around, that David Craddick had identified about 3,000 homes that were affected, that were more in the lead solder issue, and that was something that you can't change a fixture and control.

But I think what he's saying is even if we change the fixtures we still have to balance the formula of the mixture we have in there now. And the disinfection by-products are what might set us off on the other end of it. And we're either going to have -- if we don't put those chemicals in to correct the lead leaching, we're going to have high disinfection by-products.

CHAIRMAN VICTORINO: Mr. Okamura?

MEMBER OKAMURA: One question. You know, in the Haleakala Times there was a thing about water, about the high disinfection by-products. And I don't know how they worded it, but was their statement correct, did you see that article?

MR. YAMASHIGE: Yes.

MEMBER OKAMURA: They said it was at the dangerous level. Was that correct?

MR. YAMASHIGE: That was sometime in history, it was earlier. It's not now.

MEMBER PARSONS: It was last year. We went over

it. And it's not exorbitant, it wasn't like off-the-wall

charts, but we went over the maximum contaminant level. And

if you do that like twice in a row you have to bring back --

that's why we brought back the Chloramines, because two

times taking it we were over the maximum contaminant level.

MEMBER OKAMURA: Did the department respond to

that?

MR. YAMASHIGE: Yes, there was a response made. I

did see it in the paper, but I didn't see the draft. And

that was really in the upper Kula system. You will notice

that that disinfectant is Chloramine, which is a chlorine

ammonia mix. It's not as strong a disinfectant and free chlorine, so you really don't have this reaction happening.

What happens is because the disinfection isn't as strong, you do have the risk of the bacteria. So at that time when we had those violations, when we had those high levels, it was because we were going through a chlorine burn. And when I heard that I was kind of surprised. But it's just that we were putting free chlorine in the upper system, and the upper system has the highest organic carbons.

So for that period when we were introducing chlorine to kill the bacteria, the disinfection by-products

were high. A misunderstanding on how the rule was being implemented caused the violation. But after we did that chlorine burn the system has been working very well.

If that's the only questions, then I do want to point out in the last column under Pi'iholo, currently the Pi'iholo plant is the only plant upcountry that is on a multi-media filtration. It's like a sand filter. The rest of them all have this microfiltration or the spaghetti looking filters that filter out a lot of stuff. It's state of the art. You will be happy to know that Maui really did start the nation on this thing.

In the future we do want to go to microfiltration

at the Pi'iholo plant, as it says, potential microfiltration retrofit. It will bring us up into a position where we would be in compliance with the rules that have not yet come out. And that's the other thing, we keep on shaking the sword because they keep on adding new rules.

CHAIRMAN VICTORINO: Does anybody else have any questions before I go back to Miss Parsons? Okay, Miss Parsons.

MEMBER PARSONS: That was one of the questions I was going to ask you. When these new rules come out and as they sit right now, what's the feeling in the department,

are we going to be able to be in compliance once they start testing for some of these pathogens?

MR. YAMASHIGE: The microfiltration will do a lot of it and the chlorine will do the rest of it. And once we get this TOC done, we will be better off. I know that there are some that maybe neither will be able to take care of, but at this point we don't know. We have got to cross some of these bridges when we get there.

CHAIRMAN VICTORINO: Carl?

MEMBER HOLMBERG: Excuse my ignorance, I am assuming that because most of the rest of the island is on well water, that this isn't an issue for the other

customers.

MR. YAMASHIGE: You know that we do have some surface water being introduced into the central system, as well as the Lahaina system. All of the surface waters are a little bit different. The water in West Maui is different from East Maui. In fact, as you come down the system from Olinda to Pi'iholo to Kamole the water is different, which is why in the upper Kula system we have the highest TOC. We cannot use chlorine because we would fail on disinfectant by-product. We need to stay on chlorines for now until we can reduce this.

In Pi'iholo we're at this balancing thing where we

can still use chlorine, but we're getting to the point where maybe we've got to change the way we do things. At Kamole the TOC is relatively low, so even with the chlorine, the disinfection by-products are not as serious. You know, all our well water we use chlorine, so if we start to use both sources we need to be consistent with the disinfection.

CHAIRMAN VICTORINO: Eric?

MR. YAMASHIGE: Are we equipped to do testing as we introduce the surface water into the central system and Lahaina system, to make sure that what has occurred upcountry, and it probably won't, but are we prepared to do testing in a similar manner, maybe not right away, but in

the near future?

MR. YAMASHIGE: Actually, the Surface Water Rule requires that any time we introduce surface water into the system we kind of lose that protection of the groundwater. So we do have to do the same tests in all of our systems now, for all of them that have surface water, so we don't have this problem.

CHAIRMAN VICTORINO: So the results have shown no problems existing in the central or Lahaina systems at this time?

MR. YAMASHIGE: That's correct.

MEMBER PARSONS: Do you have any rise in your lead

at all down here? I mean have you kind of looked at --

have you charted this to see?

MR. YAMASHIGE: I will plead my ignorance as well.

That has not been brought to my attention, and I really

don't know.

MEMBER PARSONS: Can we look at that?

