

MINUTES

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

October 27, 2009

Hilo Operations Center Conference Room

MEMBERS PRESENT: Mr. Riley Smith, Chairperson
Mr. Dwayne Mukai, Vice-Chairperson
Mr. Francis Kuailani
Mr. Bryan Lindsey
Mr. Robert Meierdiercks
Mr. Art Taniguchi
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)

ABSENT: Mr. George Harai, Water Board Member
Ms. Millie Kim, Water Board Member
Ms. Bobby Jean Leithead-Todd, Director, Planning Department (ex-officio member)
Mr. Warren Lee, Director, Department of Public Works (ex-officio member)

OTHERS PRESENT: Ms. Amy Self, Deputy Corporation Counsel
Mr. John De Fries, 1250 Oceanside Partners
Mr. Jason Knable, Carlsmith Ball LLP

Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy Manager
Mr. Kurt Inaba, Engineering Division Head
Mr. Daryl Ikeda, Chief of Operations
Mr. Rick Sumada, Waterworks Controller
Ms. Candace Pua, Assistant Waterworks Controller
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Specialist
Mr. Ryan Quitoriano, Engineering Division
Mr. Keith Okamoto, Engineering Division
Mr. Kawika Uyehara, Engineering Division
Mr. Clyde Young, Operations Division

CALL TO ORDER - Chairperson Smith called the Meeting to order at 10:00 a.m. He announced that Ms. Amy Self would be filling in for Assistant Corporation Counsel Ms. Kathy Garson at today's meeting.

STATEMENTS FROM THE PUBLIC:

Mr. Mukai, acting as a member of the public, read a letter from Ms. Karen Maedo to the Department. Ms. Maedo, an associate at Mr. Mukai's office, wrote to express appreciation to

DWS for notifying Ms. Maedo's elderly mother about an abnormally high water reading. Ms. Maedo in her letter lauded DWS for its concern for customers. It transpired that the spike in water usage was due to a friend coming to reside with Ms. Maedo's mother.

APPROVAL OF MINUTES:

Chairperson Smith entertained a Motion to approve the Minutes of the September 22, 2009, Public Hearing on the Power Cost Charge.

ACTION: Mr. Meierdierks so moved; seconded by Mr. Kuailani. Motion carried unanimously by voice vote.

Chairperson Smith entertained a Motion to approve the Minutes of the September 22, 2009, Water Board regular meeting.

ACTION: Mr. Mukai so moved; seconded by Mr. Meierdiercks. Motion carried unanimously by voice vote.

APPROVAL OF SUPPLEMENTAL AGENDA AND ACTION TO MOVE AGENDA ITEMS:

Chairperson Smith entertained a Motion to approve the addition of Supplemental Agenda Item No. 6 (A), regarding JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1664-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #3 (N. KOHALA, S. KOHALA), and Supplemental Agenda Item No. 8 (B), JOB NO. 2008-938, KE'EI WELL "D" MCC REPLACEMENT; and to move Item No. 8 (A), EXTENSION OF WELL SITE DEVELOPMENT AGREEMENT – 1250 OCEANSIDE PARTNERS AND REVOCABLE TRUST OF E. JEAN GREENWELL, ahead of Item No. 5 (A) JOB NO. 2005-862, CONSTRUCTION OF THE WAI'AKEA OFFICE PLAZA AIR-CONDITIONING REPLACEMENT.

MOTION: Mr. Lindsey moved to approve; seconded by Mr. Meierdiercks. Motion carried unanimously by voice vote.

SOUTH KONA:

A. **EXTENSION OF WELL SITE DEVELOPMENT AGREEMENT – 1250 OCEANSIDE PARTNERS AND REVOCABLE TRUST OF E. JEAN GREENWELL:**

On April 12, 2007, William N. Greenwell and Ethelyn Jean Greenwell, trustees of the Revocable Trust of E. Jean Greenwell dated September 11, 1992, and 1250 Oceanside Partners (collectively the "Developer") entered into a Well Site Development Agreement (the "Agreement") with the Water Board to develop and dedicate a potable water well (referred to as the "Kalukalu Well"), in addition to other off-site water system improvements located in South Kona.

The Developer is requesting a time extension to complete the construction and testing of the Exploratory Well, from October 12, 2009 to October 12, 2010. Section 14(c) of the

Agreement required that the well be completed within 18 months from the time of execution of the Agreement, which set the deadline at October 12, 2009.

On October 8, 2009, 1250 Oceanside Partners submitted a letter indicating that an extension was necessary to complete the testing of the well. The Well Bond per Section 14(a) of the Agreement is in effect until June 2010, and 1250 Oceanside Partners is in the process of transferring approximately \$309,000 to its Client Trust Account at Carlsmith Ball LLP to provide for the completion of the Exploratory Well.

Staff has reviewed this request, and feels that the one-year extension to complete the Exploratory Well is acceptable.

The Manager recommended that the Water Board grant the Developer a one-year time extension, to complete the Exploratory Well by October 12, 2010.

Mr. De Fries told the Water Board how much he appreciated the Department's support of the request for a one-year time extension, along with the assurance that the funding needed for the well test has been moved to the Client Trust Account at Carlsmith Ball LLP, which affords full access to the funding that will be required. Over the past 20 months, funding has been an issue, amid upheaval and transition at the lead bank based in London. Even before requesting an extension from DWS, it was critical that the bank understand that a full financial commitment was needed, Mr. De Fries said. That commitment from the bank is in place; the monies are in the Client Trust Account, with specific conditions as to what the monies will be used for: all of the monies are tied to the Kalukalu Well.

MOTION: Mr. Kuailani moved to approve; seconded by Mr. Taniguchi.

Chairperson Smith expressed strong support for granting the extension, and praised Mr. De Fries's Hokulia project for its contributions toward infrastructure improvements to the water system in South Kona, that will ultimately be dedicated to DWS. These improvements will help Hokulia's customers as well as existing DWS customers, and expand the Department's capability to provide a reliable service to the community.

Mr. Meierdiercks requested that the Department report on the well's progress every couple of months or so.

The Manager confirmed that DWS would report on the progress.

Mr. Mukai asked if a one-year extension would be sufficient to complete the project.

Mr. De Fries confirmed that it would be sufficient time, and that if the Board approves the extension, mobilization would go ahead immediately. He believed that it would take six to eight months to complete the project.

The Manager noted that all that remains is to test the well. The well has been drilled and cased, and now it is only a matter of testing the well. The testing procedure is very simple and should be complete within two months. The test period itself is only about a week; the

Commission on Water Resource Management requires a 96-hour period of continuous pumping.

ACTION: Motion carried unanimously by voice vote.

SOUTH HILO:

A. JOB NO. 2005-862, CONSTRUCTION OF THE WAIĀKEA OFFICE PLAZA AIR-CONDITIONING REPLACEMENT:

The contractor, Isemoto Contracting Co., Ltd., requested a 121-calendar day time extension. This request is to allow for the shipping and arrival time schedule of critical air conditioning system equipment, unforeseen relocations of existing electrical and structural facilities, and unforeseen additional asbestos material removal.

DWS Engineering Division personnel have reviewed the request and find that the time extension of 121 calendar days is justified. This is the contractor's second contract time extension request.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	5/28/2009	11/30/2009	186	Shipping and arrival time schedule of new Air Handler Units
2	11/30/2009	3/31/2010	121	Shipping and arrival time schedule of critical air conditioning system equipment, unforeseen relocations of existing electrical and structural facilities, unforeseen additional asbestos material removal
Total Days (including this request)			307	

The Manager recommended that the Board approve a contract time extension to Isemoto Contracting Co., Ltd., of 121 calendar days from November 30, 2009 to March 31, 2010, for JOB NO. 2005-862, CONSTRUCTION OF THE WAIĀKEA OFFICE PLAZA AIR-CONDITIONING REPLACEMENT.

