

MINUTES

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

December 15, 2009

Department of Water Supply, Operations Center Conference Room

MEMBERS PRESENT: Mr. Riley Smith, Chairperson
Mr. Dwayne Mukai, Vice-Chairperson
Mr. George Harai
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: Ms. Kathy Garson, Assistant Corporation Counsel
Ms. Ann Earles (arrived 11:17 a.m.)

Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy Manager
Mr. Daryl Ikeda, Chief of Operations
Mr. Rick Sumada, Waterworks Controller
Ms. Candace Pua, Assistant Waterworks Controller
Mr. Keith Okamoto, Engineering
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Specialist
Mr. Clyde Young, Operations
Mr. Larry Beck, Engineering
Mr. William Yamamoto, Water Service District Supervisor II, South Kohala (arrived 11:17 a.m.)
Mr. John Earles, Lead Water Treatment Plant Operator IV (arrived 11:17 a.m.)

CALL TO ORDER - Chairperson Smith called the Meeting to order at 10:05 a.m. He called for a moment of silence to honor the late Mr. Francis Kuailani, the Water Board Member representing North Kona district, who passed away yesterday. Mr. Kuailani contributed greatly to our community and he will be sorely missed.

STATEMENTS FROM THE PUBLIC:

Former Board Chairperson Tom Goya read from his October 20, 2008, message on planning for sustainability, and from his outgoing comments to the Water Board, given at the December 2008, Water Board meeting. Chairperson Smith thanked Mr. Goya for his ongoing interest in the Water Board, and for his participation in the Mayor’s Energy Commission.

APPROVAL OF MINUTES:

Chairperson Smith entertained a Motion to approve the Minutes of the November 24, 2009, Water Board meeting.

MOTION: Mr. Meierdiercks so moved; seconded by Mr. Harai.

Ms. Garson requested that a correction be made to Page 21 of the Minutes, changing the deadline for Mr. Jernigan to file a response from December 27, 2009 to **November 27, 2009**.

MOTION: Mr. Meierdiercks moved to amend the Minutes; seconded by Mr. Lindsey, and carried unanimously by voice vote.

ACTION: Main Motion to approve the Minutes as amended carried unanimously by voice vote.

APPROVAL OF SUPPLEMENTAL AGENDA AND ACTION TO MOVE AGENDA ITEMS:

None.

HĀMĀKUA:

A. JOB NO. 2006-905, CONSTRUCTION OF THE KAPULENA WELL DEVELOPMENT – PHASE 1 (WELL NO.):

Bids for this project were opened on December 3, 2009, at 2:00 p.m., and the following are the bid results:

Bidder	Amount
Water Resources International, Inc. (Lowest Responsible Bidder)	\$857,741.00
Beylik Drilling & Pump Service, Inc.	\$996,487.00

Engineer’s Construction Cost Estimate: \$1,152,595.00.

Construction Contract Duration: Two hundred seventy (270) calendar days.

Project Scope: This project consists of providing all labor, materials, tools, and equipment necessary to drill, case, and pump test the 18-inch Kapulena Well at 1,033-foot elevation, all in accordance with the plans and specifications. The scope of work generally includes: 1) improvements to the existing access road to the drill construction site; 2) construction of the well drilling pad; and 3) construction, disinfection, and pump testing of the Kapulena well.

The project cost will be as follows:

Project Cost:

1) Low Bidder (Water Resources International, Inc.)	\$857,741.00
2) Construction Contingency (~10%)	<u>\$ 86,259.00</u>
Total Construction Cost:	<u>\$944,000.00</u>

Funding for this project will initially be from DWS C.I.P. budget; however, DWS will be pursuing a loan under the Drinking Water State Revolving Fund (DWSRF).

Department staff has reviewed the bids, and finds the bid from Water Resources International, Inc., acceptable as submitted.

The Manager recommended that the Board award the contract for JOB NO. 2006-905, CONSTRUCTION OF THE KAPULENA WELL DEVELOPMENT – PHASE 1 (WELL NO. ___), to the lowest responsible bidder, Water Resources International, Inc., for their bid amount of \$857,741.00, plus \$86,259.00 for construction contingency, for a total contract amount of \$944,000.00. It is further recommended 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. Meierdiercks.