MR. YAMASHIGE: Since it hasn't been brought to my

attention, it's not something that I'm familiar with.

CHAIRMAN VICTORINO: Mr. Johnson?

MEMBER JOHANSEN: The notes here, could you

explain a little on ortho-polyphosphate, how that works and

what it benefits?

MR. YAMASHIGE: Okay. I almost had to ask my daughter, who is in high school, about this equation, because it's been too long since I did chemistry. I don't know all about ortho-polyphosphates. I do know that as an inhibitor it will add a protection in the pipe that will limit the leaching of the lead out of the brass, or whatever fixtures that there are.

And that's why, like Mike said, it's something that we can do to put into the system that will help the lead problem or the lead leaching. And that's really the intent of that inhibitor, it just inhibits the leaching of

the lead. I can't go into the reactions and things.

CHAIRMAN VICTORINO: One request. Is it possible, Mr. Tengan, that these test results from both Central and West Maui, if at our next meeting we could look at those results? Because I'd be very interested to see what's occurring now. And then maybe a year or so down the road somebody else will ask the same question, but there will be some kind of reporting system that we can make sure that we do not get into that stage where upcountry is. I don't think it will, but just to be fair. We'd have some historical background. Miss Parsons?

MEMBER PARSONS: One more question. That upper

system that we have the most problem with, is that all EMI?

Does that source come from -- is that all the EMI ditch

water total?

DIRECTOR TENGAN: That comes from the upper system intakes, the Waikamoi flume. There are several places where the water is taken from, but they're not the same as the lower system, or even EMI's intake system extending all the way out to Nahiku.

MEMBER PARSONS: Is that the one that goes up into the Olinda, the Nahiku run?

DIRECTOR TENGAN: No, the Nahiku intake, that

water goes to the Kamole plant.

MEMBER PARSONS: Okay, thank you.

CHAIRMAN VICTORINO: Any other questions?

DIRECTOR TENGAN: Mr. Chair?

CHAIRMAN VICTORINO: Yes, Mr. Tengan.

DIRECTOR TENGAN: I wanted to ask Eric to kind of

explain the strategy we're looking at as far as dealing with

the TOC utilizing GAC filtration. Maybe you can mention

that to the Board.

MR. YAMASHIGE: Okay, thank you. Yes, when we

talk about total organic carbon reduction, the technology

that is used to do that is the granulated activated carbon.

It's a cylinder, it's a vat with activated carbon in it.

The water runs through it and the carbon will take out the  
TOC.

When we say reduction, it really takes out  
everything. But we don't have to take out everything, we  
just have to reduce this, so this will be reduced  
(indicating). So the way they do it is they put in a GAC,  
but they also put in a bypass. And by regulating how much  
water goes through the GAC and bypasses it, we can control  
what the TOC will be in the finished water.

CHAIRMAN VICTORINO: I guess the question Member

Parsons has, how soon can that be on line?

MR. YAMASHIGE: I have asked Boyle Engineering for a proposal, because they're looking at a column study to determine what is the size of this filter, how much material is going to be there, how long we can expect the material to last before we have to change it out. And they've submitted a proposal, and I've kind before gone back to them and said, "I'm not sure we can do that." So they're going to be discussing how far we can go.

What I do want to ask for is criteria that we can put out in our request for proposal for the design of this facility. And at this point, as you will notice, we are looking at TOC reduction at both the Upper Kula and the

Lower Kula systems. Kamole, again, has the lowest TOC, and it has not been a problem.

DIRECTOR TENGAN: The technology is similar to what we're doing at H'Poko.

MR. YAMASHIGE: Yes, it's really the same thing.

CHAIRMAN VICTORINO: That we're using in the H'Poko?

MR. YAMASHIGE: Yes. Also Dr. Duranceau mentioned in his presentation that in the Pi'iholo plant, because of the multi-media sand filters, some municipalities are able to put in the activated carbon as a layer in the sand.

That's a concern, because it also requires adjustments to our back wash system that will back wash all of the coagulants. And the rate that that will be introduced will either throw all the carbon out of the filters or back wash it.

So that's something that, you know, we certainly want to look at, because it may not be as involved as a GAC. The Boyle report isn't completed yet; this is preliminary. He wanted to update the committee on where we were. This was a real simple, easy way to understand the basics of what is involved.

CHAIRMAN VICTORINO: And basically that's what

we're asking for, so most of us would have an understanding.

I've gone through the preliminary report, and I'll be

honest, I haven't the foggiest idea what they're trying to

tell me this that report. I'm sorry, you have to be

scientific. Like you say, go to our children so they can

understand those equations. I forgot, that was a long time

ago, sorry.

Any other questions for Eric? If not, thank you

very much. At least that update us on the preliminary

report is very, very enlightening, thank you. And I think

George has a little more height and a little less round,

okay. At this point I'll call from a 10-minute recess.

(Whereupon a brief recess was had)

CHAIRMAN VICTORINO: I'd like to reconvene the meeting and make note that Miss Parsons has to leave us at this time. Thank you, Miss Parsons.

MEMBER PARSONS: I will be in Haiku tonight, if you all are going. We're going to talk about lead in the water.

