

MINUTES

DEPARTMENT OF WATER SUPPLY COUNTY OF HAWAI'I WATER BOARD MEETING

July 24, 2007

Hilo Operations Center Conference Room

- MEMBERS PRESENT: Mr. Thomas Goya, Chairman
Mr. Riley Smith, Vice-Chairman
Mr. Loren Heck
Ms. Millie Kim
Mr. Francis Kuailani
Mr. Dwayne Mukai
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)
- ABSENT: Mr. Bernard Konanui, Water Board Member
Ms. Paula Helfrich, Water Board Member
Mr. George Harai, Water Board Member
Mr. Bruce McClure, Director, Department of Public Works
(ex-officio member)
- OTHERS PRESENT: Ms. Katherine Garson, Deputy Corporation Counsel
Mr. Brooks Bancroft, Deputy Corporation Counsel
Mr. Daryn Arai, representing Mr. Christopher Yuen, Director,
Planning Department (ex-officio member)
Ms. Piilani Enos
Mr. Steven Lim, Carlsmith Ball LLP
Ms. Jennifer Zelko, Carlsmith Ball LLP
Mr. Barry Francis

Department of Water Supply Staff

- Mr. Quirino Antonio, Jr., Deputy Manager
Ms. Kris Aton, Public Information and Education Specialist
Mr. Kurt Inaba, Engineering Division Head
Mr. Lawrence Beck, Engineering Division
Mr. Keith Okamoto, Engineering Division
Mr. Kawika Uehara, Engineering Division
Mr. Daryl Ikeda, Chief of Operations
Mr. Clyde Young, Operations Division
Mr. Richard Tsunoda, Waterworks Controller
Mr. Richard Sumada, Assistant Waterworks Controller

CALL TO ORDER - Chairman Goya called the meeting to order at 10:07 a.m.

STATEMENTS FROM THE PUBLIC

1. Ms. Piilani Enos

CHAIRMAN GOYA: At this time, I would like to call for statements from the public; and we have Piilani Enos from Kurtistown, and she's representing herself, and she has a concern regarding a waterline break. Thank you for coming this morning, Piilani.

P. ENOS: Thank you. Basically, there was a break in the waterline. From my understanding, my brother said that we have wild boars on the property so the break was caused due to the wild boar digging up the waterline and breaking. And I was told that we were only getting half of -, you could only get 50% of the balance off; our bill is \$1,500.00 at least. So I was told to come down here and see if you could make more of an adjustment being that it was caused by the boar breaking the line.

CHAIRMAN GOYA: We're just taking public information. We cannot respond to anything at this time.

P. ENOS: Oh, okay.

CHAIRMAN GOYA: And we'll take it up a little later on a Board level, maybe have an explanation from the Manager; and someone will communicate with you at that time. So we appreciate your attendance and coming here and letting us know what happened. And I guess we could get a little more details a little later regarding what had happened, and the Department will be in direct communication with you regarding any decisions made by the Board here today.

P. ENOS: Okay.

CHAIRMAN GOYA: Okay.

P. ENOS: Thank you.

CHAIRMAN GOYA: Thank you again for coming.

M. PAVAO: What's your phone number so we can contact you? (Ms. Enos gave the Manager her number.) Okay. We'll call you.

P. ENOS: Thank you so much for your time.

M. KIM: Where was this in Puna, Piilani?

P. ENOS: Kurtistown property.

M. KIM: Okay, thank you.

P. ENOS: Goodbye. Thank you everyone.

(Ms. Enos left the meeting at 10:15 a.m.)

APPROVAL OF MINUTES

MOTION: Mr. Smith moved for approval of the Minutes of the June 19, 2007, Water Board Meeting; seconded by Ms. Kim.

Chairman Goya asked that two corrections be made; the first on Page 13, last paragraph, where it says "Chairman Goya also mentioned that he and *Mr. Mukai* attended a breakfast meeting"; it should be changed to "*Mr. Pavao*." Also, at the end of that same paragraph (top of Page 14), change "*Mr. Mukai*" to "*Mr. Pavao*."

ACTION: A vote was taken on the Motion to approve the Minutes, with corrections noted by Chairman Goya. Motion was carried unanimously by voice vote.

ADDITION OF SUPPLEMENTAL AGENDA

None

INTRODUCTION OF NEW WATER BOARD MEMBER

Chairman Goya introduced the newest member of the Water Board, Mr. Francis Kuailani, of District 8, replacing Mr. George Wilkins. He asked if Mr. Kuailani would give a brief background on himself.

Mr. Kuailani stated that he has known Mr. Wilkins for the past 20 years. Mr. Kuailani retired as a Park Superintendent from the National Park Service at Kaloko Honokohau about seven years ago. He had been with them about 28 years, starting at Haleakala National Park, then at Yosemite and the Grand Canyon, ten years at Hawaii Volcanoes National Park, and the last eight years at Kaloko in Kona. Since retiring, he has been working as a security police officer at the Kona International Airport. He also thanked the Deputy Manager and staff for helping him get medical attention when he came to the Department for his orientation and Oath of Office, and for the flowers and fruit basket.

Chairman Goya stated that with Mr. Kuailani's background, he will be a welcomed addition to this Board.

PUBLIC INFORMATION AND EDUCATION SPECIALIST

The Deputy Manager introduced Ms. Kris Aton, the Department's new Public Information and Education Specialist. She started on July 9, 2007. He asked Ms. Aton to give the Board a brief background on herself.

