

MINUTES

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

November 24, 2009

Royal Kona Resort, Resolution Room, 75-5852 Ali'i Drive, Kailua-Kona

- MEMBERS PRESENT: Mr. Riley Smith, Chairperson
Mr. Dwayne Mukai, Vice-Chairperson
Mr. George Harai
Mr. Francis Kuailani
Mr. Bryan Lindsey
Mr. Robert Meierdiercks
Mr. Art Taniguchi
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)
- ABSENT: 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: Mr. Craig Masuda, Deputy Corporation Counsel
Ms. Colleen Schrandt, Legislative Auditor (left at 11:25 a.m.)
Mr. Fred Housel (left at 11:05 a.m.)
Mr. Rod Paulos, Plumbing Services Hawai'i (left at 11:05 a.m.)
- 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. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Specialist
Mr. William Yamamoto, Water Service District Supervisor I, Kohala

CALL TO ORDER - Chairperson Smith called the Meeting to order at 10:00 a.m.

STATEMENTS FROM THE PUBLIC:

Mr. Fred Housel spoke about the Palani Waterline Project. The following is Mr. Housel's verbatim testimony.

"Good morning. My name is Fred Housel, and I live at 74-5063 Tomi Tomi Drive in Kona, and today I'd like to give you a comment from our neighborhood about the Palani Waterline Project. To give you a little history, we were notified in 2006 that the Palani Waterline Project would be built through our neighborhood. At a public meeting in July 2006, we asked many

questions about the project, especially how our access to our homes would be ensured during the construction. As you may know, Tomi Tomi Drive is only one lane in several places. We were told by the Department of Water Supply that the contractor would provide an access plan before construction started. The Department of Water Supply conducted another public meeting on October 6, 2009. When we asked about the access plan, we were only told that the equipment would stop at noon to allow access into Tomi Tomi Drive. There was no plan. The maximum wait would be five minutes. No project schedule plan was available. We were told the construction crew were about to start in about two weeks, and take about six months. We requested at the meeting, and were promised, the complete construction plan and schedule would be posted on the Department of Water Supply webpage the following week. Construction *did* start, a little over two weeks later, but no plan or schedule was posted on the Department of Water Supply webpage. Neighbors became very worried and upset about what could happen. Now, when the project started, when trenching began on Kuni Road, which is connected to Tomi Tomi (Drive), several problems were seen. The first one: no project sign, as required by the contract, had been posted, so there was no warning (for) anyone coming into the neighborhood that there was a construction zone here. The second thing is, excavation started with no dust control, as required in the contract. We actually had to call the inspector to come out and enforce the dust control. And the third thing that we've noticed is, the contract specifies that the work hours are to be from 7:00 to 3:30, and we noticed work continuing till 5:00 p.m. So we asked the contractor about that, and he said that they have been given approval to extend their hours till 5:00 p.m. Now, no notice or acceptance was provided to the residents. If the contract terms changed and we feel it affects our neighborhood, which it certainly does, there's a lot of noise, traffic, dust, in an area where you're using a hoe-ram with a lot of vibration going on. And so, extending those hours should've been made news to us, and we should've had some say-so about it, we feel. This seriously affects the quality of our life in our neighborhood. So we called a meeting with the contractor, and he assured us he would provide a short-term work plan and schedule. He told us no bypass plan had been done to ensure our access during excavation on the narrow areas of Tomi Tomi (Drive), but that he was working on a plan. All of this, plus the noise, traffic and earth-shaking due to the hammering made all of the neighbors very uneasy and upset. We called a meeting with Milton Pavao and Larry Beck to discuss the project with our neighbors. At the meeting, the Department of Water Supply promised to provide a full plan and schedule for the project. The plan has still not been delivered. The encouraging news is that the contractor has been providing a weekly short-term plan and schedule which helps tremendously to understand what to expect, and where the work's going to be done, what possible impacts we should experience. That really helps. The contractor has worked out agreements with adjacent land owners, and has constructed temporary bypass roads from the narrow areas of Tomi Tomi (Drive). There *is* still one bottleneck area which has not been resolved. The construction hasn't reached that point yet, but we're still hoping (for) some satisfactory alternative. That's key; there's virtually no other access to that point. In summary, we feel this project has not been handled very well, and that the concerns of our neighborhood have been disregarded. We still have not received the complete plan and schedule which the Department of Water Supply promised in October. We wanted you to understand our experience and our concerns. We feel all the problems we have experienced could've been prevented by proper planning and communication. We sincerely hope the Department of Water Supply learns from this experience and makes improvements in their future projects. Thank you." (End of Mr. Housel's testimony)

Chairperson Smith suggested that the Manager take up the Palani Waterline Project item at this time, instead of later in the Manager's Report.

The Manager agreed that the item should be taken up now.

Chairperson Smith asked Mr. Housel to provide the Secretary with a copy of the written testimony he had prepared.

The Manager said he understood the community's frustration, but assured that the Department was bending over backwards to address the community's concerns. The issue of dust control has been resolved for quite some time, he confirmed. He also confirmed with Ms. Aton that the Department has posted on its website a schedule from the contractor. The Manager said he understands the challenges that the contractor faces, thanks to his own background in construction. While the community wants the entire project schedule to be posted, it is virtually impossible to do so, because things change day to day. He agreed that a temporary plan is more feasible than a full plan that is subject to change. The Manager noted that he took the unprecedented step of sending Mr. Housel, a resident, the contract, as well as a complete set of plans. He noted that the Department is in the process of resolving many of the issues which Mr. Housel raised, such as the bottleneck. It is the contractor's responsibility to work out a plan to address the bottleneck, but it is not for the residents to tell the contractor what to do, he said. The Manager said that the contractor has been extremely cooperative with the residents, noting that the contractor put in a bypass to alleviate inconvenience. The contractor had also come to the public meetings, including two meetings on site. DWS and the contractor have tried to address every concern that the residents have raised. He acknowledged that it is frustrating because Tomi Tomi Drive is a narrow road and problems do arise. The Manager has apologized to the residents, explaining that while the project may not directly benefit the residents, it is for the betterment of the entire Kona community. He said that things could have been done better, but once the shortfalls were recognized, DWS and the contractor have bent over backwards to accommodate the residents.

Chairperson Smith said that the matter was not for discussion at this meeting, but invited Board members' questions and asked the Manager to respond.

Mr. Mukai said that according to Mr. Housel, the original contract had access plans, but it seems that the access plans went in after the community met with DWS.

The Manager clarified that the contract does not have any access plans; the access plans came about after DWS's public meetings with the community.

Mr. Beck noted that DWS held two public meetings at Kealakehe High School, and two public meetings out in the field.

The Manager said that four community meetings had been held, where the access plans were mentioned. He noted that when DWS draws up plans, the Department does not provide access plans. It is up to the contractor to provide access plans. DWS hires the contractor, but does not tell the contractor how to do his work. As a contracting agency, DWS specifies what it wants and what the project will look like in the end, but DWS does not tell the contractor how to do the work. The issue of scheduling in the field is entirely up to the contractor. DWS does stress to the contractor the need to **provide access**. When a contractor is working in a certain

area and is blocking traffic and a resident wants to go out, the contractor must make sure that access is provided. Contractors are fully aware of the need to provide access, he said.

Mr. Mukai said his question was why, if the access plan was agreed upon at the public meetings, that the access plan was not provided at the very beginning of construction.

The Manager clarified that there was no access plan that was agreed upon.

Chairperson Smith noted that in the contract, there is a requirement for the contractor to provide continual access to the private properties.

The Manager confirmed this, saying that this means that when the contractor is working on the road and somebody wants to pass, the contractor has to make sure that there is a way for people to pass. DWS stressed to the contractor that he needed to provide access, citing access for emergency vehicles, FEDEX, the postal service, etc. He noted that the contractor did provide an access road through private property so that people would not need to go into the construction work area. The contractor provides the access road entirely on his own; he has been extremely cooperative. The Manager acknowledged that there were things that could have been done better, but once the shortcomings were known, DWS immediately moved to resolve them.

Mr. Harai asked whether the community's road would be improved as an end result of the work in the area.

Mr. Housel said that Tomi Tomi Drive was just repaved a year ago, and the new asphalt was being destroyed during the current work.

The Manager clarified that over a year ago, DWS learned that the County planned to repave Tomi Tomi Drive, and asked the County to reschedule the repaving until after DWS's project was completed. However, DWS ran into problems with the Jernigan easement and it became clear that it would take a long time to resolve the dispute. In the meantime, the funds for the County repaving were going to lapse, so the County made a conscious decision to go ahead and repave Tomi Tomi Drive, knowing that DWS would come in after and need to repave it after the DWS project was done. It was a conscious decision based on funding and on timing. DWS explained the situation to the community. The upshot is that the road, following DWS's project, will be equal to or better than before. One of the community's concerns had to do with the project term of two years, and residents were under the impression that it would take two years before the road was repaved. The Manager told the community that that was not the case; the contractor is going to repave the road immediately after he lays the pipe and tests it (i.e. when the work in the area is done). The contractor is going to be out of there within two months, not two years. He repeated that the period of disruption would be **two months**.