CHAIRMAN VICTORINO: Thank you, Miss Parsons.

Okay, go ahead. Now, moving on to agenda item under B, discussion with the Corporation Counsel's office regarding Board's authority, duties, powers, role and functions, subsequent to the 2002 Maui County Charter Amendments,

specifically with respect to the following. And there's a whole list of things 1 through 7. I won't read them all, but there's a bunch of communication, and if you will start from page 7 through 14 that will be a memo dated December 4, 2002 to then acting Council Chair Dain Kane from Brian T. Moto, First Deputy Corporation Counsel, regarding complying with and implementing the new charter amendments.

Why don't we start there and we can move on from that point. Page 7.

MR. KUSHI: Mr. Chair, if I may.

CHAIRMAN VICTORINO: Yes, Mr. Kushi.

MR. KUSHI: In conjunction with the department staff, it's kind of a mixed bag, but we tried to hit on -- at the last board meeting we reviewed the minutes, and I was here also, but we were trying to respond to Member Okamura's concerns and requests. Looking at the minutes we summarized in the first three points under your agenda item a review of the department's annual budget, advice by the Board to the director, the Mayor, the Council, and three internal department policies.

Items 4 through 7 are copies of memos that our office issued mainly to the Council, and the last one to Kent Hiranaga, who was the chair at that time. And they

kind of go all over the place and address various issues.

It's kind of hard for me to summarize today, but these are

the basic memos and the background within which we can

respond to the first three questions.

So I hope all of you have had a chance to look at

those memos. But in essence, I can respond to questions

concerning those memos. But to respond to the first three

questions, if you want me to respond, we can move on from

there.

CHAIRMAN VICTORINO: Mr. Johansen, do you have a

question on 1 through 3? None? I think that's pretty

self-explanatory. I think we've been doing that. I think

the only question that has been brought up is, again, when we do not have the time, when it says review the department's annual operation and capital improvements budget, it says review. And there was incidences in the past where we haven't had the time to review it. In other words, even give approval. It was just sent up.

What legalities, if there were any, that wasn't reviewed by us, again, we're advising. We understand that.

But if it's not reviewed by us and somehow I don't know whatever approval we are supposed to, what seal of approval

we're supposed to put on it, then it's just sent up. Are

the procedures being followed the way the charter set forth,

the new charter?

MR. KUSHI: Right. So responding to that, which is item number 1, if you would refer to the opinion at page 32, which is the February 25, 2004 memo to Kent. And this came about because I believe that was the first year that we went into regular departmental status. And because of the time constraints I believe the Board at that time didn't even look or didn't maybe, after the fact, look at the budget.

So in response to the then Chairs request, we did a memo saying that in essence, notwithstanding what the

charter says, and the charter basically says that the departmental budget shall be reviewed by the Board, and then the Board sends it up to the Mayor, and then the Mayor sends it up to the Council. The bottom line is only the Council can approve the budget, but the Mayor has veto power. But the Council can still override that veto.

In essence, it's not the department's or the Board's review or approval that affects the final outcome. However, what the charter says is what it says. But in essence, if that doesn't happen, the Mayor is still authorized and has a duty, as well as the Director, to submit the budget before the Council.

So to interpret it any other way would not make sense, because you may have a situation where for whatever reason the Board cannot submit a recommendation or review a budget. And then if that's the case, if you interpret it strictly, then the Mayor cannot submit a budget to the Council. Then the Council cannot act on a budget. And for the next fiscal year the department has no budget. That was not the intent, we believe, of the charter amendment.

So that's our position on I guess your review powers. And the department has tried this fiscal year to submit the budget, which this Board did review. But unfortunately it did not come to a majority conclusion.

CHAIRMAN VICTORINO: But it was reviewed?

MR. KUSHI: Correct.

CHAIRMAN VICTORINO: I don't think it says that we  
have to approve it, it says review.

MR. KUSHI: It says review and submit.

CHAIRMAN VICTORINO: It does not -- submit does  
not say approve, right?

MEMBER JOHANSEN: It does say recommendations.

CHAIRMAN VICTORINO: Right, but not approve. The  
word approval, okay. I'm not a lawyer, but you tell me,  
Member Johansen.

MEMBER JOHANSEN: I'll defer to Counsel.

CHAIRMAN VICTORINO: I'll defer to you, Counsel.

We review it, it does not say we have to approve it. We  
send it up. Yea or nay, it still goes up to the Mayor,  
right?

MR. KUSHI: Yes. Submit does not necessarily mean  
approve or disapprove. But again, you look at the end  
result, and the consequences of -- I mean an opposite  
interpretation, it just is absurd.

CHAIRMAN VICTORINO: Okay, thank you. Number 2,  
does anyone have anything on item 2, advice to the Director,  
the Mayor, and the Maui County Council? We do that, okay.

Kenneth, do you have something?

MEMBER OKAMURA: I think Mr. Kushi wanted -- I wondered if Mr. Kushi wanted to make a statement prior to addressing that.