Ms. Aton stated that it was an honor to be here; and for the past two weeks, her training and orientation have revealed that she comes to the Department with fresh eyes and a very general understanding of what the Department deals with in bringing water through its pipes to the public. She understands that her learning curve is very steep because she has beginner's knowledge of public relations at the government level. At the same time, her perseverance and the warm welcome of the Department have helped her gain traction very early on. She shared her qualifications with the Board. Her strengths are in local and statewide educational endeavors in the private and non-profit realm. She has executed grants and helped with vulnerable populations and has developed, implemented, and closed federally-funded projects and served as the spokesperson on these. She has strengths in communication at the community base and also has experience in working with different sectors of the public. She comes from the private sector; she worked with her own business in consulting and educational strategies with the Department of Education, Kamehameha Schools, and the Office of Hawaiian Affairs mostly. This position expects public relations at all levels. She appreciates the Department's Informational Technology section, or GIS, for their help with the website regarding drought updates. She also has a lot of learning in the Department's overall organization as it is imbedded in government in general. To understand civil service opposed to private business and private non-profit, it is a different angle for her to adjust to. She thanked the Department for its support in helping with her orientation and training so far and asked for the Board's patience in helping her continue with this learning curve. She welcomed any questions from the Board.

Mr. Heck stated that the Board represents the entire island, but its members come from specific areas. The Board Members would be key communicators for what is going on in their areas. He mentioned his area's large project, Hawaiian Ocean View Estates, which will be discussed more in the future, along with other things. He is sure the Board is unanimously excited that she has joined the Department.

Mr. Mukai commented that he just started as a Board Member in January and described his experience so far with the Department as kind of a "honeymoon." From what he has seen from staff so far, he thinks the honeymoon is going to last forever and that Ms. Aton is working with a very wonderful organization. Everyone is very cooperative and helpful.

Chairman Goya hoped that Ms. Aton will set the standard, along with what Ms. Noelani Whittington has done for the Department of Public Works, and also that Mr. Daryn Arai from the Planning Department would have a long ear and try to influence public outreach in his department. It is important in this day and age to spend the time learning and understanding what the public issues are about and provide outreach to people. People are crying for it, but some of them may not know how to approach the subject matter. People like Ms. Enos, who came before the Board this morning, are very important. Hopefully, Ms. Aton's outreach will help every level of the community.

Ms. Aton stated that it was amazing timing because Ms. Piilani Enos was a student of hers when she used to teach at Konawaena High School. Just to offer her encouragement and support through the sharing that she was able to give the Board this morning helped her to understand the role of her position beyond what she has come to experience in the past two weeks. She also mentioned that the strategic planning for this very new position is underway. Her first meeting with

Ms. Whittington and with Ms. Janet Snyder of the Mayor's Office will be July 30, 2007, to see where their public relations strategies fit into the semblance of what she is starting to put together as a plan for this position.

Mr. Smith welcomed Ms. Aton aboard. He mentioned that recently, the Manager and staff, especially the Deputy Manager, had done a lot trying to resolve some of the drought issues in Waimea. The shortfall on their efforts was not getting the word out right away on the work being done to remedy the situation. They were focusing more on getting the work done than spreading the information. That is the gap which Ms. Aton can fill.

Ms. Aton stated that she is grateful to the Manager and the Deputy Manager for helping her find the right words for a knowledge base that is so new to her on such critical issues that are presenting themselves at this very moment. She asked for everyone's patience.

SUMMER INTERN PROGRAM:

Introduction of Summer Intern Program employees:

- Erica Chong - working in the Operations Division, attending Long Island University
- Katrina Chong working at the Microlab, attending Loyola Marymount University
- Brandon Estrella - Operations Division, attending Seattle University (Civil Engineering)
- Kevin Iwasaki - Operations Division, attending University of Hawaii at Hilo
- Caitlin Sabado - Customer Service Section, attending University of Hawaii at Manoa (Hawaiian Language)
- Lori Ann Kudo - working in the Administration Division, attending University of Hawaii at Hilo (Linguistics)
- Marissa Nago - working in the Engineering Division, attending University of Portland (Mechanical Engineering)
- Tracy Niimi - Operations Division, attending University of Hawaii at Manoa, continuing at UH Hilo
- Darren Inaba - Engineering Division, attending Oregon State University (Civil Engineering)
- William Nau - Operations Division, attending Northern Arizona University
- Gavin Okabe - Engineering Division, attending University of Portland

Mr. Inaba stated that two interns from his section were out doing survey; and Mr. Tsunoda noted that Kevin Tsubaki (majoring in Accounting) from Finance Division was not present, and Christopher Todd had terminated his employment with Customer Service earlier, planning to attend UH Hilo this fall in economics.

Chairman Goya thanked them for attending the meeting and hoped they appreciate the opportunity of working for the Department of Water Supply. He noted that the Department has a number of Civil Engineering positions open and hoped they will eventually return to Hilo.

Mr. Mukai added that Hilo is a nice place to work and hoped that most of them would consider at least moving back to the State of Hawai'i after completing their education.

(The Summer Interns left the meeting at 10:30 a.m.)

HAMAKUA:

A. **JOB NO. 2005-866, AHUALOA WELL DEVELOPMENT – PHASE 1:**

The Board considered a request from the contractor, Water Resources International, Inc., for a time extension of 63 calendar days to extend the project completion date from July 29, 2007, to September 30, 2007. The reason for the time extension is due to delays in obtaining the well construction permit from the State of Hawai‘i, Department of Land and Natural Resources, Commission on Water Resource Management (CWRM), and because the well required an additional 110 feet of drilling beyond the depth specified.

This is the contractor’s first time extension request. Engineering staff has reviewed this request and finds that it is justified. If approved, the contract completion date will be extended from July 29, 2007, to September 30, 2007.

The Manager recommended that the Board grant this extension of contract time of 63 calendar days to Water Resources International, Inc., for JOB NO. 2005-866, AHUALOA WELL DEVELOPMENT – PHASE 1.

MOTION: Ms. Kim moved for approval of the Manager’s recommendation; seconded by Mr. Heck.