MOTION: Mr. Lindsey moved to approve; seconded by Mr. Kuailani.

The Manager noted that in the past couple of days, an *additional* request for a time extension (on top of the 121 calendar days) was received by DWS.

Mr. Inaba said that the latest request, dated October 22, 2009, had not been reviewed yet.

Turning to the current request for a 121-calendar day time extension, the Manager said the request was justified because there is no way the work can be completed without an extension. He cited work that involves opening up the ceilings that cannot be done during working hours, and that by contract may be done only at night. The Manager said he assumed that there would be further requests for time extensions, based on his observations of the work's progress.

Mr. Taniguchi asked how the work affects the Department's ability to lease the downstairs.

The Manager said there is an understanding with the County, which is proposing to lease the downstairs, that two of the prospective County tenants will not be ready to move in until June 2010, when their lease (at Puainako Center) expires. The timing for their move downstairs would be perfect, because the work downstairs is expected to be finished by that time. The Manager noted that the County had stipulated that DWS would need to build a turnaround in the back of the building to accommodate Americans with Disabilities Act requirements. DWS will build additional disabled parking in the back of the building as well, as stipulated by the County. DWS has been in discussions with the Department of Environmental Management (DEM), Data Systems and possibly Mass Transit Agency. DEM and Data Systems are pretty much guaranteed to lease, although Mass Transit, currently based at Schultz Siding, is not definite.

Chairperson Smith asked about the "unforeseen additional asbestos removal" mentioned in the write-up.

Mr. Inaba noted that the asbestos in question was all in the downstairs level; when DWS moved into the building years ago, asbestos in the upstairs level was removed as part of the initial renovations. There were a few areas that were missed, mainly in the mastic in the air ducts. At this point, that asbestos has been pretty much taken care of, Mr. Inaba said.

Chairperson Smith said that because asbestos may be found whenever any kind of intrusive maintenance is done, the Department as landlord must disclose in any bid documents, etc. that asbestos may be encountered. He asked whether this time extension request means a cost increase.

Mr. Inaba said the contractor was not intending to charge for the time extension; the work involves what the contractor had to have done. However, there are fees related to the work, he noted, but did not have the details on hand. The cost is within the contingency, he said.

Chairperson Smith asked who the consultant is for this project.

Mr. Inaba replied that it is MCE International, Inc.

ACTION: Motion carried unanimously by voice vote.

NORTH KOHALA:

A. JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #3, (N. KOHALA, S. KOHALA):

Bids were received and opened for this project on October 22, 2009, at 2:00 p.m., and the following are the bid results:

Bidder	Amount
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Isemoto Contracting Co., Ltd.	\$1,221,882.00
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Project Scope: This project involves the repair and seismic retrofit of five (5) reinforced concrete water tanks (two in South Kohala district, three in North Kohala district) that were damaged in the October 15, 2006 Kiholo Bay Earthquake.

Project Cost:

1. Low Bidder (Isemoto Contracting Co., Ltd.)	\$1,221,882.00
2. Construction Contingency (10%)	<u>122,188.20</u>
Total Construction Cost:	<u>\$1,344,070.20</u>

Funding for this project will initially be from DWS CIP budget; however, DWS will be pursuing reimbursement from the Federal Emergency Management Agency (FEMA) for up to 75% of the actual construction costs. The Engineering estimate was \$1,300,000.00 (without contingency).

The Manager recommended that the Board award the contract for JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1664-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #3 (N. KOHALA, S. KOHALA) to the lowest bidder, Isemoto Contracting Co., Ltd. for their bid amount of \$1,221,882.00 plus \$122,188.20 for construction contingency for a total contract amount of \$1,344,070.20, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

MOTION: Mr. Mukai moved to approve; seconded by Mr. Kuailani.

The Manager noted that this was the third set of earthquake-damaged tanks that DWS has put to bid. With the project's estimated cost at \$1.3 million, he was surprised that there was only one bidder. The staff was pleased with that one bid, which came in at \$1.2 million.

Mr. Inaba said that several contractors had filed Intents to Bid with DWS, but at bid opening there was only one bidder.

Chairperson Smith said that it was surprising that there was only one bid. However, DWS followed state procurement procedures and even when there is one bidder, the Department follows proper procedure in making an award.

ACTION: Motion carried unanimously by voice vote.

SOUTH KOHALA:

A. PROFESSIONAL SERVICES AGREEMENT; WAIKOLOA RESERVOIR NO. 2 FINAL DESIGN OF REPAIRS, JOB NO. 2007-043:

The consultant, Kleinfelder West, Inc., has requested compensation to cover additional work due to the ongoing construction of this project. The description of the additional work and the associated fees are as follows:

1. Technical review and recommendation of Value Engineering Cost Proposal (VECP) No. 1. This VECP has been approved and is a deductive change order (Change Order No. 2) for the amount of (- \$5,641.08) to the contractor's contract amount.

Consultant's time and material cost: \$ 1,690.00

2. Engineering analysis and laboratory testing of West Hawaii Concrete's #4 sand to be used for the project's Zone 2 material. The original material that the contractor intended for that use did not meet specification requirements. The consultant's fees include a written report to DLNR and the necessary effort to secure DLNR approval to use the WHC #4 sand. A deductive change order for the amount of (-\$9,790.00) to the contractor's contract is being processed to cover the cost for this work.

Consultant's Fees Requested: \$ 9,790.00

3. Revise plans to adjust subsurface drain system alignment and profiles to relocate two headwall locations. By relocating the headwalls, disruption to current operations will be minimized, and the new locations will make maintenance of the subsurface drain system easier.

Consultant's Fees Requested: \$ 6,875.00

4. Additional fees for Task 5 of the consultant's construction services. The description for Task 5 is *Coordination Work with Construction Manager, Geotechnical Engineer, and the Department*. The budgeted amount for this task is \$20,330.00, and was based on four months of construction time or \$5,083.00 per month. Construction began on February 12, 2009 and at the end of July 2009, 88 percent of the fees under Task 5 have been spent. Fees to cover an equivalent of three more months of construction are requested.

Consultant's Fees Requested: \$ 15,249.00

SUMMARY TABLE:

ITEM	TASK DESCRIPTION	FEE AMOUNT
1.	Technical review and recommendation for VECP No. 1.	\$ 1,690.00
2.	Reanalysis for Zone 2 material and report to DLNR.	\$ 9,790.00
3.	Revise plans for subsurface drain system.	\$ 6,875.00
4.	Additional fees for Task 5 - Coordination Work with Construction Manager, Geotechnical Engineer, and the Department.	\$ 15,249.00
TOTAL		\$ 33,604.00

Staff has reviewed the request and finds that the \$33,604.00 in additional fees are justified.

The Manager recommended that the Board grant this request for additional funds of \$33,604.00 to Kleinfelder West, Inc. and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval by Corporation Counsel.

MOTION: Mr. Mukai moved to approve; seconded by Mr. Lindsey.

Mr. Inaba explained that one reason for this request is the inability of the contractor to perform his work. The contract extension affects not only the construction, but the

consultant's contract as well. The consultant, Kleinfelder, is continuing to provide their services and is keeping a very detailed breakdown, he noted. Under DWS's agreement with the consultant, Kleinfelder provides a certain number of hours during the construction period, and the end of that negotiated number of hours is approaching the end. The ongoing delay in the construction is costing Kleinfelder more money as well. Referring to Item 1 in the Summary Table above, Mr. Inaba noted that it is a Value Engineering Cost Proposal under which the consultant had added work, to evaluate and review the contractor's proposal. Under the agreement DWS has with the consultant, the Department is paying the consultant for their work, and saving through the construction contract. The Department is going to save \$5,641.08 in construction costs, versus the Department's cost for the consultant, \$1,690.00. On Item 2, the contractor (Goodfellow Brothers) was unable to provide the material that was specified. The contractor asked for additional evaluation of different materials available that might come close enough to the specifications – so that the consultant would approve that material for use. The consultant's fee for Item 2 of \$9,790.00 is being completely reimbursed through a change order proposal with the contractor, Mr. Inaba said. Therefore, DWS is seeing an increase here, but the other savings will be directly with the contractor through a change order.