MR. KUSHI: Yes, I believe we did address that specific issue. Not as to a specific question, but the issue in general. If you return to page 21 in our memo to Councilmember Mateo dated July 28, 2003, we basically under the first section summarized what the charter amendment did to this Board in terms of its authority. And in essence, I'm just quoting from a section that says that, "The Council's proposal would recast the Board of Water Supply as

an advisory body."

MEMBER OKAMURA: What page is that?

MR. KUSHI: Page 21. Now, you have to understand

the history before the charter amendment. Prior to the

charter amendment, this Board was a so-called

semi-autonomous body. Not so much advisory, but it did have

the power and authority, I should say, to not only advise

but to overrule, to modify and overrule or rescind any

decisions from the department. It couldn't overrule or

modify anything that the Council or the Mayor said. But as

to the department, the Board did have that authority.

The Board also had the authority to hire and fire

the department director. So that all changed with the charter amendment. And the background and the legislative history behind the amendment in essence put the Department of Water Supply into a position where it is exactly like the Department of Public Works, the Department of Housing, the Department of Parks, and all the so-called other line departments. Other departments, like Civil Service Department, Police Department, Fire Department, they have semi-autonomous boards that are independent. Their directors are subject to their boards, okay.

In any event, the question is what is the term, I

guess Member Okamura, when they say advisory to the Council,

the department, and the Mayor? We have not addressed that specifically, but our position would be if these bodies ask, you advise. If they don't ask, there's nothing for you to advise on.

MEMBER JOHANSEN: Mr. Chair, if I may.

CHAIRMAN VICTORINO: Member Johansen.

MEMBER JOHANSEN: It says in the charter as amended, The Board of Water Supply shall act as advisor to the Department of Water Supply, the Mayor and the Council in all matters concerning the County's water system. That calls for some interpretation.

MR. KUSHI: And I just said that.

MEMBER JOHANSEN: Well, it sounds as if we're sitting at the end of the table and we're only to have any advisory function if we're called upon. Like the kids at Thanksgiving, we don't speak unless spoken to. Is that really what our role is going to be, is that how the Corporate Counsel interprets this?

MR. KUSHI: Yes.

MEMBER JOHANSEN: In other words, we cannot initiate any issue on which we would recommend or advise, it has to be brought to us by the Mayor or the department before we have any function at all?

MR. KUSHI: No. If you in your own deliberations on your own feel you have a position on a water matter, bring it up and request an explanation from the Council, the Mayor or the department. But otherwise, to interpret it your way is that for any decision on any matter regarding water for this entire county it needs to come through here before a decision is made. Again, that will result in an exercise beyond your authority.

CHAIRMAN VICTORINO: One question at a time.

MR. KUSHI: That's where I think you are leading to.

MEMBER JOHANSEN: Well, we know that isn't

practical, but it is made and it does call for interpretation, and it leaves a lot of latitude for the Mayor and the department, which I think we should have some handle on so that we know where we are. We've been just flopping around on, well, take the issue of the Wailuku Water Company. This wasn't brought to our attention. It was brought to our attention by a citizen who appeared before us in December and said, "Where are you on all of this?"

We've got to know, I think, as a reasonable matter a more definitive interpretation of what "all matters" means.

MR. KUSHI: Well, if you need a written response to that we can look into it and respond. But I can tell you right now our position will be if you choose to ask the Director or the Mayor or the Council, "Let us review this issue," you can do that, okay. But if you're saying if the Mayor, the Council or the Director comes to our office and asks us, "Do we have to appear before the Board on any decision that we make on any water matter?" Our response would be "No."

MEMBER JOHANSEN: I understand that. But that, to me, is not responsive, because we're going to have to deal

with substance, and if we're going to have to take it case  
by case we don't even know what's going on until after the  
fact, as with the case with the Wailuku Water Company  
agreement. There's got to be some way that we're more in  
the loop, or we're absolutely useless as far as I can see.  
It really diminishes our function way beyond what I see as  
the intent of the charter amendment.

CHAIRMAN VICTORINO: Do you want to respond to  
that?

MR. KUSHI: I think I've said enough.

CHAIRMAN VICTORINO: Member Okamura.

MEMBER OKAMURA: I think Ralph hit the nail on the

head as far as what I was concerned about. Where this says that the Board of Water Supply shall act as advisor, not so much the word "advisor" as the terms "advisor to the director of the Department of Water Supply, the Mayor and the Council in all matters concerning the County's water system."

And so I don't think this implies that the Council or the Mayor has to come before us for each specific item for our approval, but he has to provide information on what he's doing, at least to this body. And I think what Ralph says is true, otherwise we become just like, you know, way to the side of the issues. But the way it's stated here,

"relating to all matters concerning the County's water supply," I don't think we should be left in the dark.

And I think maybe, to be specific, maybe your offer to submit a written interpretation of this part would be good for the Board to have as a starting point in terms of what our role is. Because the Mayor and the Council did not come before us for every item for our approval, but just at least to run these issues by us. Whether he accepts that advice or not, it's up to him, but we need to be informed about that.

DIRECTOR TENGAN: Mr. Chair?

CHAIRMAN VICTORINO: Yes, Director Tengan.