Ms. Kim asked if it was unusual to have this kind of problem with CWRM as far as delays in getting a construction permit.

Staff explained that the contractor is waiting for the Department to get the drilling permit from the consultant because they had prepared it. This permit cannot be executed before a project goes out for bids because it has to be executed by the contractor and the contractor is not known until after time of award.

The Manager responded to a question from Mr. Smith about basal water. He explained that this is high-level water, similar to the situation in Waimea where water is perched.

ACTION: A vote was taken on the Motion to grant this extension of contract time of 63 calendar days to Water Resources International, Inc., for JOB NO. 2005-866, AHUALOA WELL DEVELOPMENT – PHASE 1. Motion was carried unanimously by voice vote.

NORTH KONA:

A. **JOB NO. 2003-834 (REVISED), CONSTRUCTION OF THE KONA BASEYARD IMPROVEMENTS:**

The Board considered a request from the contractor, Central Construction, Inc., for a contract time extension of 60 calendar days to secure the building permit for the project.

This is the contractor’s second time extension request. The first time extension (64 calendar days)

was for securing a building permit, which extended the contract from May 11, 2007, to July 14, 2007.

Staff has evaluated this request and finds that the 60-calendar day extension is justified.

The Manager recommended that the Water Board grant Central Construction, Inc., a 60-calendar day extension for JOB NO. 2003-834 (REVISED), CONSTRUCTION OF THE KONA BASEYARD IMPROVEMENTS, from July 14, 2007, to September 12, 2007.

MOTION: Mr. Mukai moved for approval of the Manager's recommendation; seconded by Mr. Heck.

Mr. Smith asked if the Department gave the Notice to Proceed to the contractor without the building permit in hand.

Mr. Inaba replied that typically, they would route the plans to get the building permit. What the Department found out was that the existing structure was in a setback zone. The Department is filing to get a variance with the Planning Department, and it takes about 60 days.

Mr. Arai confirmed that it is a 60-day process from when the variance is filed. He recalled this application. The building is okay where it is now; but when you start putting walls up, then the setbacks go to the wall.

Mr. Smith noted that they applied for two extensions of time.

Mr. Inaba explained that the first one was because they found out they could not get the building permit. The second request is based on how long it will take when the variance is filed regarding the setback.

Mr. Mukai suggested that if the contractor would put that information in their request, and be more specific, it would help the Board understand what the request is for. When he read their letter, he wondered why they were requesting a second extension because there is no change in specifications.

ACTION: A vote was taken on the Motion to grant Central Construction, Inc., a 60-calendar day extension for JOB NO. 2003-834 (REVISED), CONSTRUCTION OF THE KONA BASEYARD IMPROVEMENTS, from July 14, 2007, to September 12, 2007. Motion was carried unanimously by voice vote.

B. WAIAHA SOUTH AND WAIAHA NORTH DEVELOPER'S AGREEMENTS:

The Manager stated that the recommendation shown in the Agenda was for the Water Board to agree to the list of parcels and number of units assigned to each parcel and that either the Chairman or the Vice-Chairman be authorized to execute the final Agreements subject to approval by Corporation Counsel. However, based upon consultation with Ms. Garson, Deputy Corporation Counsel, this morning, he requested that this item be deferred to next month.

Ms. Garson stated that before the Board makes a Motion on the recommendation that is in the Agenda, the recommendation from the Department will just change to be for deferral. After a Motion is made, then it can be discussed.

MOTION TO DEFER: Mr. Heck moved for deferral of this item to the next meeting; seconded by Mr. Smith.

Mr. Kuailani asked if this means the item will come up at the Kona meeting next month and if the reason is anticipation of receiving public testimony over there.

The Manager replied that the deferral would have nothing to do with that. He asked Ms. Garson if she would like to explain further.

Ms. Garson stated that a draft of these Agreements was in the Board's Agenda packet mailed last week. At the time the Agenda was sent, the numbers that were attached to the draft exceeded the number of commitments that were going to be allowed under the Agreement. Since then, Mr. Steven Lim has been attempting to get the Agreements finalized. Mr. Bolton has also been working with Mr. Kurt Inaba to finalize the numbers and the tax map keys. The problem is that what is reported to be the final numbers and the tax map keys were just given to her and Mr. Inaba yesterday afternoon and to the Board today. They have not had the chance to thoroughly check out the tax map keys, make sure the owners are right, and make sure all of the units add up; therefore, she suggested deferral of this to give time to get a final, completed draft to the Board. The Agreements attached to the Agenda also had some blanks in them and were not complete. One of the issues was that the second Agreement had to be brought to the Board within 120 days from the effective date of the Agreements. It was actually not executed by herself and the Chairperson until June 2007, so the 120 days is not running out. There might have been some concern that this was the meeting that it had to be on the Agenda for because of the 120 days; but she was willing to go on record and say that her interpretation is that the 120 days starts from the date that the last person signed the Agreements; and that was not until June 2007. She felt it prudent to defer because the information was just recently given to her and the Department, and they wanted to make sure everything was in order.

Mr. Lim came forward and stated that he represents Waiaha System LLC for the North and South Developer's Agreements. As far as they know, the only objections that the Corporation Counsel and the Department of Water Supply have are that they want to check out the tax map key numbers and the water commitments. He thinks the identity of the property owners is irrelevant because it is really the tax map key numbers and the water commitments. They have given the Board, today, the final version of the Agreements and would prefer the Board to take action on the Agreements themselves, subject to final approval by the Department of Water Supply and Corporation Counsel of the Exhibit D, which shows the tax map keys and the number of commitments. The reason is that they have been working with the Manager and the Department for the last five years on this. They first came to the Water Board in 2004 and entered into that first Agreement, which was essentially an agreement to start agreeing. Over the course of the years, it has become more complex and more expensive; and they finally have a total of 19 LLC members that are going to participate in this project, for a total of 1,500 water commitments.