Mr. Taniguchi asked whether the working hours were agreed upon with the contractors ahead of time.

The Manager said yes, that is the normal procedure. Normally, the contract documents call for an eight-hour day. The contractor may feel that he needs extra time, in this case, rightfully so. He believed that the contractor's intent was to do the work quickly and thus avoid prolonged disruption. Whenever contractors work overtime, they need to get DWS's agreement because

it involves payrolls and extra inspection time. In this case, permission was given by DWS to work the extra hours.

Mr. Taniguchi asked if matters like this were normally brought to the public.

The Manager said no, it was not something that DWS brings to the public.

Mr. Taniguchi noted that the contractor was not working at night or late at night.

The Manager said the plans were to work until about 5:00 p.m., with cleanup going until around 5:30 p.m.

Mr. Kuailani asked about the duration of the contract, and where the contractor is in the contract now.

The Manager said the contract duration is two years, and the contractor has been working for about a month and a half. Initially, they started on Kealaka'a Street, and then the work proceeded to the Tomi Tomi community, where they have been for about a month.

Mr. Beck confirmed that the contractor has been in the area since mid-October.

Chairperson Smith noted that CTS Earthmoving, Inc., is the contractor. He asked who the construction manager was.

The Manager said the construction management was being done in-house.

Chairperson Smith, addressing Mr. Housel, said that a lot of the issues raised were communication issues. He suggested that if the communications flow were improved, the community's level of frustration would diminish. He asked the Manager if a project sign was posted now.

The Manager said the original project sign that is called for in the specifications is posted down at the 595 Tank. DWS agreed to post a sign with wording suggested by Mr. Housel at Tomi Tomi Drive, but that is not the official project sign.

Chairperson Smith said that typically in a County project, there is one project sign. Based on the graphic displayed by Mr. Beck, the project is about two miles away from Tomi Tomi Drive. Typically, the official project sign is posted where the general motoring public would see it, and not in a private subdivision.

Mr. Housel acknowledged that this explanation was helpful, but added that there should have been advance warning and the sign was not posted until a month after construction started. He asked DWS how long the work was expected to take in the Tomi Tomi area. He acknowledged that things do change and that the community could live with that, but not knowing anything, or very little, was not adequate.

Regarding dust control, Chairperson Smith said that contractors are responsible for dust control under Department of Health (DOH) rules. He said that residents should call DOH if the contractor is not following proper dust control procedures.

Mr. Housel said the community has called DOH twice on dust control.

On the work hours, Chairperson Smith said he agreed with the Manager that if a contractor has an eight-hour work day, it takes him an hour in the morning to mobilize and an hour in the afternoon to demobilize, so actual work is six hours. When DWS allows the contractor an extra two hours, the contractor can condense his work schedule and thus minimize the duration of the disruption to residents. He said that it appears that the extended work hours were not communicated to the community.

Mr. Housel said that was the problem.

Chairperson Smith suggested that Mr. Beck and his inspector could do a tailgate community meeting early on a Monday or Tuesday morning, with the contractor there to listen to the community's concerns. The important thing would be to have DWS personnel present to officially communicate those concerns to the contractor. The contract is between CTS Earthmoving, Inc., and DWS, so the official communication would have to go through Mr. Beck or his inspector, not the residents going directly to the contractor, telling him what to do. He noted that it is an active work zone; there are safety issues and other concerns that the contractor has to comply with. On the access issue, the Chairperson agreed that any construction schedule or access plan would be subject to daily revision. He suggested that the contractor give a milestone schedule from beginning to end, and then provide updates as things change. The updates could be issued every week or even every day. Communications is the key thing, he said.

Ms. Aton said that a milestone schedule was posted, going four weeks out, and that schedule has been updated once already, about two weeks ago, when the contractor called to make revisions. She said that an update commentary column had been added at the end of last week. She said she requested the schedule last Thursday, and posted it on the website Friday morning. From now on, Ms. Aton will receive an email from the contractor every week with all of his projected updates to the existing four weeks out, plus an additional week tacked on to the four weeks. The update will come in the final column. Ms. Aton asked if Mr. Housel had seen the schedule.

Mr. Housel said he had seen it, and forwarded it to his neighbors. He noted that the schedule takes the work up to about the third week in December. He asked how long the work is expected to take; he and his neighbors just wanted to know approximately when the work would be over.

Ms. Aton said that in addition to the schedule, there is an overview map, which could also be amended to show the phase the project is currently in.

The Manager expressed concern that the community said they did not know that the project was going to happen. At the last community meeting, held at the Kealakehe High School cafeteria, the contractor did notify the community that he intended to start at a certain time, but unfortunately, not many people attended the meeting. However, the information was conveyed at that meeting, he said.

Chairperson Smith said that hopefully, the website will provide a clear means of communication. He asked Ms. Aton if postings are dated to let people know when the latest update was.

Ms. Aton confirmed this, and said that she also recommended to the contractor that he stencil updates on the sign (with dates of posting) and update the sign regularly because people regularly go to read the sign.

Mr. Inaba noted that one reason that DWS was unable to put the schedule up initially was that the contractor had been slated to work in Mr. Jernigan's easement area first. Due to the condemnation dispute with Mr. Jernigan, the contractor was not allowed to go there, and a right-of-entry agreement was still pending with Queen Lili'uokalani Trust. Therefore, it was a last-minute decision on where the contractor could go (i.e., the Tomi Tomi Drive area).

Chairperson Smith that the Water Board's role is not to micro-manage the Department; the Board provides DWS with input on how they can do a better job. The Department has always been receptive to input, he said.

Mr. Housel said the important thing was communications, and he asked DWS to let the community know if things change or if something happens that affects the community.

The Manager said that the one thing DWS guarantees is that the Department will not disrupt the community's lives for two years. The whole project is two years, but the disruption will not last two years on Tomi Tomi Drive.

Chairperson Smith turned to the next public statement, from Mr. Rod Paulos of Plumbing Services Hawai'i.

Mr. Paulos spoke about his request to the Department to adjust a high water usage bill for Ms. Mary McGrath, his client in Waimea. The following is Mr. Paulos's verbatim testimony:

"Good morning. My name is Rod Paulos, the owner of Plumbing Services Hawai'i. I'm from Kamuela, and we're here to ask for further adjustment of our client's water bill. Let me read this letter that we sent in to the Water Department. We requested consideration for an adjustment to the excessive water usage due to the following situation that occurred on our client's property."

Chairperson Smith referred the Board to a letter dated November 9, 2009 from Mr. Paulos to Chairperson Smith, which Mr. Paulos had written in response to a letter from DWS dated October 16, 2009. Copies of the letters were included in the Board's packets.

Mr. Paulos resumed his testimony:

"This is to explain the situation. The customer's residence is located at an elevation above the service area of the Department's system. An elevation agreement was executed prior to the service being provided. Due to the topography of the lot, we installed two water storage tanks to service the residence. One tank was installed midway up the residence, and the other at the residence site. The lower tank is fed by the County-pressure potable water, and then pumped from the location to the upper tank, which services the house. The lower tank has a float valve to keep the tank full. Both tanks and supply lines were flushed, tested and filled to a total of 8,000 gallons in December of 2008. This system was upgraded without incident since December 2008. From January 7 through May 5, there was very little consumption. This is due to the fact that the owner does not reside here, and only visited during that time frame. Between the days of May 5 and July 7, their consumption noted on your bi-monthly invoice was 436,000 gallons. On June 30, we received a call from the house contractor, notifying us

that the water was flowing out of the lower tank's overflow, so we advised them to close the customer valve at the meter until we could get there. There were several breaks in the County main waterline between January 2009 and July 2009, which led the emergency crew to be called out and repair the line. I believe this may have contributed to debris passing through the meter, and therefore causing the flow valve to malfunction. What happens is that this is the float valve that was in the lower tank, and we found a pebble lodged in the tank that was keeping this valve from closing. So I myself took the float valve to inspect it, and found a tiny pebble which was embedded inside the brass valve. After researching the situation, I believe the tiny pebble came through from the County distribution system, and passed through the meter. We have the float valve. This is almost a year ago, so I don't have the stone that was in the valve; it fell out."

The Manager asked how big the stone was.

Mr. Paulos: "It was just a pebble."

The Manager asked if it was approximately an eighth of an inch.