DIRECTOR TENGAN: So that I can have a better understanding of the Board's concerns regarding this issue here, could we have a little discussion on Member Johansen's concerns with regard to Wailuku Water Company? Because I'm not aware of any new agreements that we entered into with the Wailuku Water Company.

CHAIRMAN VICTORINO: Well, I think what Member Johansen was referring to was the fact that a number of agreements or decisions were made, and we read them in the paper or the public brought it to us. We never -- and I think this is what Member Okamura is asking, is there some

methodology that when decisions are being made on water

matters to the County system that we are put in the loop?

Now, do we have to make decisions on everything? Obviously

that's not feasible. But when you're entrusted by the

charter, and then someone asks you and you go, "I'm sorry, I

don't know." I mean --

DIRECTOR TENGAN: I'm trying to discuss the

specific situation that he's concerned about.

CHAIRMAN VICTORINO: Okay. Do you want to

address, I mean your specific concern on the Wailuku Water

Company?

MEMBER JOHANSEN: Well, I stated what I understood

about it, which was just that there were some agreements that had been made that we have not been privy to. We haven't been informed or consulted in any way. And if you say that there are no such agreements --

DIRECTOR TENGAN: No, there are agreements, but there are no new agreements that I'm aware of.

CHAIRMAN VICTORINO: Okay, Member Hiranaga.

MEMBER HIRANAGA: Mr. Chair, I guess regarding Wailuku Water Company, I think the Mayor may have stated certain positions that he's taken, but these are not binding decisions, these are position statements. You still need Council to approve whatever funds to acquire whatever assets

the Mayor may want to, but that hasn't happened.

But beyond that, if Member Johansen is not satisfied with Corporation Counsel's interpretation of the charter amendments, is it appropriate for the Board of Water Supply to retain independent Counsel to provide an independent opinion? Because Corporation Counsel, the chief Corporation Counsel is appointed by the Mayor, so are they providing a totally independent interpretation of the charter amendment?

So something to think about, if you are not satisfied with their interpretation, is to request outside Counsel opinion, but I don't know if that's appropriate or

not.

MEMBER JOHANSEN: May I just say --

CHAIRMAN VICTORINO: Member Johansen.

MEMBER JOHANSEN: As a general observation, when this charter amendment passed it left us in place. I don't think that the Charter Commission or anyone involved had in mind that we were going to be only involved in those things specified, which are the annual appropriation and the establishment and adjustment of rates. That when it says that we are in an advisory position with respect to all matters with regard to the Department of Water Supply, I

think it means more than that.

And I'm satisfied with Mr. Kushi's explanation as far as it goes, but I don't think it specifies at all to at least my satisfaction the limits of the Mayor's discretion in not bringing things before this Board, and the same with the department and the same with the County Council. That's what I would like to have spelled out more specifically.

And as you say, it may be that if we are dissatisfied with that response and we feel that more is called for, we certainly can, I would think, as a county body, request independent Counsel.

CHAIRMAN VICTORINO: Before we pursue it any

further --

MR. KUSHI: Mr. Chair, one comment about independent Counsel.

CHAIRMAN VICTORINO: Go ahead.

MR. KUSHI: I'm not sure if this Board as well as other boards have the authority to request. I know the Council does, but I have got to look at that too.

CHAIRMAN VICTORINO: One thing I will point everyone's attention to is the notes from February 18, 2003, pages 17 through 20. I was particularly taken by this, because on page 19 it in its own way shows the roles of the Council, the Mayor, the department and the Board, okay. It

clearly shows on this part of the memo the roles as  
established in their opinion for the new charter changes.

And the thing that takes me most out of all of  
this is number four, "Perform such other duties and  
functions as shall be prescribed by law." Okay. And  
that's, again, where my interpretation -- and I am not a  
lawyer, I apologize, I'm not that well versed with law. But  
when it says perform such other duties and functions as  
shall be prescribed by law, that to me -- and you correct me  
if I'm wrong, Mr. Kushi -- would be any of the new Council  
proposals or ordinances that would put us -- for example,  
they were trying to put us in charge of adjudication of the

Director's decisions on water matters, meters and all of that.

Would that fit into that if that was to come to fruition and we were to be given certain powers by the Council, would that be number four as I interpret it?

MR. KUSHI: Mr. Chair, that's correct. What you are talking about is a proposal pending in the Water Resources Committee that would give this body appeal authority, and it's still in committee.

CHAIRMAN VICTORINO: That's correct.

MR. KUSHI: That would fit into your item number

four, because it would be enacted as an ordinance and ordinance is law. However, our office is of the opinion that we will not sign off on such an ordinance, because in essence it gives back this body the authority that the charter change took away. In essence, it's an end-run around the electorate's decision to take away your power.

CHAIRMAN VICTORINO: But I go back. This is the interpretation from your office?

MR. KUSHI: Correct. Now, if an ordinance comes down that says, We hereby delegate and authorize the Board of Water Supply to do something else that it never was authorized to do, that was not taken away, then maybe we

would see that would fit into number four.

CHAIRMAN VICTORINO: But again I go back to the point, whether you are calling it an end-around or not, by your interpretation any changes by ordinance, which is law, by the Council empowering us in any section, whether it was new or once was under our privy, this says it would become part of our responsibilities.