Trying to get 19 separate property owners/developers come together to make an agreement is kind of like “herding cats.” He is afraid that if it slides a little bit more, some of them may not participate because they feel like it is not going to happen. There have been so many fits and starts over the course of the years, when they were finally asked to participate and to put down large deposits to get into the system, they were hesitant, saying the Department/Board says it is going to do it but then it does not. This was supposed to be the date that everybody was expecting the Water Board to take action. The only thing that would change are the identifications of tax map key numbers and water commitments. These were all negotiated as of yesterday. He asked the Board to see if it is within its power to act on the Agreements, as proposed, subject to the final condition that the Department of Water Supply and Corporation Counsel sign off on the final form, which they have to do anyway. The real work on this Agreement is not what has occurred up to today. Today is just like the first step to get to know who is playing in the game--who is a member of the system. After this, Mr. Bolton still has to come back to the Department of Water Supply and discuss with them the final design of the system. That is a year-long process. Mr. Lim stated that he is afraid that the longer this is delayed, the longer the Department waits for water because it will get over 50% of this water to use in its system. He is also afraid of losing their LLC members. They have kind of used this date as the date that everybody has to make up their mind and join up right now. Now if the Board says it might wait until an August or September meeting, then they may say this is not going to happen. It is a really hard task, and that is why they had to wait until yesterday to get the final numbers done. If the Board is willing to move forward with that caveat, then he thinks this is something that is manageable. It always gives an out if Corporation Counsel or the Department feels uncomfortable with it in the end. At least it would be through the hearings process and would be ministerial, and now they could go and do their work. Mr. Bolton still has to start his environmental assessment work for the project, and nobody is going to do anything until the Board acts.

The Manager asked Ms. Garson if that would be acceptable to her.

Ms. Garson did not think that to whom the water commitments are assigned is a ministerial act that she would necessarily not want to have Board’s involvement in. Part of the original Agreement says that the Board will approve the documents, but one of the conditions is that they not exceed 1,500 water commitments. She added it up and it adds up to 1,500. It also says that the allocation of those water commitments between the North and the South Agreements would be approved by the Department of Water Supply and that the tax map key parcels which will be receiving the water commitments are within the lands and will have a direct benefit from the improvements. She had made a point of adding that language. In her opinion, there is a lot that really needs to be looked at regarding the tax map keys and the allocations and making sure they are within the lands and have a direct benefit from the improvements. She reiterated that she does not think that is ministerial. If the Board approves the exhibit and it had somebody in there that it should not have, it would create a problem that she might not necessarily know how to remedy.

Mr. Lim added that he had an exhibit with him that shows where the tax parcels are and gave his assurance that they are within the lands. That is why he was giving the option of having this all checked out because if it does, then it is not a problem. If it does not, then they have to come back for the next Water Board Meeting.

The Manager asked Ms. Garson if there was some kind of Motion that would satisfy the 19 participants and still give the Department the assurance that it has the right to check on this.

Ms. Garson stated that when the Board approved the first Agreement, it meant that the Board is serious about this. The Board will have to approve this within the 120 days if certain requirements are met. Her feeling is that it is very important to get this right. When you have multiple developers involved in this kind of situation, it could give rise to a lot of litigation because you are dealing with all these different entities. Considering the fact that the information was given to the Department so late yesterday and then to the Board today, she does not think it is a fair burden to put on the Engineering Division and herself. She also noticed that, normally, on the front of the document, which is going to be recorded, it would list the tax map keys.

Ms. Kim did not think the issue is so much whether it is ministerial; it could be argued back and forth forever; but she thought what the Manager was asking for was whether or not Ms. Garson would feel comfortable with a conditional approval for now that the Board could adjust or modify at the next meeting or the following meeting. It depends on what Ms. Garson's comfort level is as far as a conditional approval from the Board.

Mr. Heck wondered how the Board might be liable if there were a condition regarding something specific like the tax map keys or if the parcels would have direct a benefit or not. It sounds like they want to give the Board time to determine that. If there were a change in there and the Department came back and said this is not right, he wondered how the Board would be liable.

Ms. Garson explained that it would probably depend on the feeling of the developer who had signed up but might be told, for some reason, that he is no longer included. She was not sure if a conditional approval would help because the driving force of the Agreement is the "where and the how much."

Mr. Lim's position was that the conditional approval should protect the Board, and it could be made subject to the approval of the Department of Water Supply and Corporation Counsel. To him, that completely protects the Board. This whole Agreement is set up to protect the Board and the Department because they get preapproval of the plans, preapproval of the budget, on the bonding, and everything. Nothing can be done without that preapproval. As mentioned earlier, he is worried he may lose his participants.

Mr. Smith did not think that if there were any errors in the Agreements that it would be a concern for the Department. He felt that is between Bolton, Inc., and the other parties. This Department's Agreement is with Waiaha System LLC and not them.

Ms. Garson stated that was true, but again, the obligation is that these parcels are allocated these units, and the developers will go to whomever with this Agreement and say they have these units. Whether or not the Agreement is with Waiaha System LLC, it is going to be used by all of the developers. She added that she normally goes through documents line by line to make sure it was what was agreed to and that everything is in order before it goes to the Board. She sees a conditional approval being so conditional that it is not effective.

Mr. Lim indicated that he would like to afford Ms. Garson the opportunity to go through this with the Department and check the tax map key numbers and units; but he thinks, it is merely a matter of checking it out and not a request for either the Department or Corporation Counsel to make any substantive decisions. If they do not like what they see, they can have it come back to the Board. It is very important to have action on the Agreement because he was very concerned that he is not going to be able to come back again. Some of these participants are participating because they have land that the system is going to go through and they are giving easements as part of this deal.