Mr. Paulos: "Yeah, we looked at the screen, not in that water meter, but another water meter, and we felt that the pebble could pass through the screen."

The Manager said that he had a screen at the meeting, and that there was no way that a pebble of an eighth of an inch could pass through such a screen.

Chairperson Smith asked that Mr. Paulos be allowed to finish his testimony, and afterwards, Mr. Yamamoto, DWS's Waimea supervisor, could give the other side of the story.

Mr. Paulos: "So we are asking for an adjustment to the customer's water bill for the amount of \$2,518.49; not just the overage of consumption. We realize that she's responsible for the standby fee and the normal average consumption. If, based on the average over her last three billing cycles, her average consumption estimates at 3,000 gallons, and this would be \$31.74... So we're just asking for a further adjustment to her water bill, and what we did, being that this water improvement is just part of other improvements on her property, we didn't want her to stop paying the general contractor, who is Quality Builders, for their services, so we had the Department transfer her bill to my personal account. So I'm just asking if we could have a further adjustment on that water bill." (*End of Mr. Paulos's testimony.*)

Chairperson Smith noted that Mr. Paulos was testifying on Agenda Item 10 (C), and asked if the Board could take this item out of order to accommodate Mr. Paulos.

MISCELLANEOUS

C. LETTER FROM PLUMBING SERVICES HAWAI'I ON REQUEST TO ADJUST HIGH WATER USAGE BILL FOR MS. MARY MCGRATH:

The Manager called on Mr. Yamamoto to give background on the letter. Mr. Yamamoto had looked at the float valve and has a sample of the screen, he said. When the meter was taken back to Hilo, the meter tested out perfectly and the test results were available, the Manager said. The test results were well within the American Water Works Association guidelines for meter testing. The screen was intact, and the meter in question was functioning so well that it

is now in use at a location in Hilo. The Manager said that the sample of the screen on hand at the meeting will show that no pebble sized an eighth of an inch could pass through. Furthermore, the screen in question was not broken.

Chairperson Smith described the Waimea property in question. The house elevation is higher than the Department's water service level can provide service. In cases like this, the Department requires the property owner to sign an elevation agreement which states that, because of the way the DWS system is designed, the Department cannot provide the normal standard of service. Under the agreement, the customer agrees to accept water service at a substandard pressure. In many such cases, the land owner will install a service water tank that breaks the pressure, and from there, the owner has a pump that pumps into a higher reservoir that services the house. According to Mr. Paulos, the float valve was installed at the lower tank, and it did not shut off when it was supposed to, the Chairperson said. He noted that this was within the owner's private system, past DWS's meter and past DWS's screen. The Chairperson said he believed that the real issue came down to whether the pebble (or the obstruction) that ended up in the float valve could have come from DWS's water system and DWS's water meter, or whether the pebble was there before the improvements were built.

Mr. Harai asked where the float valve was located.

Mr. Paulos said the float valve was installed in the first tank, the lower tank, where there was about 25 psi of County water pressure. At the house site, there is zero pressure, he added.

Chairperson Smith said that when the tank is full, the valve is supposed to close, but because the rock was in there, the valve remained open and the water overflowed the upper tank.

The Manager noted that under DWS rules, when situations like this occur, people are not allowed to pump directly from the DWS system. When there is an elevation agreement and an owner needs to pump water to his home, DWS rules require that there is a physical air gap between DWS's system and the holding tank to prevent any possibility of backflow. If something were to happen to DWS's system, there would be no way that the water from the private tank could come back into the DWS system, he said. Therefore, that float valve was probably in the tank, but was probably above the water level of the tank. DWS does not allow an owner to pump directly into DWS's system, he said.

Mr. Paulos confirmed that the float valve was indeed above the water level, and that there was also a backflow preventer at the meter at the property line. He confirmed that the float valve was installed the way it is supposed to be, with the storage tank first.

Mr. Kuailani asked if there was damage to the float valve.

Mr. Paulos said no, the valve worked perfectly; it was tested.

Mr. Kuailani asked when the rock was found.

Mr. Paulos did not answer, saying the pebble was in there, and was keeping the valve from closing.

Mr. Beck said that the Department's letter of October 16, 2009 says that DWS personnel went to the site, and there was no washer, gasket or pebble found in the float valve, and the float valve still failed.

Mr. Paulos said he was aware of that, but said it was not so. He said that what was taken to DWS for inspection was only this particular part. He asserted that the washer was still in there, and that this was the “seat” from the washer. He said that his daughter had taken only part of the valve, not knowing that they go together. Therefore, Mr. Paulos went to Mr. Yamamoto’s office to explain everything; the valve works perfectly, he said.

At this point, Chairperson Smith asked Mr. Yamamoto to make his presentation.

Mr. Yamamoto said that Mr. Paulos’s daughter had delivered only the top half of the valve, which he examined closely. He confirmed that the “seat” of the valve was the missing part. He concluded that the valve was defective. The day after the daughter’s visit to DWS, Mr. Paulos brought over the “seat” of the valve. Mr. Yamamoto confirmed that rubbish and debris do get stuck in a valve. DWS had some breaks in the waterline in Waimea, and Mr. Yamamoto received work orders to go make repairs.

Chairperson Smith clarified that the breaks were in DWS’s main along Māmalahoa Highway, which services the area fronting the McGrath property’s meter.

Mr. Yamamoto said that the closest that he got to the McGrath property was a 1.5 inch by 2 inch corporation head, near the Kamehameha Preschool on Hawaiian Homes. The corporation head was leaking and needed to be removed. He noted that the waterline there was looped, with valves at various stations. When the work crew went to shut the line down, the crew could not shut the line completely down. The reason was that there was pressure, and so the crew slid a full-circle clamp into the line. This work was done on January 20, 2009. The other full-circle clamp was done on January 21, 2009, up in Pu’u Nani subdivision. This meant that there was no need whatsoever to shut down the line in the area. He confirmed that in Hawaiian Homes’s Pu’u Nani subdivision, there were booster pumps so that there was no way that the water flowed there.

The Manager clarified that the corporation head could not be shut down completely; there was still pressure in the line pushing stuff *up*, so there was no way that debris could get into the line.

Chairperson Smith confirmed that even if any debris came from those repairs, it would be very unlikely that debris would go the half-mile or a mile upstream from the repair area to reach the McGrath property. He asked Mr. Yamamoto to talk about the screen.

Mr. Yamamoto passed around a screen which he said was identical to all of the ones on DWS meters islandwide.

Mr. Paulos said that the pebble that he removed could have gone through the screen, and could have been just enough to keep the valve open. Because nobody lives year-round on the property, the water was flowing for a considerable length of time.

Mr. Yamamoto said that rubbish and debris do not only come from the County side of the water system.

Mr. Paulos agreed, and said that his first thought was to excavate the entire area because a fencing installer was working on the McGrath property. He thought at first that maybe the

fencing man, using his auger, may have drilled into the water pipe and then fixed it without telling anyone. However, that was not the case, he said.

Mr. Yamamoto said that he had nothing more to share, except to say that he was pretty sure that the problem was not a result of the DWS waterline breaks, because the problem at the McGrath tank occurred long after the waterline breaks.

Mr. Paulos, citing his long years as a plumber, noted that stuff grows in the water that can cause valves to remain open.

Chairperson Smith noted that the Department's Rules and Regulations allow a customer to have an adjustment of one-half of the overage (excessive usage) once every three years.

Mr. Paulos said that this adjustment had been received, but that the customer was requesting a total adjustment because she does not believe that she should have to pay for the excessive usage.

Chairperson Smith noted that the customer got a bill of \$2,518.49, and was allowed a one-time adjustment of one-half (i.e., \$1,239.54) under the Rules and Regulations. Mr. Paulos, however, was asking for 100 percent off, that is, a further adjustment of \$1,239.54. From the Department's perspective, DWS has jurisdiction up to the meter. DWS controls the lines, the meters, the appurtenances and facilities up to the meter. The Department's last means of defense is the screen on the meter to prevent any debris from going into the customer's system. Anything that happens beyond the meter, on private property, is the responsibility of the individual homeowner. DWS does not control the customer's tank or the private waterline that was installed by the owner, nor does DWS control the maintenance of the float valve or any pumps or appurtenances beyond the meter, the Chairperson said. The Board needs to consider whether it wants to allow a further adjustment, and whether there is evidence that something in the Department's system prevented the float valve from closing.

The Manager said that the Board will have observed how small the openings are in the screen. He noted that Mr. Yamamoto testified that when the crew made repairs in the area, the crew could not shut down the system. The water was still shooting out, so the crew slid a clamp over the line. This shows that with the pressure going out, nothing could have gone in. Even if something dropped in, there is no way it would go backwards; it would go forwards, he said. The Manager said he was positive that a pebble could not logistically have come from the DWS meter.