Chairperson Smith noted that Kleinfelder, which has the design agreement with DWS, is based on the Mainland. The contractor is a Hawai'i-based construction company, and to save on costs, DWS hired local firm SSFM International to do some construction management work so that Kleinfelder would not have to fly back and forth from the Mainland. This arrangement, he said, made a lot of sense. He expressed appreciation for how DWS has handled this project. In many cases, the overhead of additional consultant review time ends up meaning cheaper construction costs, and the Department usually absorbs the extra consultant costs. In this case, Kleinfelder works for DWS, which asks the consultant to evaluate the different proposals by the contractor. DWS hopes that it will save the Department money; usually the Department absorbs the design costs while saving on construction costs. On Items 1 and 2, DWS is getting the contractor to reimburse DWS for these additional design efforts. The contractor benefits because the project can continue without delays, he noted. The Chairperson complimented the staff for the write-up which explains the additional design costs, which are offset by greater savings in construction. Regarding Item 3, the Chairperson noted that there were additional consultant fees for the change in headwall design, and asked Mr. Inaba if there was a fee from the contractor, Goodfellow Brothers, for the additional construction costs.

Mr. Inaba said there was a fee, but it would be within the project contingency; he did not have the exact figure but it was nominal.

The Chairperson said it would be good for the Board to know, even though the fee does not exceed the contingency.

Mr. Mukai said he was not clear on how the reimbursement from the contractor worked on Items 1 and 2.

Mr. Inaba explained that the consultant's contract between DWS and Kleinfelder is going up by \$1,690.00, while the construction contract with Goodfellow is going down by \$5,641.08.

Chairperson Smith noted that the net impact to DWS is that the Department will save \$3,950.00 on Item 1. On Item 2, the consultant Kleinfelder is going to charge DWS \$9,790.00, and the contractor Goodfellow is going to credit DWS on the construction contract for the same amount. Therefore, there is no net impact to DWS on Item 2.

The Manager noted that when amounts are deducted from the construction contract, it affects the 75% maximum reimbursement from FEMA. This 75% also comes into play if the Department does a strict analysis of the accounts, net-wise.

Chairperson Smith said that 75% is money that is *not* coming out of DWS's coffers.

The Manager said the main thing is that the contractor is taking responsibility for what he does.

Regarding Item 3, Mr. Kuailani asked for clarification on whether contingency funds came into play for the work by the consultant.

Chairperson Smith said that the \$6,875.00 is the consultant fee; the contingency is only on the construction contract and not on the consultant contract.

The Manager explained that DWS has two separate contracts for this project: a contract with the consultant and a contract with the contractor (for construction). These two contracts are completely different things. Normally, DWS does not include contingency in a contract with a consultant.

Mr. Inaba said that DWS has a separate contract on the contract oversight and a separate supplemental contract with the consultant Kleinfelder. DWS narrowed Kleinfelder's scope as much as it could to keep costs down, and has a detailed hourly rate for Kleinfelder.

Chairperson Smith noted that with the consultant agreement, the contract only covers what DWS knows that Kleinfelder needs to provide. Kleinfelder has an obligation because he stamps the plans with his license, and he is obligated to make sure that the design works. Kleinfelder is entitled to additional compensation for services that comes outside the scope of his contract.

Mr. Inaba said that Item 3 was basically the Department's change request.

ACTION: Motion carried unanimously by voice vote.

Chairperson Smith mentioned that the Waimea Community Association will hold a meeting to discuss emergency preparedness with Civil Defense and other agencies. The meeting's organizer, Ms. Margaret Wille, asked the Chairperson what would happen if the dams break in Waimea.

The Manager said he had a phone message to call Ms. Wille back.

Chairperson Smith asked if Ms. Wille is aware that DWS has a contingency plan, and suggested giving Ms. Wille a copy of DWS's inundation map. He assumed that the reservoirs would drain into the neighboring streams, and that there was no hazard.

The Manager clarified that there is a hazard with Reservoir No. 3, which does not drain completely into a stream. If it broke, it would go into the town, he said.

Mr. Inaba said that Reservoirs 1 and 2 drain into the stream.

Ms. Self noted that if the Board wished to hold a long discussion on this subject, it would be necessary to agendaize it for a future meeting.

Chairperson Smith ended the discussion by asking the Manager to have an inundation map available.

SOUTH KONA:

A. EXTENSION OF WELL SITE DEVELOPMENT AGREEMENT – 1250 OCEANSIDE PARTNERS AND REVOCABLE TRUST OF E. JEAN GREENWELL:

(This item was taken up earlier, at the top of the Agenda.)

B. JOB NO. 2008-938, KE‘EI WELL “D” MCC REPLACEMENT:

Bids for this project were received and opened on October 22, 2009; at 2:30 p.m., and the following are the bid results:

Bidder	Amount
Able Electric, Inc.	\$57,630.00

Project Scope: This project generally consists of the removal and replacement of the existing medium voltage motor controller switchgear and motor control panel, and all appurtenant electrical work.

Project Cost:

1) Low Bidder (Able Electric, Inc.)	\$57,630.00
2) Construction Contingency (10%)	<u>5,763.00</u>
Total Construction Cost:	<u>\$63,393.00</u>

Funding for this project will be from DWS's CIP Budget under "Deepwell Pump Replacement." The contractor will have 150 calendar days to complete this project. The Engineering estimate was \$200,000.00

The Manager recommended that the Board award the contract for JOB NO. 2008-938, KE‘EI WELL “D” MCC REPLACEMENT, to the lowest bidder, Able Electric, Inc., for their bid amount of \$57,630.00 plus \$5,763.00 in construction contingency for a total contract amount of \$63,393.00, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

MOTION: Mr. Kuailani moved to approve; seconded by Mr. Mukai.

The Manager said this project involves replacing switchgear in panels in DWS's Motor Control Center for Ke'ei Well D. The Manager expressed surprise that the Engineer's Estimate was \$200,000.00, while the bid came in at \$57,630.00. He noted that Ke'ei Well D is the only well on the south side of the island that hit the high-level water situation. DWS's other wells there, Wells A, B, and C, hit the basal lens, which is basically rising chlorides. Well D's vicinity is where DWS is trying to negotiate with Bishop Estate to get additional land to put up a larger reservoir, he said. The location is about three miles south of the Kealakekua Ranch Shopping Center in South Kona.

Mr. Kuailani said he was under the impression that the residents in the area were on catchment, and asked how many DWS customers there were.

The Manager said DWS provides service all the way along the highway up to Hookena Junction.

Chairperson Smith asked who the design consultant was. (Mr. Clyde Young was called in to respond.) The Chairperson in the meantime said he shared the Manager's concern about the gap between the Engineer's Estimate and the winning bid, and wondered if the bidder had missed something or that the plans may have been unclear.

The Manager noted that there was a non-responsive bidder who failed to provide a bond. While the Manager could not disclose the bid amount of the non-responsive bidder, he could say that the amount was in the same ballpark as the lowest bidder.

Chairperson Smith said that would give the Board confidence that the contractors looked at the same plans and did not miss anything.

Mr. Clyde Young arrived at the meeting, and said that the design consultant was Mr. Andy Miyasato of Ron Ho & Associates.

Chairperson Smith noted that DWS had followed the procurement process, and that the contractor had provided a bond which ensures that the work will be completed.

ACTION: Motion carried unanimously by voice vote.