Mr. Smith recalled the meeting in Kona (March 27, 2007) where this was something really unique and in the best of all scenarios, the Department of Water Supply would take the lead on it; but it was so complex to get the water storage and the water sources interconnected. Both Councilmembers Angel Pilago and Brenda Ford had provided testimony on the crises in Kona with the sodium. This is a step to correct that problem with no exposure to this Department. Knowing how difficult it is to be the developer, Mr. Smith is inclined to amend the Motion to make sure this moves forward and make it contingent upon the Department's and Corporation Counsel's giving their approval; and if they do not, then the Chairman cannot sign it. He thinks that protects everybody's interests and he does not see a problem there.

Mr. Lim reiterated that the Department has the ultimate preapproval of getting the system done. If at any point in time, they decide that they do not want to do this or that the design is not what they want, it comes to a halt. You are talking about the minimum time to get this system online and the water commitments being issued by the Department of about 18 to 24 months. So you are looking at having the water situation in Kona being the way it is for at least two years from now.

Ms. Garson asked, if the Board is going to do some sort of conditional approval like that, if it would it mean it is either this or it comes back to the Board; because she understands that Mr. Lim and his client do not have all their people on line and everything finalized yet. The position she does not want to be in is to have Mr. Lim call her and say take this person off, or add something else, like a tax map key. If that were to happen, her concern would be what discretion she would have to allow that to happen if it is something the Board has never seen.

Mr. Lim stated that would be a totally different situation. What is in front of the Board today are the participants. It is the final Agreements. It is those numbers and they are asking the Board to approve that; and if they have to change it, then they have to come back to the Board and process the thing all over again. He does not anticipate that happening; but that is what he has told the participants--either they get on board now or if they do not or they want more units, it has to come back to the Water Board to change it. That is understood.

The Manager asked if there was anything that could be done to make Ms. Garson feel comfortable and yet give the participants the feeling that this is going through.

Ms. Garson replied that it was very hard for her to feel comfortable with a document that was just handed to her and also not comfortable that Engineering Division did not have a chance to look at this. Even if Mr. Lim could show where all of the tax map keys are, she would not know if that would be helpful to Mr. Inaba or if he needs to look at this more closely. She did not know if they could tell by looking at the tax map keys if they are in fact tax map keys that will have a direct

benefit from the improvements. If that will help Mr. Inaba, that would make her feel a little bit better.

Mr. Smith asked if the real concern was the total amount of water commitments that the developer is going to get, irregardless of where they are allocated.

Ms. Garson and Mr. Inaba replied that they have to be in the area.

The Manager stated that the locations are critical because the system is going to serve those locations.

Mr. Lim stated that they have delineated in the Agreement, Exhibit "A," something called "the lands" with a dark line around it. He had an exhibit with him that he could show where these particular parcels are located and that they are located within the lands.

Mr. Mukai stated that he looked at this situation in this way--if the Board approves this proposal before it today and finds out that the tax map keys are erroneous, then they have to come back to the Board anyway. Also, if Corporation Counsel finds any misrepresentation in the documents that are presented to the Board, he would find it very difficult to approve any further documents that would come before him. He is basically relying on presentations being as honest as possible. There are other means down the road where the Board could stop the project if information provided was incorrect.

Mr. Lim provided a quick briefing (with a map on the wall) for the Board and staff. The lands that are noted in both Agreements start on the south part by Kuakini Highway/Queen Kaahumanu Highway intersection, going along Mamalahoa Highway on the mauka side, coming down into the Queen Liliuokalani Trust (QLT) lands and Palani Road junction with Queen Kaahumanu Highway and then along the shoreline along Alii Drive. So this is the general area that is described as the "lands and holds" of the Agreements. The system is going to start at the Waiaha well and tank, the South system coming down makai generally along Hualalai Road, and on the North side, it is going to come down in through where he pointed out a tax map key. The yellow dots on this map are where the water units are going to go--a core area general-planned for urban growth. Most of these are coming in as residential projects--they might be either single or multiple family. This is what is represented to the Board today and he asked that the Board allow the Department and Corporation Counsel to check out.

Mr. Inaba outlined what he would still need to do, and that is for whatever is submitted, there is a proposed zoning, there is the number of units allocated have to be addressed also. He has to verify that there is an agreement to what type of development will have to be assigned two units per potential zoned lot versus one unit. He does not have that information to verify yet.

Ms. Garson stated that one of the other things originally that they were concerned with was who the participants were with the North system and who were the participants in the South system. They might all be within the lands, but the Department's position was that if you are going to be served from the South system, you would have to be part of that system. Maybe that could be checked out really quickly, but those are main concerns that she would be looking for.

Mr. Beck wondered how much time was left on the 120 days and if this was well within the boundaries that were set up in that original Agreement. He wondered why the participants would jump out at this point when things are almost finished. From his understanding, they do not have anything in there financially at the moment.

Mr. Inaba stated that some of them have options to do other improvements because they can get the units, but to get water to their property is another issue.

Mr. Lim thought that was a good point because some of the developers do have options to develop their own water system and not be part of this system. If he loses some of the participants, then he would not have enough and the cost per member would go up for the others.

Ms. Garson asked if the Board would want to give her and staff about 20 minutes to go over these concerns.

ACTION TO TAKE RECESS: Mr. Mukai moved for a 20-minute recess; seconded by Mr. Heck and carried unanimously by voice vote. (11:10 a.m. to 11:39 a.m.)

Ms. Garson asked the Board to vote on the Motion on the floor to defer. During discussion, she and the Department noticed some things that have to be changed, including possibly moving one developer to another agreement--switching them back and forth. Based on that, as Corporation Counsel, she would recommend that the Board defer. If the Board voted not to defer, then she would provide alternate language for a conditional approval.