Mr. Kuailani asked how long the problem went on, suggesting possibly one month or two months.

Mr. Paulos said the problem could have gone on that long because it was not a big leak; it was just leaking for a long time. Nobody noticed until the property owners hired the fencing man, who noticed that the tank was overflowing.

The Manager noted that in cases of excessive usage, DWS notifies the customer either by tagging the door or via a notice with the billing.

Mr. Paulos said that when he got the call, he went to shut down the water immediately. He went to DWS's Waimea office and read the meter. He hoped to keep the news from the owner because he felt the problem was his responsibility. There was a miscommunication over the

reading, and at first he thought that it was a “misread” of the meter, so he decided he could solve the problem by fixing the valve. However, the owner sent Mr. Paulos the bill, which she refuses to pay. Mr. Paulos confirmed that the valve has been fixed.

Mr. Taniguchi asked how a pebble could have gotten in.

Chairperson Smith said that the pebble either came in through the meter, or it was in the system when the system was constructed.

Mr. Taniguchi said that he did not think it was in the meter; it was in the tank already.

The Manager said no, it was not in the tank; it was in the line that the owners installed.

Mr. Paulos said that 8,000 gallons flowed through the pipes before anything went wrong.

Mr. Meierdiercks asked when the last time that the owners were on the property was.

Mr. Paulos said he did not know; they just show up and stay for the weekend, and then go back. He confirmed that no one was on the property full-time.

Chairperson Smith again cited the Department’s perspective. When DWS issues a meter to a customer, the Department has no oversight; they do not visit the site and they do not see what happens within the private property. The Department’s responsibility ends at the meter. When a customer signs up for service, he takes responsibility for the meter and has a duty to mitigate any issues that happen within the property.

Mr. Paulos said that the leak was in the first, or lower tank, where the County water reaches and comes to the float valve, which remained open and overflowed.

Chairperson Smith said that because the leak occurred far from the meter, it was not DWS’s responsibility to go on private property to investigate. He said that while he sympathized with Mr. Paulos over this problem, it was not DWS’s responsibility to absorb anything more than the rules allow.

Mr. Paulos said that his company was not the first to start installation of the tanks and the system. Somebody else started the work, and failed. The first people did not even install a storage tank; they just pumped water right out of the meter, he said. The first people had a falling-out with the owners, and were fired. The owners then hired Quality Builders to make things right, and Mr. Paulos is working as a sub-contractor to them. Mr. Paulos said his company installed two storage tanks in December 2008.

Mr. Masuda from Corporation Counsel noted that under the rules, DWS has no control of the water from the meter, nor does DWS have responsibility for the maintenance and repairs of pipes or fixtures beyond the water meter. In addition, there is one adjustment allowed in a three-year period, and that adjustment is one-half of overage (excessive usage).

MOTION: Mr. Harai moved to deny the request for a further adjustment; seconded by Mr. Taniguchi.

Mr. Kuailani asked whether the 50 percent adjustment was credited to the owner.

Chairperson Smith said the adjustment was credited to the McGrath account, and Mr. Paulos paid at the end.

Mr. Taniguchi said he transferred the bill to his account.

Mr. Mukai said he sympathizes, but did not believe that the pebble was caused by DWS.

ACTION: Motion carried unanimously by voice vote.

Chairperson Smith thanked Mr. Paulos for bringing the matter to the Board's attention.

APPROVAL OF MINUTES:

Chairperson Smith entertained a Motion to approve the Minutes of the October 27, 2009, Water Board meeting.

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

APPROVAL OF SUPPLEMENTAL AGENDA AND ACTION TO MOVE AGENDA ITEMS:

None.

To accommodate Legislative Auditor Ms. Colleen Schrandt, Chairperson Smith asked that Item 10 (A), LEGISLATIVE AUDIT OF DWS, be moved forward ahead of Item 5 (A), PROFESSIONAL SERVICES AGREEMENT: AINAKO AND AINA-LANI WATERLINE REPLACEMENT, JOB NO. 2002-0798. Deputy Corporation Counsel Mr. Masuda said that no vote needed to be taken to move the item forward.

MISCELLANEOUS:

A. LEGISLATIVE AUDIT OF DWS:

Ms. Schrandt noted that her office had conducted a county-wide risk assessment in 2007, in which the Manager participated. Based on the risk assessment, the Legislative Auditor created a priority list of audits, and DWS is up next. She noted that preliminary work has been done to familiarize the auditor with DWS operations, and to identify possible issues in the Department. Ms. Schrandt said she met with the Manager and key DWS staff, and today she wished to get Water Board input before finalizing the scope of the audit.

Chairperson Smith noted that the item today was informational, and did not allow for decision-making. He asked what areas the auditor intended to focus on.

Ms. Schrandt said she could not indicate the areas because they were not yet finalized.

The Manager said that during the meeting attended by Ms. Schrandt and DWS staff, the Department suggested some focus areas, including financial collections. Today, Ms. Schrandt was seeking input from the Board, on whether there were particular areas the Board wished the audit to focus on.

Chairperson Smith noted that DWS is a semi-autonomous County agency, and therefore is not directly under the County Council or Legislative Auditor's responsibility. However, as an ongoing business that provides utility services to customers within the County, the Board

welcomes any and all oversight to make DWS stronger and better-run, he said. That being said, Chairperson Smith said he wanted to make clear that any outcome of Ms. Schrandt's audit would really be just a suggestion to the Department.

Mr. Masuda said that the Board, which has direct oversight over DWS, can discuss any focus areas the Board wishes Ms. Schrandt to look into as an Action Item. Because an Action Item is not on today's Agenda, the Board needs to place on a future meeting's Agenda a separate item pinpointing the Board's desired focus areas. He noted that the Legislative Auditor is availing herself and her staff to assist the Water Board.

Ms. Schrandt clarified her office's role as providing checks and balances for the public, to provide greater transparency and accountability. To fulfill its role, her office needs to provide recommendations that promote improvement and progress. She said that the experts on DWS issues are the Department's management and the Water Board, and therefore the Legislative Auditor needs input from everyone to make a good assessment of where the risks lie, and how the audit can be of the greatest benefit. She said that the County Charter amendment that was passed a year ago gave the Legislative Auditor's office the right to audit any County department, agency or semi-autonomous agency. This, she assured, was the proper thing for her office to do.

Chairperson Smith said he was not questioning Ms. Schrandt's right to do the audit; he was questioning what action the Board takes after the Board receives feedback from the audit.

Ms. Schrandt said that while her office has the authority to audit, her office does not have any actual authority to say what action must be taken, which would be up to the Board and DWS management. The Legislative Auditor's job is to report findings, and make recommendations that her office hopes will be of benefit and will promote progress. It is up to the Water Board and DWS management to go from there, she said.

Chairperson Smith said that the Board and the Manager work very well together, in the interests of making a stronger department.

Ms. Schrandt said that was the impression that she and her staff got from the initial meeting at DWS; she foresees a very smooth process for the audit. She noted that the only concern she had was that this is the first audit involving a board, in between a Department and the Council. She said that while her office likes to stay in communication with management throughout the process of the audit, her office will not be able to come and report publicly its findings to the Board and DWS. It is not proper for her office to discuss findings before the final report is made public; this is how the Legislative Auditor is obliged to operate, she said.

Chairperson Smith asked Mr. Taniguchi to explain some of the efforts he is making, which are listed in today's Agenda. These efforts will let Ms. Schrandt know some of the areas of concern that the Board had, he added.

Ms. Schrandt confirmed that she had read the Minutes of the previous Water Board meeting, citing the Board's focus on cash handling. DWS management had also brought up this area during the meeting with Ms. Schrandt, she noted.

Mr. Taniguchi said that the Board was deferring his item, in the belief that it was better to wait for Ms. Schrandt to give her recommended focus areas first. The idea was to discuss the item later and figure out the best solution, he added.

Chairperson Smith suggested that Mr. Taniguchi provide Ms. Schrandt with a copy of his ad hoc finance committee summary, to show Ms. Schrandt the committee's three focus areas.

Mr. Taniguchi confirmed that he would email the summary to Ms. Schrandt.

Mr. Masuda asked Ms. Schrandt if she had a timeline for when her audit might be finished, and for when she wants the Board to provide its recommendations for areas to focus on in her audit.

Ms. Schrandt said she needed the Board's input as quickly as possible, and her office is ready now to start firming up the audit's scope, doing the formal entrance conference and getting the fieldwork started.

Chairperson Smith said that the question, then, is when does the audit start, and when does the auditor plan to finish.

Ms. Schrandt said that normally the audit runs for six months, in three two-month phases. Two months are for the research and planning phase; two months for the fieldwork and two months for reporting.