C. **JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE, MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR – QUEEN LILI'UOKALANI TRUST RIGHT OF ENTRY:**

The contractor, CTS Earthmoving, Inc., through the Department of Water Supply, is in need of a Right-of-Entry to the Queen Lili'uokalani Trust (QLT) property, which DWS is in the process of obtaining easements and deeds (for the reservoir sites) for the subject improvements. The existing Right of Entry agreement between the Water Board and QLT has expired. A new Right of Entry has been drafted **on condition that** CTS name QLT as an additional insured to their policy, and that CTS is allowed to do clearing and grubbing work only until February 2010.

In the meantime, DWS and QLT will work towards a complete Construction Right of Entry, as well as a formal agreement specifying the requirements for the DWS easement and reservoir lots, along with QLT's requirements to obtain additional water service to their lands serviced by these water system improvements.

DWS staff has reviewed the Right of Entry, and finds it acceptable.

The Manager recommended that the Water Board approve the Right of Entry with Queen Lili'uokalani Trust, subject to the approval of the Corporation Counsel, and that either the Chairperson or Vice-Chairperson be authorized to sign the document.

MOTION: Mr. Kuailani moved to approve; seconded by Mr. Lindsey.

The Manager said the Right of Entry agreement will enable DWS to proceed with the Palani Road project. The existing Right of Entry has expired. DWS is also working with QLT to formalize an agreement for their participation in the Palani system, because QLT intends to use some of the capacity.

Ms. Self said Ms. Garson had wanted her to note that the Right of Entry agreement will have an indemnification clause, because the work crosses QLT property. This indemnification of QLT is routine, and such provisions normally appear in a Right of Entry agreement, Ms. Self said.

Chairperson Smith noted that the County is self-insured.

The Manager said that in addition, the contractor has insurance.

Mr. Inaba said that the requirement in this Right of Entry agreement is to name QLT as an additional insured on the policy.

Chairperson Smith asked if, on this project, DWS is able to give the contractor, CTS, full authorization to do all the work in the construction contract.

Mr. Inaba said DWS was not currently able to do so.

The Manager said that was another story, involving the Jernigan easement issue.

Chairperson Smith asked if the Board could discuss this issue now.

Ms. Self said the Board would be coming to that issue later in the Agenda, (under the Manager's Report). She said she would be able to provide an update at that time.

Mr. Inaba noted that the Jernigan easement issue should have been agendized as a separate item under North Kona.

ACTION: Motion was carried unanimously by voice vote.

MISCELLANEOUS:

A. LEGISLATIVE AUDIT OF DWS:

Chairperson Smith noted that Ms. Self informed him that the Legislative Auditor had been called away, and so this Item will be deferred.

Ms. Self said that the Legislative Auditor asked to be put on the Agenda for the November 24, 2009 Water Board meeting. At that time, the Legislative Auditor will provide an update on the status of the Legislative Audit.

Chairperson Smith asked if the audit work would start prior to the next Water Board meeting.

The Manager said that work had already started, and that there had been requests for information.

Chairperson Smith asked if the Department had seen the Legislative Audit report on the Department of Public Works (DPW).

The Manager confirmed that the Department had seen the report. The Department had discussions with Ms. Garson, during which it was noted that the issues are pretty much the same in both DPW and DWS and the two departments operate the same way.

Ms. Self intervened at this point to say that any further discussion would need to be agendaized; this was not the time now to discuss particulars. The Agenda item only provided for the Legislative Auditor to give an update on the audit, she noted.

Mr. Meierdiercks suggested that the item be deferred to the next Water Board meeting.

The Manager confirmed that the item would be back on the next Agenda.

Chairperson Smith said that the Agenda item was inadequate to allow him to ask questions. He asked Ms. Self how it could be agendaized so that he could ask questions at the next Board meeting. He suggested putting an item in the Manager's Report to allow for questions from the Board.

Ms. Self confirmed that this would be alright.

The Manager said that he would put the item under the Manager's Report for the November 24, 2009 meeting under the heading: "DWS Preparation for the Legislative Audit."

B. PLACEMENT OF FIRE HYDRANTS IN MCCOY SUBDIVISION, KONA:

Water Board member Mr. George Harai, at the September 22, 2009 Board meeting, inquired about the Department's policy on placement of fire hydrants in McCoy Subdivision, in South Kona. The Department explained the policy, based on the rules below:

Increment 1, Parts A & B of the McCoy Subdivision (Subdivision Application No. 75-79) was submitted to the Department of Water Supply in 1975 under the December 23, 1969, Rules

and Regulations. Section 4-4 of the Rules and Regulations required that for agricultural subdivisions, the water system be designed to “deliver water at adequate pressure for domestic use under peak consumption” only. Part C and subsequent increments were submitted and approved in 1978 or later under the September 10, 1976 amendments to the 1969 Rules and Regulations.

This amendment included the requirement for fire protection to subdivisions of one-acre agricultural lots.

Mr. Inaba gave background on why one increment of McCoy Subdivision did not have fire hydrants, while subsequent increments or phases of the subdivision did get fire hydrants. As described in the Agenda write-up, the initial increment of the subdivision was built when the rules did not require fire protection for agricultural subdivisions. A couple of years later, fire protection became a requirement in the rules, which was when the second increment of McCoy Subdivision started.

The Manager said that was the reason for the discrepancy whereby one increment of the subdivision had fire hydrants and another increment did not.

Chairperson Smith noted that from the Department’s perspective, DWS only maintains what is dedicated to DWS. DWS is not in charge of extending infrastructure when standards change. He likened it to Public Works doing one section of road in a subdivision in a certain way, and a subsequent section of road will look different as standards change.

The Manager said it was not financially feasible for DWS to extend infrastructure when standards change.

Chairperson Smith said it was important to give this explanation in response to Mr. George Harai’s request for information, and thanked the Department for its explanation.

The Manager noted that the initial request for information came several months ago from Councilmember Ms. Brenda Ford.

Mr. Inaba said the Department had responded to Ms. Ford’s email inquiry several months ago.

Chairperson Smith suggested giving Ms. Ford the information again.

The Manager confirmed that the Department would send Ms. Ford the Minutes of this meeting.

C. **REPORT OF AD HOC FINANCE COMMITTEE:**

The Water Board’s Ad Hoc Finance Committee Chairperson, Mr. Art Taniguchi, reported on the following areas, which encompass the scope of the Committee’s work:

1. Review and approval of credit card expenses of DWS personnel;
2. Procedures regarding cash control;
3. Vehicle take-home policy.

Mr. Taniguchi reported that the Committee's initial meeting was on October 7, with all of the Committee's members in attendance: the Manager, Mr. Mukai, Mr. Lindsey and Mr. Taniguchi. The Committee decided to take up two of the items first (i.e., expense and credit card approvals; and vehicle take-home policy). The Committee divided up the assignments as follows:

- Expense and credit card approvals -- Mr. Taniguchi
- Vehicle take-home policy* -- Mr. Mukai and Mr. Lindsey

*The vehicle take-home policy item was considered more time-consuming, so two Committee members were assigned to look into this item.

Mr. Taniguchi said that on October 16, 2009, he met with the Manager and Mr. Sumada to discuss the policy on expenses and credit card approvals. The Manager had already drafted a policy which they discussed.

The Manager asked the Secretary to distribute copies of the Department's policy on credit card use, effective October 19, 2009.

Ms. Self asked if the Committee was reporting on what the Committee had found out about expenses and credit card use.

Mr. Taniguchi said the Committee was reporting and recommending that the Board adopt the policy drawn up by the Manager.

Ms. Self said the Committee could only report today; the Committee cannot discuss it or make a recommendation today. The discussion and recommendation could be made at the next Board meeting, she added.

Mr. Taniguchi said that the Committee was reporting what the Committee had discussed; he acknowledged that the Board could not vote on it today. He asked the Board to forward any additions or recommendations to him in the meantime.

The Manager said that as a result of the meeting, the policy was adopted administratively; the policy has already been adopted by DWS.