Mr. Heck asked what that alternative language would be.

Ms. Garson replied that the Board could conditionally approve, subject to the discretion of the Department and Corporation Counsel, that there will be no additional changes in tax map keys, no changes in number of units, and that they must come back at the September meeting for final approval. However, she encouraged the Board to vote for deferral.

The Manager clarified that what Ms. Garson was recommending was that the Board vote in favor of deferral, but he added that the Department hopes the Board vote “no” on deferral and accept the conditional approval.

ACTION ON MOTION TO DEFER: The Board voted on the Motion to defer. Motion was defeated by a show of hands (Ayes: 0; Nays: 6 - Ms. Kim; Messrs. Heck, Kuailani, Mukai, Smith, and Chairman Goya; Absent: 3 - Ms. Helfrich, Messrs. Harai and Konanui).

MOTION FOR CONDITIONAL APPROVAL: Ms. Kim moved that the Board conditionally approve the revised version of the Waiaha South and Waiaha North Developer’s Agreements given to the Board today, subject to the discretion of the Department of Water Supply and Corporation Counsel, that there will be no changes in the tax map keys, no changes in the number of units, subject to final approval of the Water Board at its September meeting; seconded by Mr. Mukai.

Ms. Kim asked why Corporation Counsel was recommending September for the Board to take up final approval--if it is whether they are being given two months to work things out and not have to deal with it within the next month.

The Manager replied in the affirmative.

Ms. Kim stated that she appreciated Ms. Garson's efforts in this matter and her consistency and assistance in helping the Board come to a decision this morning.

ACTION: A vote was taken on the Motion that the Board conditionally approve the revised version of the Waiaha South and Waiaha North Developer's Agreements given to the Board today, subject to the discretion of the Department of Water Supply and Corporation Counsel that there will be no changes in the tax map keys, no changes in the number of units, subject to final approval of the Water Board at its September meeting. Motion was carried unanimously by voice vote.

(Mr. Lim thanked the Board and left the meeting at 11:44 a.m., along with Ms. Zelko.)

C. **JOB NO. 2006-891, KAHALU'U SHAFT PUMPS CASING MODIFICATION:**

This project consists of modifying four (4) pump casings to eliminate the existing perforated casing sections and the periodic necessity of cleaning the corrosion from these sections. An additional benefit, of the modification, is the elevated pump water intake which will be in the zone of lower chloride content water, which should result in better water quality.

One bid was received from Beylik Drilling & Pump Service, Inc., for \$725,117.74, dated May 3, 2007. This bid contained an exception to the specifications and suggestions on ways to reduce the bid by altering and deleting the project's scope of work.

After negotiation, the bid was reduced to \$599,682.62 by incorporating the changes suggested by the bidder.

The Manager recommended that the Board award the contract for JOB NO. 2006-891, KAHALUU SHAFT PUMPS CASING MODIFICATION, to Beylik Drilling & Pump Service, Inc., for their bid amount of \$599,682.62, plus \$50,317.38 in contingency, for a total contract price of \$650,000.00, and that either the Chairman or the Vice-Chairman be authorized to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel.

MOTION: Mr. Smith moved for approval of the Manager's recommendation; seconded by Mr. Heck.

In response to Mr. Kuailani's question about the contingency amount, the Manager explained that it is used if something unforeseen comes about. The Department would have the discretion to make decisions administratively without having to come back to the Board. If the money does not get used, it goes back to the Department.

ACTION: A vote was taken on the Motion to award the contract for JOB NO. 2006-891, KAHALUU SHAFT PUMPS CASING MODIFICATION, to Beylik Drilling & Pump Service, Inc., for their bid amount of \$599,682.62, plus \$50,317.38 in contingency, for a total contract price of \$650,000.00, and that either the Chairman or the Vice-Chairman be authorized to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel. Motion was carried unanimously by voice vote.

MISCELLANEOUS:

A. DEDICATION OF WATER SYSTEMS:

The Department received the following documents for action by the Water Board. The water systems have been constructed in accordance with the Department's standards and are in acceptable condition for dedication.

1. **GRANT OF EASEMENT AND BILL OF SALE
INDEMNIFICATION AGREEMENT**

DEED (for 3-Tank Sites)

BILL OF SALE (for 3-Tank Sites)

Hokuli'a, Phase 1, Package 1

Subdivision Application No. 98-124

Grantor: 1250 Oceanside Partners

TMK: (3) 8-1-004: Portion 003

E.W.O.: 2001-049

Lots: 284

Zoning: A-1A

Facilities Charge: \$ 952,876.00

Date Paid: 9/17/99

Final Inspection Date: _____

Water System Cost: \$3,721,569.00

2. **GRANT OF EASEMENT AND BILL OF SALE**

Grantor/Seller: Wainani 42, LLC

TMK: (3) 7-3-010:027 (por.) and (3) 7-3-010:049 (por.) Tank Site

E.W.O.: 2006-063

Final Inspection Date: _____

Water System Cost: _____

3. **INDEMNIFICATION AGREEMENT
MAKALEI ESTATES SUBDIVISION**

Owner: Makalei Estates Community Association

Tax Map Key: (3) 7-2-015:086 portions

The recommendation in the Agenda was for the Water Board accept these documents subject to the approval of the Corporation Counsel and that either the Chairman or the Vice-Chairman be authorized to sign the documents.

Ms. Garson stated that there was one change to that recommendation. The developer for Item No. 1 (Hokuli'a, Phase 1, Package 1) is asking for deferral.

ACTION TO DEFER #1: Mr. Smith moved for deferral of Item No. 1 (Hokuli'a, Phase 1, Package 1); seconded by Mr. Heck and carried unanimously by voice vote.