Chairperson Smith asked if there were gaps between the two-month periods.

Ms. Schrandt said that she did not foresee major gaps.

Chairperson Smith asked if the audit started in December, would it finish in May.

Ms. Schrandt confirmed this.

Mr. Masuda asked if for example, the Board came up with a focus area midway during the audit, say in February, would it be okay to send the recommendation to Ms. Schrandt.

Ms. Schrandt said absolutely, the scope could be revised. While her office cannot keep an audit going forever, if there is a shift in the audit's focus, her office could be flexible.

Mr. Masuda asked if Ms. Schrandt could report to the Board what areas her office is looking into as a priority.

Ms. Schrandt said that she wanted to get the Board's input, and look at it in relation to the areas that her office is looking at. She said she could come back with a formal scope, and could issue a formal letter to the Board informing on what exactly the audit's scope is.

Chairperson Smith asked what the proper protocol was for giving information to Ms. Schrandt, and whether it should go through the Chairperson.

Mr. Masuda said that the Board would have to vote on its recommended areas to the Legislative Auditor, and would have to agendize it as an Action Item. He asked if agendizing the item on the December 15, 2009 meeting would be okay for Ms. Schrandt.

Chairperson Smith agreed that the Agenda item for today does not allow the Board to take action, but promised to get the recommendations to Ms. Schrandt as soon as possible. He asked the Secretary to place an Action Item on the next meeting's Agenda. He asked Mr. Masuda if the Board could even discuss the recommendations at today's meeting.

Mr. Masuda said the Board should not hold a discussion, because today's Agenda only allows for information from Ms. Schrandt.

Ms. Schrandt asked if it was proper for the Board members to communicate *individually* with her.

Mr. Masuda confirmed that it was okay for Board members to communicate what they want to the Chairperson individually, as long as there are no serial communications. He reaffirmed that an official vote on recommendations for the Legislative Auditor must be agendaized.

Chairperson Smith asked Board members with suggested items to email the Chairperson alone, and copy in the Secretary. He would then compile the suggestions, which would be discussed at the December Board meeting, and thereafter presented as a consolidated list to Ms. Schrandt's office. The three focus areas taken up by the ad hoc finance committee will be on the list, he added.

Mr. Kuailani asked how broad the audit's scope would be.

Ms. Schrandt said that the narrower the scope, the better. She said she was hoping to keep the scope on the DWS audit as narrow and specific as possible. Her desire was to finish the audit in a timely manner, she said.

Mr. Kuailani asked whether her audit looked at financials.

Ms. Schrandt said no, KPMG is doing an independent financial audit of DWS every year already, and her office does not wish to duplicate those efforts. Instead, her office's audits look at a department's underlying areas, the processes, the controls, the procedures and the performance. For example, the audit might look into DWS's compliance with water quality standards. Customer service is another area that the audit looks at.

Chairperson Smith repeated that Board members should email to him any topics they want looked at.

Mr. Mukai asked Ms. Schrandt to email the Board a typical audit that the County has done.

Ms. Schrandt directed the Board to the County website, under Legislative Audit Reports, where all of the audits have been posted.

Chairperson Smith confirmed that the December Agenda will include discussion/action on recommended areas for the audit. Following the meeting, the Board will get back to Ms. Schrandt formally. He asked Ms. Schrandt to communicate with the Secretary if she had any communications in the meantime.

Ms. Schrandt asked if she should stay for the rest of today's meeting, since she noticed that the Manager's Report included an item on the Legislative Audit.

Chairperson Smith thanked Ms. Schrandt but said no, the item had been taken up out of order here already. *(Ms. Schrandt left the meeting.)*

At 11:25 a.m., Mr. Harai requested a break in the meeting. Chairperson Smith called a five-minute break from 11:25 a.m. to 11:30 a.m.

(Meeting resumed at 11:30 a.m.)

SOUTH HILO:

A. PROFESSIONAL SERVICES AGREEMENT: AINAKO AND AINA-LANI WATERLINE REPLACEMENT, JOB NO. 2002-0798:

The first bid for the subject project on June 23, 2006 had only two bidders, and the bids were judged to be high for the scope of work. The apparent low bid was for \$1,958,107.00, or more than double Engineering's estimate of \$940,000.00. A decision was made to re-bid the project, with some controls to scale back the project if necessary. In the meantime, there were other problems with the plans, where additional pipeline work would be required.

The consultant, Hilo Engineering, Inc., has submitted a proposal for a supplemental agreement to re-bid the subject project, with the addition of replacing approximately 2,800 linear feet of 6-inch waterline to meet National Pollutant Discharge Elimination System (NPDES) and Best Management Practices (BMP) requirements, and also for additional pavement repairs.

The original agreement was for \$67,650.00, with one change order for \$7,000.00, for a revised agreement amount of \$74,650.00.

Staff has reviewed the request and finds that the \$129,500.00 in additional engineering fees are justified.

The Manager recommended that the Board grant this request for additional funds of \$129,500.00 to Hilo Engineering, Inc., and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents for PROFESSIONAL SERVICES AGREEMENT: AINAKO AND AINA-NANI WATERLINE REPLACEMENT, JOB NO. 2002-0798, subject to review as to form and legality by Corporation Counsel.

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

The Manager explained that the scope of work now is greatly expanded from the earlier scope of work; therefore, the price is higher.

Mr. Inaba said the original contract, for \$67,650.00, was considered very low. DWS tried to piggy-back with the County's Waste Water Division, which planned to do sewer improvements in the area. The County project did not go through, but DWS was able to utilize Hilo Engineering's proposal, with their survey taken care of with the sewer project. DWS was able to get a very reasonable price at the outset. Since then, however, conditions have changed, roads in the areas have been paved, and other improvements have been done. As a result, Hilo Engineering must go back and do a new topographical survey of the entire project.

Chairperson Smith expressed concern that a \$74,000.00 contract has become a \$205,000.00 contract, while it involves the same 2,800 feet of waterline.

Mr. Inaba said that some of the waterline has changed, too. When DWS did the first bid, the Department did not accept the contractor's proposal, because the bids at that time were coming in too high. When DWS later tried to determine alternates, whereby the Department could possibly deduct from the contract when it was re-bid, Operations in the meantime discovered two breaks that needed to be fixed. Those areas were included in DWS's original contract, and the Department had to go back and take another look at the entire system, because it involved a mix of some galvanized line, ductile iron, and transite line. DWS also found that the maps in use were not very accurate. Going over the project again with Operations, the Department found there were some streets in the area where only lateral replacements were done, which meant replacing the entire line. In addition, there were some streets where lines did *not* require replacement because they had been replaced already. In summary, DWS re-determined the scope, outlining what things needed to be changed from the original scope. As a result, the design needs to be changed for the sections in question.

ACTION: Motion carried unanimously by voice vote.

HĀMĀKUA:

A. DRINKING WATER STATE REVOLVING FUND RESOLUTION NO. 09-03:

Resolution No. 09-03 is for the project for which DWS has submitted a loan application, under the Drinking Water State Revolving Fund (DWSRF). One of the prerequisites for the loan is a Resolution approved by the Water Board. This Resolution is specifically identified for the following project: JOB NO. 2006-905, KAPULENA WELL DEVELOPMENT - PHASE 1, and authorizes the Manager or Deputy Manager to execute loans and/or grants with the State Department of Health for up to \$1,500,000.00.

The Manager recommended that the Water Board adopt Resolution No. 09-03 subject to the approval of Corporation Counsel.

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

The Manager explained that the well is badly needed for the area. Currently, DWS is hauling water from Honoka'a to Kukuihaele because the Kukuihaele well's water is extremely salty. The Kapulena well will alleviate that problem, and provide an additional water source for the area. DWS has applied for federal stimulus funds for the project, and will be receiving 60 percent funding for the project. He noted that this is a matching grant; DWS must provide 40 percent.

Mr. Inaba said that the total cost of the project will be about \$1.5 million.

The Manager noted that the federal grant was for \$754,000.00, and DWS would borrow the balance from the State Revolving Fund (SRF), which are low-interest loans through the State Department of Health.

Mr. Taniguchi expressed confusion over language in the Resolution, which mentioned a figure of \$4.875 million.

Mr. Inaba explained that the \$4.875 million was specific to the Āhualoa well project, but the language was left in because of the possibility of a *second* round of funds coming in that DWS might be able to use.

The Manager explained that the entire state got less than \$19 million through the SRF program, which was split four ways among the counties. There is a possibility that one of the counties may not use their share. DWS is already using its share for Āhualoa, but there remains a possibility of extra funding (left on the table by one of the counties), that DWS might get or might get a portion of. Therefore, the language in the provision was left in the Resolution so that DWS may get some of those monies also.