Chairperson Smith said that at the next Board meeting, the Board will simply concur on the policy that the Manager has implemented.

The Manager said that the policy was administratively put in place, effective October 19, 2009, in an administrative memo.

Mr. Taniguchi agreed that today's report was informational, since DWS has implemented the policy already.

Chairperson Smith said that the Board only needs to concur on what was implemented at the next meeting, to show that the Board has full faith in the steps that DWS has taken.

Ms. Self confirmed that the Board could do that.

Mr. Taniguchi commended the Manager for being proactive and putting in place the policy, which covers everything and closed whatever loophole may have existed before. He said that the Committee would be reporting on the other two items in the Committee's scope (cash control procedures and vehicle take-home policy) at subsequent Board meetings.

Chairperson Smith said the Board should concur on the credit card policy at the November 24, 2009 meeting, and asked Mr. Taniguchi's Committee to try to have reports on the other two items written up and provided to the Board at the November meeting.

Ms. Self asked if Mr. Taniguchi would be reporting today on the remaining two items.

Chairperson Smith said Mr. Taniguchi would be reporting on the two items at the November Board meeting.

Mr. Taniguchi said he would report on the progress on the cash control procedures next month, but work on the vehicle take-home policy might take more time.

D. WRITE-OFF DELINQUENT ACCOUNT #77000940-10: EDWARD CORTEZ, JR.:

Background: Account #77000940-10, which was opened by Edward Cortez, Jr. in 1998, serviced a Pu'ukapu farm lot in Waimea. The account was closed in March 2002, and sent to the Frank Huff collection agency with a balance due of \$15,221.08. The account was returned to the Department as uncollectible by Frank Huff Agency, Inc. in August 2009, due to unsuccessful efforts to locate this individual within the statute of limitations time period.

This customer had very little usage at this service, except for the final bill covering the period January 2002–March 2002, when 3,534,000 gallons were consumed. The customer's previous bill had been returned by the post office in addition to his final bill, and his account had already been tagged for meter removal. No leak adjustment was applied for, so DWS does not know why consumption was so high.

The Manager recommended writing off the \$15,221.08 balance due from Edward Cortez, Jr., on delinquent Account #77000940-10.

MOTION: Mr. Mukai moved to approve; seconded by Mr. Lindsey.

Mr. Sumada explained that this was a pretty straightforward account that went bad at the last billing, so there was no time to track down this person or to find out what was wrong with the person's meter. The Department is required to get Board approval to write off delinquent accounts of \$10,000 or more.

A lengthy discussion ensued on the person, who Mr. Sumada said was a renter in Waimea on Hawaiian Homes land. There is a new tenant on the property, who is current in his account and whose consumption is normal. Mr. Sumada said that the delinquent tenant just up and left, and it was not clear how some 3 million gallons of water were used. The new tenant has no problem with the pipes. The statute of limitations of six years on the delinquent account has run out, so no lawsuit could be filed against the person, who is believed to have gone to

the Mainland. After the six years' statute of limitations runs out, the Department writes off delinquent accounts, Mr. Sumada said.

The Board discussed whether there were procedures in place to flag someone with a prior delinquent account who applies for a new meter.

Chairperson Smith noted that the only way that DWS could deny a person water service would be to get a judgment against the person.

The Manager said that in the past, someone who had been delinquent came back and applied for another meter at a different location. In that case, the statute of limitations had not run out, and DWS attached the delinquent bill to the current account. That person was desperate for water, and agreed to pay.

Mr. Mukai asked if there was a system in place where a person like Mr. Cortez applies for service and a red flag pops up.

The Manager said there was no automatic flag that pops up, but Customer Service manually checks when people sign up for service.

Mr. Sumada said that when people sign up, DWS transfers any old balances to the new account.

ACTION: Motion carried unanimously by voice vote.

E. **HAWAII INFORMATION CONSORTIUM (HIC) STATEMENT OF WORK (SOW) FOR BILL PAYMENT SERVICES OVER THE INTERNET:**

The Department is requesting approval of a Statement of Work (SOW) agreement with the Hawaii Information Consortium (HIC) to provide bill payment capability over the Internet for DWS's customers. This is in response to numerous requests from DWS's customers in recent years to provide this type of payment option.

HIC was selected via Request for Proposal (RFP) to serve as manager of the State of Hawaii's EHawaii.gov website. The RFP included providing Internet services to all counties and water departments, and is currently being used by the State of Hawai'i for General Excise Tax and licensing payments, and by the County of Hawaii for real property tax payments.

The Statement of Work agreement provides a general outline of services and terms between HIC and the Department. The key decision to be made at this point, noted in the Statement of Work agreement, is to identify who will be responsible for paying HIC fees that will be assessed per transaction. The Department may choose to absorb all the fees, pass all the fees on to the customer, or split the fees by type between the Department and the customer.

The fees for each payment option provided by HIC are as follows:

- Credit Card: \$2.50 per transaction, plus a 2.25% of the transaction amount credit card fee.
- Debit Card: \$2.50 per transaction, plus a \$1.00 e-check processing fee.

The Department proposes the following fee allocation for each payment option:

- Credit Card: Customer pays \$2.50; Department pays 2.25% of the transaction amount.
- Debit Card: Customer pays entire \$3.50 fee.

The Department currently absorbs credit card fees associated with walk-in customers who pay by credit card. The Department's Statement of Work proposal is consistent with this policy.

It is difficult to determine how much the fees will amount to under different fee allocation scenarios, because it is not clear how many customers will use the website.

Based on current credit card activity from July and August 2009, DWS averages on a monthly basis: 700 credit card transactions, credit card payments totaling \$100,000, and credit card fees totaling \$2,250.

If this activity were transferred to the HIC website and the Department chose to absorb all fees, total fees from credit card use would increase from approximately \$27,000 ($\$2,250 * 12$) to \$48,000 ($\$27,000 + (\$2.50 * 700 * 12)$) per year, almost doubling with the addition of the \$2.50 transaction fee.

The Department does not feel it is fair to all its customers to subsidize those choosing to pay via the Internet, when less costly ways to pay such as via U.S. mail or automatic bill payment are available.

The Manager recommended that the Water Board approve the HIC Statement of Work allocating HIC fees as follows:

- Credit Card: Customer pays \$2.50, DWS pays 2.25% of the transaction amount;
- Debit Card: Customer pays entire \$3.50 fee;
- And that the Chairperson or Vice-Chairperson be authorized to execute the Statement of Work, subject to approval by Corporation Counsel as to form and legality.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Mukai.

The Manager said that DWS had received myriad requests for this service over the years, but the Department had been reluctant due to the additional costs involved. Mr. Sumada kept investigating and managed to find a system DWS could work with.

Mr. Sumada explained about the agreement in question, with the disclaimer that this was a very basic agreement that needed to be signed with the contractor before further details could be worked out. Those details would be covered in future agreements, he said. All that this agreement was doing was to set forth who is responsible for the fees that are going to be involved when a customer goes online to pay their water bill. He explained the fee structure listed above. Currently, with walk-in customers, DWS is absorbing the 2.25% credit card fee. If the online payment system goes ahead, DWS will absorb the 2.25% credit card fee for online customers, too.

The Manager said life would be simpler without the extra accounting and paperwork entailed in providing online payment services, but DWS is doing it in response to customers' requests.

Mr. Sumada agreed, saying there are going to be additional procedures that will have to be set up to transfer the billing information to HIC and to receive payment information on a daily basis. There will be a daily transmittal back and forth, he added.

Mr. Mukai wondered why DWS was subsidizing credit card use by customers.

A discussion ensued about how merchants' agreements with Visa and Mastercard have charges, which are not passed on to the customer.

Mr. Mukai asked whether the proposed online payment service would be across the board for commercial as well as residential accounts.