Whether you sign off on it or not, that's not the question. But you're saying because you took something away that we wouldn't sign off on it. But if it's something new, we would. By your interpretation such functions that shall be prescribed by law.

So that's all I'm asking at this point. If something came down, whether you sign off or not, it says here in your number 4 that we would be, under your interpretation, be given that because it was statutorily put back as an ordinance, which is prescribed by law.

MR. KUSHI: Correct.

CHAIRMAN VICTORINO: Okay. I didn't want to get into a long argument.

MR. KUSHI: I will tell you frankly that the Council has passed some ordinances that we have not signed off. We have recommended strongly against, and it's still on the books. The problem is if it's ever challenged the

record will show that their own attorney advised them not to do it.

CHAIRMAN VICTORINO: Anyhow, continue. I'm sorry,

I didn't mean to get into a long discussion. Member Hiranaga.

MEMBER HIRANAGA: Just correcting Member

Johansen's statement that the Charter Commission prepared

the Charter Amendment. It was not the Charter Commission,

it was the Council that came up with this amendment. The

Charter Commission had an amendment proposing to grant more

power to the Department of Water Supply. The Council was

unhappy with that proposed charter change, so they came up with their own Charter Amendment.

So maybe we should ask the Council what role they perceive the Board of Water Supply should have, since they're the ones that prepared and submitted this Charter Amendment.

MEMBER JOHANSEN: Mr. Chair, to respond to that, I notice that Mr. Kushi has extracted from the Charter Commission narrative some wording. I wonder if there's more in that narrative that would spell out how they envision this amendment to operate in practice.

MR. KUSHI: Mr. Chair?

CHAIRMAN VICTORINO: Mr. Kushi?

MR. KUSHI: We did extract that citation from the Charter Commission's narrative. Member Hiranaga is correct in that the narrative just basically recited what the Council's amendment was. I can review, go back and review the Charter Amendment, Charter Committee's narrative, but as I recall, in essence that was the intent.

Now, to go deeper into it, one could basically look at the minutes of the Council meetings that discussed this charter change. We haven't done that yet, but it is there for review.

MEMBER JOHANSEN: Could we request that that be

done and that we get information about it?

CHAIRMAN VICTORINO: Corporate Counsel Kushi?

MR. KUSHI: Put it in writing, because my plate is kind of heavy. But I will try and get to it.

CHAIRMAN VICTORINO: Okay.

MR. KUSHI: Not heavy, overflowing.

MEMBER JOHANSEN: While you're writing, my perception of what has taken place here is that there's still a feeling, I think, that there would be, if the electorate were considered, a feeling that we had a role, that we represent the community in ways which the Council and the Mayor don't quite. And with specific reference to

the affairs of the water department here, our role is to represent the community and to be apprised of major activities and concerns.

And it seems to me that that could be spelled out in some way that would give us more of a role to play here. And I think that's consistent with what I see as the intent of this Charter Amendment.

MR. KUSHI: Mr. Chair, if I may comment, and it's just a comment.

CHAIRMAN VICTORINO: Yes, Mr. Kushi.

MR. KUSHI: As I recall, the election that caused

this Charter Amendment -- and I believe Member Hiranaga was on the board -- I believe the sentiment that passed this Charter Amendment was just the opposite. The campaign for passage of Amendment 9A was to take away from the Board. That people were kind of upset at the Board, and they wanted to move authority from the Board to elected officials, and that happened. And now if the sentiment is going back, maybe should you go back to semi-autonomous. But that's just my discussion, nothing legal.

CHAIRMAN VICTORINO: It's just an opinion at this time.

MEMBER JOHANSEN: I don't think that contradicts

what I said. What I'm saying is, since they left this Board in place with an advisory function and they said with respect to all matters, and this is what they voted on, that all matters is something that should be taken seriously and should be spelled out. That's where I am.

CHAIRMAN VICTORINO: Member Okamura.

MEMBER OKAMURA: Thank you, Mr. Chairman. What if the Board were to ask for a written opinion on this particular section, and then we will start from there. And then whatever we want to do afterwards, at least we have something to start with, some opinion.

CHAIRMAN VICTORINO: So when you say written

opinion, you're referring to our role in all water matters?

MEMBER OKAMURA: In regards to this specific part

of the charter that says --

CHAIRMAN VICTORINO: Which section?

MEMBER OKAMURA: That says we shall act as advisor

to the Council, the Director and the Mayor in all matters

concerning -- in all matters concerning the County's water

system.

CHAIRMAN VICTORINO: 11-3 and 11-4.

MEMBER OKAMURA: Especially the last part, "in all

matters concerning."

MR. KUSHI: Your intent being, Member Okamura,

that all matters determine when, if, and how. All matters get to you. That's what you want, right?

MEMBER OKAMURA: Yes. At least to be kept in the loop, or something like that. Not for approval.

MR. KUSHI: I've got it.

MEMBER OKAMURA: Because there are things that happen which we have to say we don't really know about, because we don't know about them.