ACTION TO APPROVE #2 AND #3: Mr. Heck moved for approval of Item Nos. 2 and 3; seconded by Mr. Smith and carried unanimously by voice vote.

B. WATER USE AND DEVELOPMENT PLAN:

Mr. Beck gave the Board a brief presentation of what would be given to the public at the upcoming second series of public informational meetings on the Water Use and Development Plan (WUDP) update by Fukunaga & Associates (consultant). The meeting schedule is as follows:

July 25, 2007, 6:00 p.m. to 8:00 p.m. – Aupuni Center Conference Room
July 26, 2007, 6:00 p.m. to 8:00 p.m. – Naalehu Community Center
July 31, 2007, 6:00 p.m. to 8:00 p.m. – Waimea Community Center
August 1, 2007, 6:00 p.m. to 8:00 p.m. – King Kamehameha Kona Beach Hotel

Mr. Beck handed out an Executive Summary to the Board and reviewed the nine major aquifers and different scenarios for each.

Mr. Heck asked if this was the same presentation the consultant would be giving at the different districts and if it would be for the whole island or localized for each district they visit.

Mr. Beck replied it is similar but this one is a reduced version and is for the whole island. When the consultant presented this in their first round of public meetings last year, the majority of the comments received dealt primarily with agricultural lands. This study attributes the greatest demand worst-case scenario to agricultural lands, and the comments were that it was not realistic-- that people will not plant crops in areas where they have to do a lot of pumping. They are going to rely on the natural precipitation in that area, so the true demand would be much less than those worst-case scenarios.

In response to Mr. Heck's question if they had more information about agricultural use yet, Mr. Beck replied that the Agricultural Water Use Development Plan is expected to come out by the end of this year, about the same time the WUDP would be wrapping up. It would almost be nice to delay this WUDP and incorporate that information; but this is supposed to be updated on a five-year cycle and this will be the first update since 1992. This started in 2004 and it is taking until 2008 to complete.

The Manager stated that there is an Ordinance that requires the WUDP to be updated every five years, so part of the consultant process is to have them conduct a session with the Council to educate them on the process and to see if they would redo the Ordinance.

Ms. Kim asked who is doing the Agricultural Water Use Development Plan.

Mr. Beck replied that it is being done by the State Water Commission.

Chairman Goya encouraged Board Members to attend one or more of the public meetings being put on by Fukunaga & Associates.

(Mr. Francis left the meeting at 12:10 p.m.)

C. **MONTHLY PROGRESS REPORT:**

No questions.

D. **REVIEW OF MONTHLY FINANCIAL STATEMENTS:**

Chairman Goya commented that he thinks the Department worked very hard in filling all of its vacant positions. There were 35 positions available, and the budget reflects full employment. That gives a little more flexibility in the budget and hopefully going forward, it will be better attuned to the budget. He made a recommendation that the reporting not include items under \$10,000.00. Other than that, the new fiscal year looks good. Another question regarding the budget would be how much flexibility the Department has on its capital budget projects to include any of the contingencies, emergencies, or if there are spare projects that could be moved up that could be done within the fiscal year.

The Manager replied the Department has the flexibility to adjust projects and they are all done by priority. A good example is the money being spent on drought related issues and some of that will be adjusted because of the expenditures.

In response to Chairman Goya's question about the \$25 million general obligation bond and if it is being spent, the Manager replied that the Palani Transmission project will eat up a good chunk of it. The bond money will be spent as soon as possible because there is a three-year limit on it.

E. **AMERICAN SAVINGS BANK ACCOUNT:**

The Department plans to transfer its primary checking account to American Savings Bank and requires adoption of a corporate resolution by the Water Board in order to do so. The bulk of the Department's deposit and disbursement activity will be made into and out of this account, which will earn a substantially higher rate of return than the existing account at First Hawaiian Bank.

The Department recommended deferral of this item. Chairman Goya stated that he would like a full written report so the Board can review it before taking any action.

F. **REVISION OF DEPARTMENT'S MOTTO:**

Chairman Goya stated that he has concerns about the "Water Brings Progress" motto.

The Manager stated that the Department has been researching what the other islands use for their motto. He asked how the Board would like to see the Department handle changing this.

Chairman Goya stated that he would like to see the Department take ownership of it--not only Division Heads, but other staff. He would prefer not to hold a contest, but would like employees to buy into the change.

The Manager stated that he was thinking of getting suggestions from employees. It may be a good thing to put in the Department's newsletter. Ms. Aton is already working on it. He will let the Board know what the progress is at a future meeting.

G. **MANAGER'S REPORT:**

- 1) *Status of the Palani Road Transmission Waterline project* - the Department received appraisals and is working with Queen Liliuokalani Trust to finalize.
- 2) *Status of the Waimea Clearwater Reservoir Repair* - the repair work is expected to start in August 2007.
- 3) *Status of the Hawaiian Ocean View exploratory well* - project on schedule. The initial exploratory well drilling is advertised for bids--to be opened in August. A report will be given at the August 28, 2007, Water Board Meeting; however, the ultimate approval will come from the County because the funds come from them. The Department assured people in Hawaiian Ocean View that it would try to put the second well in the design/build phase if funds are available. Ms. Komata, the Department's project engineer, is doing a good job of keeping Mr. Woodward updated, so everything is fine in that area.
- 4) *Status of the Kona Water Quality* - the two items taken up by the Board today, Kahaluu Shaft Pumps Casing Modification, and the Waiaha North and South Agreements will help with improvements to the water. The Department is still working with two other developers on other projects.
- 5) *Update on negotiations with Kamehameha Investment Corporation (KIC)* - Mr. Inaba is working with Mr. Francis Kauhane; and in the meantime, staff is working with Mr. Christopher Lau who knows Mr. Greg Chun of KIC in an effort to meet with them both. The Department has an interest in trying to do something cooperatively because of the benefits to the Department.
- 6) *Update on the Memorandum of Agreement (MOA) for the use of the State Department of Agriculture's (DOA) Pu'u Kapu Well* - the Deputy Manager worked out the details with the State on the MOA, and it has been executed. This Department has not used the well yet.