Chairperson Smith asked if it was necessary for the Board to amend the Motion, to allow DWS to amend the Resolution.

Mr. Masuda suggested that the Board could do a floor amendment to the Resolution.

Mr. Inaba interjected, saying that the language in question was not specific to DWS's project, and instead it is specific to the County.

Chairperson Smith asked again if the Resolution is okay as written.

Mr. Inaba confirmed that the Resolution was okay because Kapulena was one of the projects on DWS's list for stimulus funds.

Mr. Taniguchi asked if the Board was authorizing a loan of \$1.5 million.

Mr. Inaba confirmed this.

Mr. Taniguchi, summarizing, said that the chances of getting that \$1.5 million are pretty low, unless one of the other counties says they do not want to use their share of the money.

The Manager confirmed this, while reminding the Board that DWS is getting federal money, and so DWS's total outlay is going to be less than \$1.5 million.

Mr. Taniguchi asked if DWS had budgeted for the debt service.

Mr. Sumada said yes, it was in the budget.

ACTION: A roll call vote was taken on the Motion to adopt the Resolution. Motion was carried by Ayes: 7 – Messrs. Harai, Kuailani, Lindsey, Meierdiercks, Mukai, Taniguchi, and Chairperson Smith; Nays: 0 – Absent: 1 – Ms. Kim.

NORTH KOHALA:

A. DRINKING WATER STATE REVOLVING FUND RESOLUTION NO. 09-04:

Resolution No. 09-04 is for the project for which DWS has submitted a loan application, under the Drinking Water State Revolving Fund (DWSRF). One of the prerequisites for the loan is a Resolution approved by the Water Board. This Resolution is specifically identified for the following project: JOB NO. 2005-867, HALAULA WELL DEVELOPMENT - PHASE 1, and authorizes the Manager or Deputy Manager to execute loans and/or grants with the State Department of Health for up to \$1,500,000.00.

The Manager recommended that the Water Board adopt Resolution No. 09-04 subject to the approval of Corporation Counsel.

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

The Manager said this well will allow DWS to offer greater service to the area, and create an additional source of water whereby DWS could allow new subdivisions. The funding for this project would come from low-interest loans from DOH, he added.

Mr. Mukai asked if any federal funds were coming in for this project.

Mr. Inaba said no, the funding would be from SRF funds. The language in the Resolution was similar to the previous Resolution to show that the project is shovel-ready, making it eligible for any other stimulus funds that might become available.

ACTION: A roll call vote was taken on the Motion to adopt the Resolution. Motion was carried by Ayes: 7 – Messrs. Harai, Kuailani, Lindsey, Meierdiercks, Mukai, Taniguchi, and Chairperson Smith; Nays: 0 – Absent: 1 – Ms. Kim.

SOUTH KOHALA:

A. JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, PW NO. 638:

The contractor, Goodfellow Bros., Inc., has requested a 26-calendar day time extension. This request consists of 2 calendar days for the additional work of Change Order No. 1 (five added clean-outs to the subdrainage piping system); and 24 calendar days for rain-outs and unworkable conditions from September 1, 2009 to October 31, 2009.

Note: There is no additional cost associated with this time extension.

Staff has reviewed the request and finds that the 26 calendar days are justified. This is the second time extension request.

| Ext. # | From (Date) | To (Date) | Days (Calendar) | Reason |
|-------------------------------------|-------------|-----------|-----------------|---|
| 1 | 11/9/2009 | 1/30/2010 | 82 | Rain-out days and Hypalon polymer supply issues. |
| 2 | 1/30/2010 | 2/25/2010 | 26 | Additional clean-out installation work and rain-out days. |
| Total Days (including this request) | | | 108 | |

The Manager recommended that the Board approve a contract time extension to Goodfellow Bros., Inc., of twenty-six (26) calendar days from January 30, 2010 to February 25, 2010, for JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS.

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

Mr. Inaba said that the conditions on site have not allowed the contractor to proceed with the work and meet specifications. This was for a two-month period, with about half of the time rained out.

Chairperson Smith expressed approval that the contractor was requesting the extension in small bites, rather than waiting for a long period of time. He asked whether the additional work specified in Change Order No. 1 was covered in the contingency funds.

Mr. Inaba confirmed that it was covered by the contingency funds.

ACTION: Motion carried unanimously by voice vote.

NORTH KONA:

A. JERNIGAN PROPERTY CONDEMNATION DISPUTE:

Mr. Masuda reported that the dispute is stuck in court. The court denied a motion to vacate DWS's possession, and Mr. Jernigan then filed a motion to reconsider. That is where the matter stands. Judge Ronald Ibarra sought input from the State Attorney General's office on the constitutionality of the condemnation statute. The Attorney General was supposed to submit his position filing by November 23, 2009, but Corporation Counsel has not yet received it. From there, Mr. Jernigan and DWS have until December 27, 2009 to file a response. Pending that, and because there was a motion to reconsider, everything is stayed. DWS cannot enter and take possession at this point.

Chairperson Smith asked how this affects CTS Earthmoving's contract, and how much work does DWS have for the contractor before the situation becomes a crisis.

The Manager said that theoretically, CTS has enough work for a whole year. The Department was concerned that under the contract, DWS asked that the top section be worked on immediately. As long as the Jernigan dispute continues, that will not happen and it will affect DWS's ability to serve the proposed Hawaiian Homes housing project in the area. However, barring that, the contractor can still work on the easements at Queen Lili'uokalani Trust's property, do the tanks, etc. In summary, CTS has more than enough work to do for another year, he said.

Chairperson Smith said that his concern was that the longer it takes to resolve the litigation, Mr. Jernigan's position gets increasingly stronger. Corporation Counsel needs to resolve this quickly; otherwise the mitigation of damages to the contractor will go higher and higher, he added.

Mr. Meierdiercks wondered if the Board would need to take any action or approval, if the dispute gets cleared up by the next Board meeting. In such a case, CTS could just keep going on the project, he said.

The Manager said DWS had relayed this information to the contractor.

Mr. Beck asked Mr. Masuda if the judge rules in DWS's favor but Mr. Jernigan appeals in federal court, would DWS still be stayed or could the state allow DWS to go forward, at risk.

Mr. Masuda said it would be *at risk*. He noted that Mr. Jernigan will have to establish federal grounds to appeal. At issue is a state condemnation action. If DWS were to lose, all other state condemnations will be in jeopardy; the entire state will be affected, he said. Mr. Jernigan may appeal, and try to get injunctive relief while the appeal is ongoing.

Mr. Beck asked whether this kind of condemnation case has been tested many times in the past.

Mr. Masuda confirmed that “plain vanilla” condemnations have passed the constitutionality test numerous times. He noted that the tests to get injunctive relief pending an appeal are that the party must show likeliness of success on appeal *and* must show irreparable harm. Showing the likeliness of success could be a tough test, he added.

MISCELLANEOUS:

A. **LEGISLATIVE AUDIT OF DWS:**

(This item was taken up earlier.)

B. **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**

Subdivision Application No. 2005-000211

Grantor/Seller: Big Island Bamboo/BIBCO, LLC

TMK: (3)1-3-008:027 portion

E.W.O.: 2009-031

Lots: 7

Zoning: A-1a

Facilities Charge: \$33,000.00

Paid: 5/14/2009

Final Inspection Date: 1/22/2009

Water System Cost: \$46,000.00

The Manager recommended that the Water Board accept these documents subject to the approval of the Corporation Counsel and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents.

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

C. **LETTER FROM PLUMBING SERVICES HAWAI‘I ON REQUEST TO ADJUST HIGH WATER USAGE BILL FOR MS. MARY MCGRATH:**

(This item was taken up earlier in the meeting.)

D. COUNTY OF HAWAII'S GENERAL OBLIGATION BOND ISSUE ON BEHALF OF DEPARTMENT OF WATER SUPPLY:

The Department provided an update on Bill 160, which authorizes the sale of \$31 million in general obligation bonds for the purpose of funding various improvement projects for the Department of Water Supply.

Bill 160 had its first reading at the Hawai'i County Council meeting held on November 4, 2009, and was passed following its second and final reading on November 18, 2009.

The DWS will reimburse the General Fund for the related debt service on the bonds and the cost of issuance.

The Manager said the general obligation bond was basically a go, now that it has passed its second reading. The Manager met with the Mayor yesterday, and thanked the County for doing the general obligation bond for DWS. The County pledges its reputation so that DWS could borrow money, and DWS pays the money back, the Manager explained. DWS has projects lined up and ready to go as soon as the Department receives the funds, he added.