CHAIRMAN VICTORINO: And sometimes it may be beyond our privy. Maybe there are things that go into executive matters, such as the Council goes into executive

committee meetings, and it may not be able to be sent to us.

But let's go with that first, and then we can then discuss

the matter in more detail.

MEMBER OKAMURA: One last question.

CHAIRMAN VICTORINO: Sure, go ahead.

MEMBER OKAMURA: Page 19 under the Roles of the

Mayor, pursuant to number 5, pursuant to Section 91-3 HRS,

the Mayor shall, you know, in regards to the Mayor, approve

or disapprove administrative rules or regulations proposed

by the department. So administrative rules can be proposed

by the department and the Mayor approves it and they become

rules?

MR. KUSHI: Mr. Chair, I believe that that section is a Hawaii Revised Section that is regarding promulgation of administrative rules by agencies, such as the department or boards. The reason why it's listed under the Mayor in this case -- well, let me give you some history.

Before the charter change, any rules of the department as enacted by the Board would go up to the Mayor. Then the Mayor's office would then review it and submit it to the Council. Any rules, any and all rules, rates, fees, priority lists, water meters, et cetera. Any rules in this book would have that path. Then there was a time schedule where the Council could approve or disapprove, et cetera.

Now, because of the charter change, the question is who can promulgate rules. That question is yet to be answered. But in the event the department or another agency, not this Board, because that was taken away, does promulgate rules --

MEMBER OKAMURA: What does that mean, "promulgate"?

MR. KUSHI: Go through a public hearing process. There's a specific process about enacting rules, amending rules pursuant to state statute. Then the final authority to accept those rules, to approve the rules would be the Mayor. And in the case of the state, the Governor. That's

why that was put in there.

CHAIRMAN VICTORINO: Okay, thank you. Any other questions or discussion in area number 2?

MEMBER OKAMURA: Do we need a motion to request a written?

CHAIRMAN VICTORINO: No, he's already agreed to give us back, so no motion necessary. Anything else we'd like to ask of Corp Counsel Kushi at this time?

MR. KUSHI: Mr. Chair?

CHAIRMAN VICTORINO: Yes.

MR. KUSHI: I believe I just responded to number

3, item internal department policies, which are basically --  
  
lawyers hate to use the word policy, but any policy that  
  
affects more than one becomes a rule, and we talked about  
  
rules.

CHAIRMAN VICTORINO: Right. Okay, anything else,  
  
ladies and gentlemen?

MEMBER OKAMURA: That's a good definition, more  
  
than one person.

MR. KUSHI: More than several, I should say.

CHAIRMAN VICTORINO: More than several, okay. I  
  
hope this, and again, I don't think it clears it up, but at  
  
least now you have some historical background, Ralph. And

some of us were here when all these changes did occur, and  
  
yes, I think we still are all grappling with what exactly  
  
the Board of Water Supply shall do, can do, will do. I  
  
think that's still there.

          However, I think we're getting closer to some  
  
definitive roles. But I still point out, and I leave with  
  
the closing statement, that I have been told that unless the  
  
charter change powers that were taken away from us are put  
  
back by a Charter Amendment, that we cannot get that back.  
  
Just by your own interpretation on the Corp Counsel, if it  
  
is given to us by law or ordinance, then you say, yes, you  
  
are to do that. So I will leave it at that, and I am not

going to get any further in that discussion. But I'm using your interpretation on number 4.

Anyhow, moving on, we go now to C, receipt of Board Member requests for agenda items to be placed on future agendas. One of these will be this letter, and hopefully the response from Corp Counsel on these matters we just discussed. If we could have that by next month. Do you think that's possible?

MR. KUSHI: Probably not possible, Mr. Chair.

Maybe two meetings from now.

CHAIRMAN VICTORINO: Two meeting from now, okay.

I'm not going to hold your feet to the fire, but two

meetings from now we will look for it.

MEMBER JOHANSEN: Mr. Chair.

CHAIRMAN VICTORINO: Yes?

MEMBER JOHANSEN: We still have not gotten a response on our request for information about the opinion of independent counsel to the County Council. Mr. Kudo, I think his name is.

MR. KUSHI: Ben Kudo is the Special Counsel to the Maui County Council. Mr. Chair, I believe we discussed that last meeting.

CHAIRMAN VICTORINO: I will work on finishing that

up with Corporate Counsel Kushi. I will try to finish that up and see what kind of response we can get back from them.

I will put that as next month's agenda item, okay.

Anything else, any other request? Member Okamura.

MEMBER OKAMURA: A brief follow-up regarding the Planning Commission meeting topic in regards to coordination between the two departments. There was something that Ellen proposed I think at that meeting.

CHAIRMAN VICTORINO: I'll ask Ellen.

MEMBER OKAMURA: Just as a general topic, it's getting harder to figure out, to remember what we talked about.

MEMBER JOHANSEN: Mr. Chair, we are going to get

minutes of that meeting, right, that joint planning meeting?

CHAIRMAN VICTORINO: Yes. Michelle?

MS. SAKUMA: The Planning Commission secretary is

drawing up the minutes, and we will include a copy. She did  
say that she would get us a copy.