The Manager confirmed that it would be for any DWS customer who goes online to pay his water bill.

Mr. Mukai said he would like to speak against the proposal, because the Board is working under the assumption that is for the general consumer. He was concerned about the percentage charge that would come from large commercial accounts, with DWS subsidizing major accounts that use millions of gallons of water.

The Manager acknowledged that DWS would be paying the 2.25% credit card charge for whatever amount. If the Department establishes this policy, it cannot single out those who may use credit cards to pay online and those who may not. However, DWS *can* set a **limit**.

Mr. Taniguchi agreed that it would be no different from the way credit card payments work now (i.e., with a limit).

Mr. Meierdiercks said DWS would need to see to what degree the online payment service draws the high-end accounts, and asked if DWS had any idea of what that might be.

The Manager said he believed that the majority of customers who walk in and use their credit cards at DWS are residential users. The larger commercial customers tend to mail in their payments. At this time, DWS has no idea what the make-up of online customers will be.

Chairperson Smith asked what the 2.25% credit card charge translates into per year for the Department.

Mr. Sumada said it comes to about \$27,000 in credit card charges that DWS absorbs per year, or about \$2,200 a month.

Mr. Mukai said he would like to do the online payment service on a trial basis. He expressed fears that a large volume of major water users would go online to make their payments.

The Manager said the Department was between a rock and a hard place. So many customers are asking for online payment services, and with the HIC arrangement, DWS is provided with a mechanism whereby DWS does not have to eat all of the costs for providing online payment

services. He suggested that DWS try the online payment system, and report back to the Board in six months on how it is going.

Mr. Sumada acknowledged Mr. Mukai's fears that a big account might paying off a water bill of \$100,000, and the credit card fees would be too high. The way to fix that dilemma is to **set a charge limit**, as HELCO does.

Chairperson Smith suggested amending the Motion to establish a cap, based on Mr. Sumada's recommendation.

The Manager said that DWS could not set such a cap unilaterally; DWS would have to check with the vendor, HIC, to see if they would agree to it.

Mr. Sumada agreed that he would have to check with HIC to see if they can program a limit into the online system. He did believe that DWS could set a charge card limit administratively.

The Manager said that DWS could set a limit administratively for the walk-in customers, but would be unable to do so for online customers unless HIC agrees.

Mr. Sumada said if HIC cannot agree to a limit, then it may raise questions of whether DWS should go with online payment.

The Manager said there was such tremendous popular demand for DWS to offer online payment services that DWS should try it for six months, and then report back to the Board.

Mr. Taniguchi said it would be difficult to offer a service, and then later take it away.

Mr. Mukai said he would like to amend the Motion, and asked what the Motion was on the floor.

Mr. Sumada said the Motion was to approve the agreement with HIC.

Mr. Mukai said he would like to speak against the Motion until Mr. Sumada can provide more information on whether HIC accepts the charge limit or not.

Chairperson Smith suggested deferring the item until next month's Board meeting.

Mr. Mukai said the Board could defer or vote the Motion down, and bring the item up again next month.

Ms. Self said it would probably be better to withdraw the Motion and defer to the next Board meeting.

Mr. Mukai said there were a lot of variables involved, and the Board did not know whether HIC would accept the charge limit.

Mr. Sumada suggested that the Board amend the Motion, or approve the Motion subject to imposition of a limit by HIC.

The Manager said if HIC cannot accept a limit, then DWS will not go with an online payment system.

Mr. Mukai agreed that he could agree to that.

Chairperson Smith asked if the Board needs to set a limit and amend the Motion.

The Manager said that would be probably necessary.

Mr. Sumada suggested a limit of \$1,500 or \$2,000.

The Manager said that would be a small water bill for larger users. He asked the Board how much it would be willing to absorb for a transaction.

Mr. Sumada said he could verify with HELCO what their charge limit was.

The Manager said that maybe the Board should defer until more information is available.

Mr. Sumada said he did not want to see the item deferred.

Mr. Taniguchi suggested setting a limit; if the Board can approve it by setting the limit, it would not cost DWS anything.

The Manager agreed that it would not cost DWS anything, and suggested a \$5,000 limit.

Chairperson Smith asked whose Motion and Second it was (Mr. Meierdiercks moved; Mr. Mukai seconded); and asked them if they wanted to set a limit of \$5,000.

Mr. Mukai said he wanted to amend the Motion, to limit the charge to a maximum of \$5,000.

Ms. Self said Mr. Mukai would be amending the Motion to approve it, subject to DWS being able to get the \$5,000 limit approved by HIC.

Chairperson Smith said the Board needed to vote on the amendment first, and then vote on the Main Motion.

Ms. Self asked if there was a Second to the Amended Motion.

Mr. Meierdiercks seconded.

ACTION: Amended Motion carried unanimously by voice vote. Main Motion as amended carried unanimously by voice vote.

The Manager said that if HIC does not agree to the \$5,000 limit, the staff would come back to report to the Board.

Mr. Sumada said if the limit is not accepted by HIC, then DWS will have to start over.

The Manager said the Board will be informed; as far as the Board is concerned, the limit will be \$5,000, or the staff will come back to the Board.

F. **RED FLAG POLICY:**

The Federal Trade Commission (FTC) is requiring certain businesses and organizations to implement a written Identity Theft Prevention Program designed to detect warning signs, or “red flags” of identity theft in their day-to-day operations, in an effort to protect confidential customer information. Organizations that regularly provide goods or services and bill customers later are required to implement such a Program, and the Department qualifies under those conditions.

The Red Flag Policy requires the following elements:

1. Identify “red flags” of identity theft in our organization.
2. Procedures to detect the red flags that DWS has identified.
3. Appropriate action to take when red flags are detected.
4. Update Policy periodically.

The Department’s Red Flag Policy is written to protect confidential customer information received in Customer Service from customers applying for service or paying water bills.

The Federal Trade Commission guidelines require that a business’s Board of Directors approve its first written Policy program.

The Manager recommended that the Board approve the Department’s first written Red Flag Policy program, which was distributed prior to the Board meeting.

MOTION: Mr. Kuailani moved to approve; seconded by Mr. Taniguchi.

The Manager noted that bringing this to the Board was very unusual, because it is essentially an administrative matter. However, the procedures that DWS must follow *mandate* that the Board approves the policy. This is basically an administrative tool that DWS will be using.

Chairperson Smith asked what it is that DWS needs to do to comply with federal regulations.

The Manager said that DWS needs to develop red flag procedures.

Chairperson Smith asked if DWS will need to do all kinds of cross-checks when somebody applies for an account.

The Manager said that if DWS notices something out of the ordinary, a red flag would be set off and then DWS would investigate further. The basic purpose of this policy is to develop procedures that would trigger a red flag. He reiterated that the reason that the item is on today’s Agenda is because the federal government requires DWS to get the Board’s approval.

Mr. Sumada said it is a policy that the Honolulu Water Board adopted, and the Federal Trade Commission has guidelines that specify who needs to adopt the red flag policy. Based on those guidelines, DWS qualifies, while the County does not. DWS qualifies based on who its customers are, along with the fact that DWS bills its customers and allows them to pay over time, etc.

Mr. Mukai asked if this policy was based on a model that DWS did not develop from scratch.

Mr. Sumada said that DWS looked at the Honolulu Water Board's policy, and tailored it so that it made sense to DWS.

Chairperson Smith asked if this was in compliance with federal requirements.

The Manager said that the federal government simply requires that the Board approve the written policy.

Mr. Kuailani said he approved of the policy, noting that compliance with federal regulations has a bearing on receiving federal funding, etc.

Chairperson Smith asked Ms. Self if she had any comments.

Ms. Self said she did not know anything about it.

Mr. Sumada said that he had forwarded a copy of the finalized version of the policy to Ms. Garson, but had not heard back from her.