E. REPORT OF AD HOC FINANCE COMMITTEE:

The Water Board's Ad Hoc Finance Committee Chairperson, Mr. Art Taniguchi, is investigating the following areas, which encompass the scope of the Committee's work. It had been anticipated that at this meeting, the Committee would do the following tasks:

1. Recommendation and possible concurring vote on DWS policy regarding credit card expenses: Mr. Taniguchi noted that the Manager had provided the Board with the Department's policy on credit card use, with which the Committee concurred. Since the policy has been implemented, it does not require Board action.
2. Report on vehicle take-home policy: Mr. Mukai and Mr. Lindsey are spearheading DWS vehicle policy, which Mr. Taniguchi described as a very complex topic. Mr. Lindsey, whose company has a fleet of vehicles, brings valuable expertise to the table, Mr. Taniguchi noted. The Committee has met, and has a rough draft of the policy, which the Committee will fine-tune with the Manager and Deputy Manager. By the December Board meeting, there should be something more concrete to report.
3. Report on procedures regarding cash control: As mentioned earlier in this meeting while the Legislative Auditor was present, the Committee has decided to wait to hear what Ms. Schrandt's office comes up with, to avoid duplicating efforts.

Chairperson Smith noted that the Agenda for the December Board meeting should include discussion/decision-making on whatever the Committee has finished. He asked the Secretary to send a copy of whatever is decided on by the Board to the Legislative Auditor.

Mr. Kuailani asked if a written copy of the draft vehicle policy was available.

Mr. Taniguchi said the policy was not ready yet, but copies will be distributed to the entire Board when they are ready.

F. ENERGY MANAGEMENT ANALYST UPDATE:

Ms. Myhre covered the following areas:

- a. Negotiations with HELCO on Lālāmilo Windfarm/DLNR land lease: DWS's lease on the property with the Department of Land and Natural Resources (DLNR) expires in December 2010. DWS has been negotiating with HELCO on what DWS wants to do. Ms. Myhre reported that the Manager on November 16, 2009 had sent a letter to HELCO expressing dissatisfaction with HELCO's performance, and requesting a schedule for cleanup of the 78-acre site. Chairperson Smith, approving the letter, said that HELCO needs to have a contingency plan in place to satisfy DWS as the primary lessee of the property. DWS and the Board are on the line, he said, because DWS must return the site to DLNR in 13 months. Ms. Myhre said she had contacted DLNR in Hilo to inform them of the letter, and DLNR was happy that DWS has requested HELCO to clean up the site. She said she expected to continue conversations with DLNR regarding any possible project that DWS does with HELCO. Ms. Myhre reported that the National Renewable Energy Laboratory (NREL) met with the County, HELCO and DWS to discuss NREL's technological support of a project. One potential project concept is to pump water uphill and let it flow downhill through DWS's system through a hydro-generator. NREL would provide DWS with preliminary engineering and economic analysis. DWS has its next meeting with HELCO on Monday, November 30, 2009. Chairperson Smith asked whether the idea is to figure out if a pumped hydro-system is feasible within DWS's existing storage tanks, existing waterlines and access road. Ms. Myhre said the concept was even bigger than that. DWS is still working to see if it can get the best price or discount for energy, and how HELCO can benefit by incorporating more renewables into its system. Currently, HELCO presumably cannot take more energy on its system until HELCO gets more storage, so storing renewable energy may possibly be done through a pump storage hydro-system. Chairperson Smith asked how DWS would overcome the challenge of sending power across the parcel line, and not becoming a utility. Ms. Myhre said she had addressed that question with an email to the Public Utilities Commission (PUC), requesting a **direct interpretation** regarding the language in DWS's agreement with HELCO, which says that DWS would own the power lines from the existing windfarm to the Lālāmilo side of the road. Right now, DWS's Lālāmilo A, B, C, and D wells have a power line that would be owned by DWS if the power is generated on land leased by DWS, and directed down power lines owned by DWS. That energy could be served to DWS's wells. This request for direct interpretation was sent to the PUC about two months ago, but there has been no response so far, Ms. Myhre said. Chairperson Smith said his concern is that HELCO is the only recognized power utility that can get power off the site, and *if* HELCO does it, HELCO needs to charge the rates that PUC approves and cannot offer preferential rates. Chairperson Smith expressed doubt that the PUC would make an exception to allow a third party to generate power for DWS. He believed that the lease will revert back to DLNR in December 2010, and that DWS needs to focus on HELCO cleaning up the site. Ms. Myhre said that if a third party independent power company comes in and re-powers the site, the third party's issue with sending power to the HELCO grid is between the third party and HELCO. She said that if a third party provides DWS with energy, in an arrangement just like DWS had before, that could be done and the third party could charge DWS whatever rate they wanted to. Furthermore, if the third party was not tied to the grid, there would be an agreement between DWS and the

third party for solar, wind or a combination of the two, Ms. Myhre said. Chairperson Smith disagreed, saying that by sending power across a parcel line would make DWS a utility. At this point, the Manager said that the third party Ms. Myhre was referring to would come into the picture well after the lease expires, and that such an arrangement would not happen by the time the lease expires in December 2010. Chairperson Smith expressed concern about the liability that DWS has, because DWS signed a lease for a property that DWS let HELCO on, and because HELCO had done all kinds of stuff on the property. The Manager said that that was why DWS had been very specific in its letter to HELCO.

- b. Mayor's Green Team: Ms. Myhre said an energy audit had recently been conducted at DWS's main office, and Mr. Inaba had received a draft report. The report was very informative on how DWS can save energy at the main office, and can even get rebates on some of the equipment DWS is installing. Ms. Myhre said that the Environmental Protection Agency will hold an all-day workshop in Hilo on February 8, 2010, on energy efficiency vis a vis water service and waste water management.
- c. Mayor's Energy Advisory Commission: Ms. Myhre is on an investigatory committee on water supply and use, along with Alex Woodbury (who did the DWS energy audit at DWS's main office), former Board Chairperson Tom Goya and County Energy Coordinator Will Rolston. The committee will be meeting with the Manager, Chairperson Smith and other invitees on Monday, December 14, 2009, at 1:00 p.m., at DWS's main office conference room. The topic of the meeting is big picture planning, and how the energy commission can support DWS in reaching the Hawai'i Clean Energy Initiative goal of 70 percent renewable use by 2030. Mr. Mukai said he should attend the meeting as well.

G. MONTHLY PROGRESS REPORT:

No discussion.

H. REVIEW OF MONTHLY FINANCIAL STATEMENTS:

Looking at DWS's bank charges, Mr. Taniguchi suggested meeting with Mr. Sumada to explore ways of minimizing bank charges, which he noted are too much. On the income side of the balance sheet, he noted that DWS's interest income was too low. He asked what kind of investments DWS was planning, and where DWS monies were currently invested.

Mr. Sumada said that DWS does not hold the typical six-month certificates of deposit (CDs) that it once did. DWS got out of the six-month CDs when interest rates dropped, and when the County treasurer began putting larger amounts of money into other investments. Instead of having interest come in every month as before, it comes in more like every six months when an investment matures, Mr. Sumada said.

Mr. Taniguchi expressed concern about the Power Charge, noting that DWS collected \$1.1 million on the Power Charge and DWS got charged \$1.7 million, meaning a shortfall of \$600,000.00. He said that year-to-date, DWS looks okay, but it would be scary if the trend continued. He asked if the Board over-reacted by going too low on the Power Cost Adjustment.

The Manager said no, the Board went with where it was when the Board voted to lower the Power Charge. He noted that any adjustment lags by two months.

Mr. Sumada noted that the revenue side gets adjusted down for leak adjustments, etc.; that revenue is not the gross amount that DWS generates for the Power Charge income. There are adjustments made to that gross number for leak adjustments.

Mr. Taniguchi asked if the leak adjustments would be on the Power Charge or on water sales, adding that he thought that the Power Charge was a separate amount that DWS collects.

The Manager said that it is a separate amount, but that a portion of the leak adjustments is the Power Charge Adjustment, too. The total bill includes a power cost, and actually the usage charge is far less than the power adjustment, the Manager said.

Mr. Taniguchi said maybe he was misunderstanding; he thought the power cost was a stand-alone item.

The Manager confirmed that it was a stand-alone item.

Mr. Taniguchi said that DWS was ahead, to date. However, last month DWS was short by \$600,000, and Mr. Taniguchi expressed concern at the possibility of the trend continuing.

The Manager noted that it was also a function of what time of the month, or what month. In some months, because of the way the data comes in, the consumption may be skewed. The Manager suggested that Mr. Taniguchi come to DWS and examine the numbers closely together with Mr. Sumada.

Mr. Taniguchi agreed, saying it might be better to closely look at the numbers, more often.

I. POWER COST CHARGE UPDATE:

The Power Cost Adjustment for October 2009 was **\$1.77** per 1,000 gallons, compared with the current Power Cost Charge of \$1.68.