In response to Mr. Smith's questions about providing 250,000 gallons a day to the farmers through the State's system, the Manager explained that when the Department met with the Waimea Community Association, the farmers were assured that this Department would provide

four hours worth of pumping whenever it uses the well. He guessed they just translated that to 250,000 gallons.

Mr. Smith also noted that this may be an area Ms. Aton could be involved in, and that is the initial perception in the community that this Department was taking their water with no compensation. They do not realize that this Department pays the cost to pump the water out of the ground.

The Deputy Manager stated that it is important to know that the reason this Department got the Memorandum of Agreement so soon is that the State Civil Defense used this Agreement to allow them to expend some funds available to them. They will be providing up to \$200,000.00 for operation of the well. After that, it will be this Department's cost.

In response to Chairman Goya's question of whether the Department will have a template for future scenarios so that the back and forth can be minimized, the Manager replied in the affirmative. In conjunction with that, Ms. Bettina Arrigoni, Energy Analyst, is working Mr. Clyde Young, Ms. Elaine Chiu, and Mr. Daryl Ikeda to apply for federal funds to provide for drought mitigation.

- 7) *Update on drought conditions in specific districts* - the Manager reported that all three projects are ready to go should another dry spell arise. The Department now has 81 million gallons of total storage, which is the most it can store, regardless of river flow. The only thing stopping the Department from lifting the water restrictions is it is waiting for Department of Health clearances for the Waimea Treatment Plant Well and the State well for backup.

In response to Mr. Smith's question of whether the Department needs the two wells to lift the restriction, the Manager replied that the Department would like to have the two approvals in case problems arise with one, there is always the other as a backup. Department of Health clearances are expected to come back the same time.

Mr. Smith also mentioned that a concern in Waimea is if irrigation is turned off, contractors cannot use water from the hydrants, so it is impacting commerce. He asked what levels in the reservoirs would trigger another water restriction once the one in effect is lifted, because they would probably be modified if the Department has these extra sources available.

The Deputy Manager replied they would be left at the same level. Water Conservation Notices are triggered at 100 million gallons (MG); Water Restriction Notices come in effect at 60 MG; and Rationing is when it is at 28 MG.

- 8) *Hawaii Water Works Association (HWWA) 2007 Annual Conference - October 3 to 5, 2007, Sheraton Waikiki Hotel, Oahu, Hawai'i* - Board Members may let the Secretary know if they wish to attend.
- 9) *Employee of the Quarter Presentation (second quarter 2007)* - Ms. Elaine Chiu, Civil Engineer IV, was given the award for the second quarter of 2007. The Manager commented that he has never seen anyone fit in so well in the short time Ms. Chiu has been with this

Department. He called on Mr. Ikeda to give a brief background on Ms. Chiu. Mr. Ikeda stated that Ms. Chiu started with the Department on August 1, 2006. She took on a lot of work after the October 15, 2006, earthquake occurred and then again recently with the drought situation. She came at a really good time for the Department because of all of the work she has done on these emergencies. She has handled herself very professionally in working with consultants and FEMA and has done very well. Chairman Goya presented Ms. Chiu with an award and commended her on behalf of the Board for all she has done for the Department and the community.

Ms. Chiu stated that it has been a great experience working for this Department. The staff is very good, and that is the best part of working here. She thanked the Department and the Board for the opportunity.

Mr. Smith asked what the status was on the open reservoirs.

The Manager reported that the Department is working with the Federal Emergency Management Agency (FEMA) and the consultant to come up with a final design so a construction contract can be done. Ms. Chiu is handling that project. The contractor (Kleinfelder) is a mainland firm. Because this project is eligible for FEMA funding since it relates to the earthquake, design has to be done very carefully so that it complies with FEMA.

In response to Mr. Smith's question if the consultant contract is with the Department of Water Supply or with FEMA, the Manager replied the contract is with this Department; but FEMA reviews it.

Ms. Chiu added that FEMA has already come in and proposed the scope of work that they feel this Department should abide by, based on their geotech recommendation. Now this Department's consultant is going back and giving an independent recommendation for the alternative that the Department should proceed with. The next step would be to go back and negotiate with FEMA on how their recommendation differs from FEMA's recommendation.

Chairman Goya asked for an Agenda item for the next meeting covering a report on the automatic meter reading program, the project status, and if the Department is progressing with opportunities.

H. **CHAIRMAN'S REPORT:**

Chairman Goya announced that the Board is very happy with what the Department is doing and the progress in various areas--Capital Improvements Projects, budgets, and new employees, and hopes to provide further input in the future.

ANNOUNCEMENTS:

1. **Upcoming Meetings:**

The next meeting of the Water Board will be held on August 28, 2007, 10:00 a.m., in the Royal Kona Resort, Resolution Room, 75-5852 Alii Drive, Kailua-Kona, Hawai'i.

The September 25, 2007, meeting will be held in Waimea at 10:00 a.m. (place to be announced).

The Board decided to hold its October 23, 2007, meeting at the Hilo Operations Center Conference Room, 10:00 a.m.

STATEMENTS FROM THE PUBLIC

None.

ADJOURNMENT

ACTION: Ms. Kim moved for adjournment of the Meeting; seconded by Mr. Smith and carried unanimously by voice vote.

(Meeting adjourned at 12:33 p.m.)

Secretary

The Department of Water Supply is an Equal Opportunity employer and provider.