Ms. Self suggested deferring the item until Ms. Garson gets back; Ms. Garson did not send the policy to Ms. Self.

Mr. Sumada said that the only thing is that DWS needs to have the red flag policy in place by November 1, 2009. The original deadline was May 1, 2009, but the Federal Trade Commission kept putting off the date and as of now, the deadline is November 1.

Mr. Taniguchi said that as long as DWS has something in place, it is in compliance.

Chairperson Smith said the Board should approve, and if Ms. Garson comes up with any comments, the policy could be modified.

ACTION: Motion carried unanimously by voice vote.

G. ENERGY MANAGEMENT ANALYST UPDATE:

The following areas were covered:

1. Securing fuel delivery and lightning mitigation for Haleki'i - Emergency Back-up Generator
2. Negotiations with HELCO on Lālāmilo Windfarm/DLNR land lease
3. Mayor's Green Team

4. Mayor's Energy Advisory Commission

On Item 1, Kona Hospital administrator Mr. Eric Willis asked at the August 25, 2009, Board meeting about DWS's plans for securing fuel delivery to the Haleki'i Well site, as well as about lightning mitigation. Ms. Myhre subsequently found that additional lightning mitigation there would be redundant, because of radio towers only a quarter of a mile away from the well site. DWS also has lightning protection units installed on the telemetering equipment at the site, so DWS is well-protected. DWS has secured several 55-gallon drums for transporting diesel to the site, along with a hand pump. In addition, DWS's generators have pumps in them that can pump diesel out of whatever container DWS brings to the well site. Chairperson Smith asked what kind of generators they are; he had never heard of a generator with its own pump. Ms. Myhre said the generators were made by Caterpillar, and there's a pump on the tank that can pump fuel from another tank. DWS also has a hand pump, she added. Chairperson Smith asked about the procedure if the power goes off. Ms. Myhre said that the generator does not start back up by itself; it is a manual start-up. As soon as the staff determines that the length of the outage will be longer than what DWS has fuel for, the staff will start to secure DWS's fuel source. Chairperson Smith asked for an idea of how long the fuel would last. Ms. Myhre said the fuel would last 12 hours or more, depending upon the load. DWS has secured a delivery provider after contacting 10 different contractors to see if they were willing to provide DWS with site service, and confirmed their ability to haul with their own oiler truck. DWS secured the services of Willocks Construction, who can make it to the Hilo generators within three hours, to Kona in four hours, and North Kohala in five hours. DWS can pump diesel into that oiler truck and have it delivered to DWS's site, and then pump it from the oiler truck to the generator tank. Mr. Kuailani noted that Ms. Myhre's presentation at the Hawai'i Water Works conference last week about emergency generators gave him confidence that DWS is in good shape at the Haleki'i Well, as far as outages and getting water to Kona Hospital. In the event that Willocks is not available, DWS has a list of other contractors to contact for service, Mr. Ikeda said. Ms. Myhre said that DWS could transport the 55-gallons drums in a truck as well. The Kona baseyard has a source of diesel that could be transferred to the gensets in the 55-gallon drums, she said. The Manager said that in a **major** disaster, DWS would follow Civil Defense's orders. What DWS has in place are procedures for non-disaster type situations. In a major disaster, DWS's procedures would be thrown away and Civil Defense would take over. Mr. Taniguchi asked about the communications issue in Kona. Ms. Myhre said that DWS's answering service has a corded, wall telephone (a land line), and as a backup DWS also has an operable two-way radio that can address the Hilo district, and the Hilo district in turn would relay any information over DWS's radio system to DWS's baseyards. The Manager said that DWS personnel in Kona are trained to check key areas such as Haleki'i. Ms. Myhre said she emailed Mr. Willis at Kona Hospital the genset checklist on October 12, and she plans to do that quarterly.

On Item 2, Ms. Myhre said there are two likely outcomes:

- DWS will do a project with HELCO or another third party to provide energy to DWS's site; or
- DWS will return the site to DLNR with the site cleaned up.

On the clean-up issue, DWS *verbally* requested to HELCO to perform a Phase I Environmental Assessment. Ms. Myhre drafted a letter to HELCO that is currently under

review by Corporation Counsel and the Manager. On the topic of providing energy to the DWS wells, DWS is looking to get the best deal in terms of a discount on energy bills, versus what DWS is currently paying HELCO (approximately \$3.8 million a year for the eight Lālāmilo/Parker wells.) DWS plans to collaborate with DLNR regarding the lease after a decision is made in early 2010. The next meeting with HELCO is on November 5. Chairperson Smith asked if Ms. Myhre was preparing a draft letter to HELCO stating that DWS is requesting that HELCO do a Phase I Environmental Assessment. Ms. Myhre said that HELCO should do a Phase I Environmental Assessment, and they will need to clean up the site even if they build a new wind farm project. The draft letter right now says that, according to the DWS-HELCO contract, HELCO is responsible for cleanup of the site and requests that HELCO give DWS a schedule of when the clean-up will occur, along with documentation at the end of the process that attests that the clean-up has been done according to State and federal standards. The letter also says that DWS is not satisfied with the performance of the Lālāmilo Windfarm, and notes that the contract allows DWS to terminate the agreement due to underperformance. Chairperson Smith said that a Phase I Environmental Assessment is just an environmental report documenting what is on site, and it does not necessarily talk about remediation measures. DWS, as the “sandwich lessee,” wants to make sure that HELCO can return to DWS a clean site by December 2010; HELCO needs to show DWS how HELCO can turn over a clean site in 14 months, the chairperson said. Ms. Myhre confirmed that is exactly what the draft letter says. When DWS made the verbal request to clean up the site in 14 months, HELCO said no problem, Ms. Myhre said. The Manager confirmed that HELCO has been put on notice verbally, although the letter has not been sent to HELCO yet. Ms. Myhre said that this request from DWS appears in the summary of the minutes of the meeting with HELCO. Chairperson Smith asked for the name of the person at HELCO who said there was no problem in cleaning up the site in 14 months. Ms. Myhre said it was Jose Dizon (HELCO’s General Manager, Operations). Chairperson Smith doubted that there was anything HELCO could do in 14 months to re-energize the wind farm site; the site is too small to do a large wind farm that would make it profitable. He asked Ms. Myhre to keep the Board apprised.

On Item 3, Ms. Myhre reported that a contractor with the County of Hawai‘i will be performing an energy audit of the main office this Friday. The audit will look at air leaks and electrical efficiencies. The Environmental Protection Agency (EPA) told Ms. Myhre this week that they plan to do an Innovative Energy Management Strategies Workshop in Hilo, probably in January. Ms. Myhre is the contact point for the EPA, and is taking the lead to ensure the workshop happens. Ms. Myhre sent to the Manager and Chairperson Smith a copy of the County Sustainability Resolution that passed its first reading at the County Council last Monday.

On Item 4, Ms. Myhre is on the Energy and Waste Water Management Investigatory Committee, which includes former Water Board Chairperson Mr. Tom Goya, the County’s Energy Specialist Mr. Will Rolston, and business owner Mr. Alex Woodbury. The committee is discussing ways to address water and energy conservation in terms of practices within the County.

H. MONTHLY PROGRESS REPORT:

No discussion.

I. REVIEW OF MONTHLY FINANCIAL STATEMENTS:

No discussion.

J. WATER RATE STUDY:

No discussion.

K. MANAGER'S EVALUATION:

Chairperson Smith noted that the Board members had received the evaluation forms in their packets. He appointed Vice-Chairperson Mr. Mukai to collect and tally the evaluation forms, and make a recommendation at the December 15, 2009, Water Board meeting. He said that typically, the Board makes its evaluation and analysis by the December meeting and votes on it.

The Manager said it was not really a vote; it is basically a tally of the performance.

Chairperson Smith asked whether the Board does the Compensation Adjustment at the December meeting as well.