The Manager said despite the rise in the Power Cost Adjustment, there was unfortunately insufficient time from now to publish a Public Notice that would legally allow the Board to hold a public hearing on December 15. He explained that there was no way that DWS could fulfill the statute of 20 days' notice, plus getting the Public Notice into the newspapers. Therefore, it is DWS's intent to come to the Board at the December 15 meeting to request that the Board hold a public hearing in **January**. There *will* be sufficient time between the December 15, 2009 meeting and the January 26, 2010 meeting to publish the Public Notice. At the December meeting, DWS will make a recommendation for a possible increase in the Power Cost Adjustment, based on *updated* data. At that time, the Board can decide whether to hold a Public Hearing on January 26, and publish a notice on that hearing.

Chairperson Smith agreed the item should go on the December Agenda, with a possible Public Hearing to be held on January 26, 2010.

J. **WATER RATE STUDY:**

No discussion.

K. **MANAGER'S EVALUATION:**

Mr. Mukai said he had received evaluations from seven Board members, and had compiled the evaluations into one report, following the format used in years past. He asked what the next step would be.

Chairperson Smith said that Mr. Mukai would distribute the report to the Board, and asked that the evaluation be placed on the December Agenda, when the Board will decide on any adjustment based on the evaluation.

Mr. Mukai confirmed that he would circulate the report, and give copies to the Manager and the Secretary.

Chairperson Smith asked the Secretary to find out the salaries of the other water department managers in the state, as well as salaries for the County department heads, appointees and the Mayor. He asked whether the department heads took a five percent pay cut, and find out what Human Resources did on their salaries. He said the Board wanted the dollar amount, and what was done to adjust the salaries in the other water departments and among the County appointees, as well as the Mayor.

The Secretary asked if the Chairperson wanted that information mailed with the Agenda.

Chairperson Smith confirmed this, saying it was the data that the Board had looked at before.

Mr. Masuda suggested that the Board look at what other excluded management employees (EMs) in the County of a similar professional level (i.e., engineers) are making.

Chairperson Smith said that was good information to have, and clarified that in numerous situations in the County, excluded management employees who report to an appointed director make more than the appointed director.

L. **MANAGER'S REPORT:**

The Manager provided an update or status on the following:

1. Update on use agreement on KIC wells -- The Manager recently met with one of the KIC directors, Mr. Bill Mielke, through Mr. Wally Lau, the County's Deputy Managing Director (and a former director of KIC). The Manager explained to Mr. Mielke about DWS's desire to cooperate on the development of the KIC wells. Chairperson Smith suggested writing a letter directly to the Chairperson of the KIC Board. The Manager said he would send a recap of the meeting with Mr. Mielke and express our interest in cooperation in the development of the wells.
2. Palani Road Transmission Project – (covered earlier)
3. Report on Hawaiian Ocean View Estates/County Council – The Manager said the County Council approved an additional \$400,000 from a bond float for the project, which involves construction of a 300,000-gallon concrete tank (instead of the originally planned 100,000-gallon steel tank). DWS's contractor, Bolton, Inc., is putting together a proposal for the 300,000-gallon tank. Many months ago, the contractor assured DWS that this larger tank

can be done for less than the \$400,000 approved by the Council. Chairperson Smith clarified that this was money approved by the Council that is going to be amended to a contract that DWS is administering, involving an increase in size from a 100,000-gallon steel tank to a 300,000-gallon concrete tank. The Manager said that the footprint for the larger tank will be different, and the contractor will need to redesign the site. Mr. Inaba noted that Engineering Partners is doing the design. Mr. Kuailani explained that the reason he requested that this item be on the Agenda was due to pressure from the community. The Manager said that DWS's position on the tank was simple; the County of Hawai'i received \$6 million to do the tank and the Mayor asked DWS to administer the project, which DWS did. DWS administered the project to DWS standards, and the money available at that time could only buy a 100,000-gallon steel tank, he said. The Ocean View community wanted a larger tank, and for the same money, they wanted to go from a concrete tank to a steel tank, and DWS said no, that is not DWS standards, the Manager said. DWS then gave the community the option of increasing the size of the reservoir if the community could find the additional money. They found the additional money, the Manager said.

4. DWS Preparation for Legislative Audit – The Manager noted that DWS had met with Ms. Schrandt and suggested to her that her audit look at cash control procedures. Meanwhile, Mr. Sumada and his staff have developed a tightening of cash management controls. Mr. Taniguchi asked if DWS was privy to the matrix whereby DWS was selected for an audit. The Manager said he had no idea, aside from the risk management survey Ms. Schrandt mentioned earlier in the meeting. Chairperson Smith said the Department will cooperate with the Legislative Auditor in the interests of improving the Department. Chairperson Smith commended the Manager and Deputy Manager for faithfully attending the Mayor's community meetings, which help allay questions or concerns from the community.

On a separate topic, Mr. Kuailani asked that the Ainaloa pipeline that appeared on the Council agenda be placed as an update on the Board's December Agenda, under Manager's Report.

M. CHAIRPERSON'S REPORT:

Chairperson Smith asked Board members to be sure to submit to the Secretary their reports on their attendance at the Hawai'i Water Works Association conference.

N. KAWAILANI 1.0-MILLION GALLON RESERVOIR:

Mr. Masuda said a complaint has been filed against Wesley R. Segawa & Associates, Inc., (Segawa) who in turn has cross-claimed against the original contractor, Jas W. Glover, Ltd. (Glover). The case is in the discovery phase, which will be ongoing for a while.

Mr. Inaba explained how Segawa is trying to fix the problem of the sagging roof, with the help of some experts, sending out a Request for Proposals (RFP). Mr. Inaba said yesterday Segawa received responses to the RFP from three speciality contractors. On Tuesday, December 1, DWS is meeting with Segawa and Glover to determine whose responsibility or what relief for responsibility Glover has, and Segawa is intending to bring in a specialty contractor at his own cost.

Chairperson Smith clarified that DWS is in litigation. He asked if this side matter is resolved among all of the parties, would the litigation go away.

Mr. Masuda said that depends because DWS would still have to get the Attorney Chief-in-Counsel to prepare the case, as well as other costs. For that reason, Mr. Masuda recommends that the Assistant Corporation Counsel, Ms. Kathy Garson, attend the December 1 meeting.

Mr. Inaba said this would just be a preliminary meeting, where Segawa has not even determined which contractor is selected. He noted that Segawa only sent out an RFP, and not a full scope which asks the contractors for prices. Segawa wants the experts who apply the product to have some input, Mr. Inaba said. Mr. Inaba has seen all three responses to the RFP; in each of the responses, there were differences in prices and also different explanations.

The Manager said that he wanted Ms. Garson to be involved because of the uncertainty amid the litigation, and he was concerned about how procurement comes into play here with Segawa seeking alternative contractors.

Mr. Masuda said that was not so much the main concern. He was more concerned with any statements that might be made during the meeting.

Mr. Inaba agreed to call Ms. Garson to see if she would be able to attend the meeting.

Chairperson Smith said that from the Board's perspective, the only concerns would be design liability and extended warranty. He noted that if the design is changed, DWS would need something longer than a one-year warranty, starting from whenever DWS accepts the design.

Mr. Inaba said the design is already built; Segawa is just going to overlay something on it.

Chairperson Smith said that the contractor usually gives DWS a warranty for one year from the date of acceptance. In this case, Segawa would be changing the design because of some flaw either in design or construction, so DWS should be given an extended warranty beyond the one year, to prove that DWS is getting what it paid for.

Mr. Inaba said that is what the meeting will be about. He expects Segawa to assure that he and the contractor are responsible for any warranty issue. Mr. Inaba said that he just wanted everybody to be on the same page and move forward with the project.

Mr. Harai asked if any statute of limitations was involved.

Mr. Masuda said there was no statute of limitations here.

ANNOUNCEMENTS:

1. **Next Meeting:**

The next 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.

2. **Following Meeting:**

The following meeting of the Water Board will be held on January 26, 2010 at 10:00 a.m., at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo.

Mr. Kuailani asked if there was any update on filling Board vacancies.

The Manager said that he had spoken with the Mayor again, and expressed hopes that a woman would be appointed. However, there was no update, because no nomination has passed through DWS from the Mayor's Office on its way to the County Council. Normally, the Mayor's Office lets DWS know about nominations. The Manager noted that the Board member for Puna, when appointed, will only have a four-year term instead of a five-year term, because one year has already elapsed since the seat fell vacant.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Smith called for a Motion to adjourn. Mr. Mukai so moved; seconded by Mr. Kuailani, and approved unanimously by voice vote. The Meeting adjourned at 12:35 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.