CHAIRMAN VICTORINO: Can you call her and request

that it be ready for our next meeting, if possible? Because

I mean if we are going to review it three months from now, I

agree with Member Okamura, it's going to be hard to remember

what we discussed, even though it may be in writing. So if

it could be available at our next meeting, that would be

greatly appreciated.

Any other requests? And you all know that you can, and I usually say by the following month by the 6th, March 6th, if you can get any other requests via email so that I can make sure it gets on the agenda.

Now, also I will remind everyone that March 8th we have that upcountry, and I think that will be very interesting to attend. I think we can all attend, if I'm not mistaken, because it is not a department or a board function, sponsored function. Is that correct, Corporate Counsel Kushi?

MR. KUSHI: I'm sorry?

CHAIRMAN VICTORINO: Under the Sunshine Law,

because I've had this real grapple with the fact when you go

to meetings if there's more than two members we're violating

the Sunshine Law. What the Upcountry Water Oversight

Advisory Committee is putting on, if any and all board

members wanted to attend we would not be violating any

Sunshine Statute, Sunshine Law statute?

MR. KUSHI: What is the purpose of the meeting

now? It's just an informational meeting put on by who?

CHAIRMAN VICTORINO: It's put on by the Upcountry

Water Oversight Advisory Committee. They're the sponsoring

entity.

MR. KUSHI: Mr. Chair, is this something that this Board will take up later? Is this meeting, the results of this meeting, is this something -- are the results or decisions of this committee, of that committee, is that something that this Board would take up later?

CHAIRMAN VICTORINO: I am not sure, to be perfectly honest.

MEMBER OKAMURA: But it's not on the agenda right now, anyway.

DIRECTOR TENGAN: Mr. Chair, it might come back to the Board in the form of a report.

CHAIRMAN VICTORINO: I see, okay.

DIRECTOR TENGAN: But I don't think any decisions to make any kind of recommendation to the Director, the Mayor or the Council.

MEMBER JOHANSEN: Mr. Chair, this is informational only, there's no action of any kind to be taken, right?

CHAIRMAN VICTORINO: As far as I understand it, yes, strictly for informational purposes.

DIRECTOR TENGAN: This is in conjunction with the federal grant that's funding the upcountry committee.

MR. KUSHI: One more question. This committee, was this committee appointed by this Board?

CHAIRMAN VICTORINO: No.

MR. KUSHI: Who formed this committee?

CHAIRMAN VICTORINO: The Mayor.

MR. KUSHI: Okay, no problem.

CHAIRMAN VICTORINO: Thank you very much. So all members, I encourage you to attend, if you so desire.

Okay, moving on to division reports. They are provided. If you have any specific question on any of the division reports, I would ask you to direct it at this time to the Director or any of his representatives. Any specific questions on the division reports?

MEMBER OKAMURA: I had a couple of things, a

couple of comments. I didn't really get to see all of the division reports, but I received the whole packet on Tuesday and it gave me like two days to go through the whole thing. I know sometimes you're busy, but if at least I could get it by Friday or Thursday or Friday then I have --

CHAIRMAN VICTORINO: Let me see your postmark.

When was it postmarked?

MEMBER HIRANAGA: The 17th. I got mine Saturday.

I guess it takes awhile to get up to Kula.

MEMBER OKAMURA: Long way.

MEMBER CRIVELLO: It's longer to get to Molokai.

CHAIRMAN VICTORINO: When did you get yours?

MEMBER CRIVELLO: I probably got mine on Monday.

MEMBER OKAMURA: Monday was a holiday.

MEMBER CRIVELLO: Tuesday.

CHAIRMAN VICTORINO: Member Okamura, I will talk with Michelle and Director Tengan and see if maybe we can put it out a day or two or three earlier, so that you get a little more time to review it. I understand that getting it on Tuesday and here it comes Thursday, it's difficult.

MEMBER OKAMURA: And Monday was a holiday.

DIRECTOR TENGAN: You need to understand that these packets are mailed out at the same time or on the same

day that the agenda is posted. And the agenda is usually posted one week, at least one week prior.

CHAIRMAN VICTORINO: One week in advance, yes.

DIRECTOR TENGAN: So that leaves only one week for the members to get their material.

CHAIRMAN VICTORINO: Well, is it possible -- and I don't want to get too expensive because, you know, in multiple mailings -- however, if these division reports are available prior to the posting of the minutes, I mean the posting of the notice of meeting, would that be possible to have that mailed out in advance?

DIRECTOR TENGAN: That's possible.

CHAIRMAN VICTORINO: Again, just to ensure that the board members have an opportunity to review it. Grant you, Monday was a holiday, but still. Just the division reports, that's all. I don't think that would upset the apple cart too much, and that way, Member Okamura, you would have more time to review it.

MEMBER OKAMURA: The minutes too, if possible.

Whatever is ready.

CHAIRMAN VICTORINO: Well again, certain things have to follow certain things. This can be done. I don't know about the minutes. Sometimes the minutes are not even ready from the prior month.

So okay, anything else on the division reports?

If not, meeting adjourned.

(The proceedings were concluded at 11:00 a.m.)