The Manager said that normally the Compensation Adjustment takes place at the December meeting, but he does not expect a Compensation Adjustment with the economy the way it is.

Chairperson Smith said the Board needs to set a timeline, noting that last year the Board approved a raise, but that both the Manager and Deputy Manager agreed to voluntarily defer implementation of the raises. He said he believed that the Board needs to go through the process to determine the performance, and at the December meeting the Board can make some kind of decision and evaluation. Chairperson Smith asked the Secretary to notify the missing Board members to fill in the evaluation forms and get them to Mr. Mukai.

The Manager asked Chairperson Smith if he ever received a formal resignation from Board member Ms. Millie Kim.

Chairperson Smith said he had not gotten her resignation, although her term is nearly over. He did speak with Corporation Counsel Mr. Lincoln Ashida about filling the Water Board vacancies. He asked Ms. Self to remind Mr. Ashida, and mention the need to fill the current vacancy (in Puna) and the two upcoming vacancies (in Hilo and Waimea).

L. MANAGER'S REPORT:

The Manager provided an update or status on the following:

1. Update on use agreement on KIC wells -- No report.
2. Palani Road Transmission Project – The contractor has begun work on Kealaka'a Street; however, the project has hit a snag due to a court dispute involving an easement in the upper portion. Initially, Corporation Counsel told the Department that work could proceed, but the landowner, Mr. Mark Jernigan, has filed an appeal and now DWS must wait for the

Attorney General's opinion, the Manager said. Ms. Self reported that on October 14, 2009, Judge Ronald Ibarra heard two motions regarding the Jernigan condemnation. The first motion was DWS's motion to dismiss and Mr. Jernigan's counterclaim against the Water Board alleging an unconstitutional taking. The second motion was for the judge to reconsider Jernigan's motion to vacate DWS's order of possession. That motion to vacate had previously been denied, and Mr. Jernigan was trying to get the judge to reconsider. Mr. Jernigan is claiming that the state statute which authorizes the County to gain immediate possession of the property is unconstitutional. The court took the matter under advisement as is mandated, and the court sought input from the Attorney General. In the meantime, the court has stayed the Water Board from taking possession or working on Mr. Jernigan's land. This is stayed until around the end of November, Ms. Self said. The contractor, meanwhile, has been informed, and is doing work on the QLT property. Chairperson Smith noted that because this dispute involves the constitutionality of a state statute that allows DWS to condemn and obtain permission at a point of access, resolution of the dispute will take time. While DWS is keeping the contractor working, there may come a point where work will stop at the small section in dispute. Chairperson Smith feared that the dollar amount of settlement with Mr. Jernigan might change, unless the judge agrees with DWS's position. The Manager said the contract period is quite long, and there is at least a year's worth of work for the contractor to do. The Manager did not foresee that the Attorney General will take a year to make a decision. Mr. Inaba said the Attorney General has a time period in which to respond, and in light of the potential statewide impact of this constitutional issue, an additional 10 days or so was requested. The Manager said that the only thing that might affect DWS is that DWS in the contract documents mandated that the contractor do the mauka portion of the work first, in order for DWS to be able to immediately serve the La'i'opua area. *That* may change as a result of the dispute, he added.

3. Hawai'i Water Works Association (HWWA) '09 conference report -- Ms. Aton reported that it was a rousing success, with thanks to the many DWS staff members who worked hard to organize and run the event, and special thanks to Mr. Mukai for his kokua with the Meet & Greet and Banquet entertainment. Attendance was 120 conferees, and response from the other islands' water boards was tremendously positive.

4. Kona Hospital area emergency generator/diesel logistics -- covered earlier by Ms. Myhre.

5. Update on Pāhala Water System – The new well is in operation, and therefore no more violation letters will need to be published.

6. Update on delivery of vehicles – The two mini cargo vans have been delivered.

On a separate topic, the Manager noted that he and the Deputy Manager had been taking turns representing DWS at the Mayor's islandwide talk-story sessions over the past couple of months. Tonight is a session in Hōnaunau, which the Manager will be attending. Last week, the Deputy Manager attended a session in Waimea. The purpose of attending is to be on hand to respond to any questions from the public regarding DWS. Chairperson Smith expressed approval at the Department's consistent attendance at the talk-story sessions.

7. Employee of the Quarter – Manager reported that Ms. Jan Hatami, Engineering Support Technician III, is this quarter's awardee. Ms. Hatami, who began her DWS career in the Customer Service section in 1986, has a wealth of knowledge which immeasurably assists DWS's engineers. She has created her own data bases and spreadsheets incorporating all of the

information that the engineers refer to regarding planning applications on parcels. For going above and beyond her duties, Ms. Hatami is being recognized with a plaque. The unassuming Ms. Hatami did not attend the meeting.

M. CHAIRPERSON'S REPORT:

The Chairperson asked Board members who attended HWWA to submit their conference reports to the Secretary by next month's Board meeting. He asked the Secretary to let him know if any reports were not submitted.

Calling a point of order, Mr. Kuailani said that at the HWWA Conference, Councilmember Ms. Brenda Ford asked if the Water Board was aware that the Hawaiian Ocean View Estates (HOVE) Community Association had met with the County Council regarding a water-related issue in the subdivision. The Manager said that he was aware of it. Ms. Self intervened, saying the matter was not on the Agenda. Mr. Kuailani asked that the item be put on next month's Agenda, and that a report be made. Chairperson Smith asked what the subject was. The Manager replied that it was Hawaiian Ocean View Estates. Mr. Kuailani wondered about the HOVE community association going directly to the County Council, without having the Water Board present. The Manager said that the item would be on the next Agenda, and that he would report exactly what happened, how and why it happened, and the proposed outcome.

N. KAWAILANI 1.0-MILLION GALLON RESERVOIR:

Ms. Self reported that the lawsuit is pending. Wesley Segawa & Associates brought suit with Jas W. Glover, Ltd., and Jas W. Glover, Ltd. has answered, she said. The parties are to continue working with each other, she said. That was all the information available, Ms. Self said.

O. REFERRALS FOR EXECUTIVE SESSION: KAWAILANI 1.0-MILLION GALLON RESERVOIR:

Ms. Self told the Board that there was no need to convene an executive session. She suggested that if the Board wants further information, it should agendize the item for the November Water Board meeting.

The Chairperson indicated that it would be good to agendize the KAWAILANI 1.0-MILLION GALLON RESERVOIR item for the November meeting, pending input from Ms. Garson. A decision on whether to go into Executive Session at the next meeting will depend on the progress of the litigation, he added. This decision whether to agendize the item would be up to Ms. Garson as well.

The Deputy Manager suggested that next month's Agenda should include the Department's General Obligation Bond float (Bill 160), which is scheduled to come before the County Council for consideration on November 4, 2009. He suggested that this item should appear in the Manager's Report.

ANNOUNCEMENTS:

1. **Next Meeting:**

The next Meeting of the Water Board will be held on November 24, 2009 at 10:00 a.m., at the Royal Kona Resort, Resolution Room, 75-5852 Ali'i Drive, Kailua-Kona.

2. **Following Meeting:**

The following meeting of the Water Board will be held on December 15, 2009 at 10:00 a.m., at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Smith called for a Motion to adjourn. Mr. Kuailani so moved; seconded by Mr. Taniguchi, and approved unanimously by voice vote. The Meeting adjourned at 12:11 p.m.

Senior Clerk-Stenographer

Anyone who requires an auxiliary aid or service for effective communication or a modification of policies or procedures to participate in this Water Board Meeting should contact Doreen Shirota, Secretary, at 961-8050 as soon as possible, but no later than five days before the scheduled meeting.

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

Notice to Lobbyists: If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist. {Article 15, Section 2-91.3(b), Hawai'i County Code} A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration forms and expenditure report documents are available at the Office of the County Clerk-Council, Hilo, Hawai'i.