The Manager noted that DWS had drilled a well in Kukuihaele, whose water turned out to have an excessive chloride level (despite being at an elevation of five feet above sea level). Since the well was drilled, the spring source that fed the Kukuihaele area dried up. Because of the well's high chloride level, DWS ended up hauling water and continues to do so today. The Kapulena well would replace the well at Kukuihaele, and supply the area with water. The Manager said this project is interesting because DWS is applying for State Revolving Fund (SRF) funds. Some time ago, Mr. Bill Takaba at the Mayor's Office helped DWS in applying for federal money, which DWS obtained, under a 60-40 cost-sharing arrangement. (Sixty percent of the funds are provided by the federal government, and DWS comes up with the remaining 40 percent.) There was an appropriation in the same federal package of approximately \$220,000.00 for a project at Hawaiian Ocean View Estates. Over the past couple of weeks, the Deputy Manager has been working with Senator Daniel Inouye's office to try to transfer the \$220,000.00 to the Kapulena project, so that more of the funding will be from federal monies. The sure thing is that the Kapulena project is being funded by the SRF funds, which are a low-interest loan from the state Department of Health through the Environmental Protection Agency (EPA). The Manager said that the Kapulena project will be very beneficial, and it will end up having a lot of outside funding. The bids came in very favorable; they were lower than the Department's estimate.

Mr. Okamoto noted that this would be Phase I, involving an exploratory well. If good water is discovered, then DWS will move on to Phase II, which would include distribution improvements.

Chairperson Smith asked if the exploratory well would become a production well.

Mr. Okamoto confirmed this.

The Manager noted that the Kukuihaele well was an anomaly, with its high salt content despite its elevation five feet above sea level. With an elevation five feet above sea level, the water quality should be fresh.

Chairperson Smith asked what DWS's potable limit was, and who the hydrogeologist is for the project.

The Manager said that DWS maintains a limit of 180 parts per million, while the state limit is 250 parts per million. He said that Tom Nance is the hydrogeologist for the Kapulena project.

Mr. Mukai asked for clarification on moving the finances from the Hawaiian Ocean View project to the Kapulena project.

The Manager explained that the Ocean View project was funded separately by the County Council; the Mayor had asked the Council to allow them to use General Obligation bond money to supplement the Ocean View project. Therefore, currently, \$400,000.00 from the County is going into the contract at Ocean View, so that concern has been settled. The \$220,000.00 that had been geared for Ocean View is no longer needed by Ocean View, and the Deputy Manager is now working with Senator Inouye's office to look at ways that they can take the \$220,000.00 and put it into the Kapulena project.

The Deputy Manager said that the agreement is tentative at this point; there needs to be something more formal from the EPA and from Senator Inouye's office. This is moving forward, and there still needs to be an application for a grant, which will come in the latter part of 2010.

Mr. Mukai noted that the \$220,000.00 in federal money is just sitting there, and would probably lapse if DWS does not do something with it.

The Manager confirmed that the funds would either lapse, or go to another project.

Chairperson Smith asked Ms. Garson if the language of the recommendation would need to be amended, amid the possibility of other sources of funding.

Ms. Garson said no change was necessary because the recommendation involves the contract award.

ACTION: Motion carried unanimously by voice vote.

NORTH KONA:

A. **JOB NO. 2009-954, KAHALU'U SHAFT PUMP NO. 1 REPAIR:**

The contractor, Derrick's Well Drilling and Pump Services, LLC, has requested a contract time extension of 91 calendar days. This is due to unavoidable material and manufacturing

delays in the delivery of the pump. The contractor's supplier has changed the scheduled arrival date to mid-April 2010, which is beyond the control of the contractor.

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

Staff has reviewed the request and finds that the 91 calendar days are justified. This is the first time extension request.

- **1st time extension – 91 calendar days**

The Manager recommended that the Board approve a contract time extension to Derrick's Well Drilling and Pump Services, LLC, of 91 calendar days for JOB NO. 2009-954, KAHALU'U SHAFT PUMP NO. 1 REPAIR. If so approved, the contract completion date will be revised from January 29, 2010 to April 30, 2010.

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

The Manager explained that this was a basic material delay/contract extension request. The job involves the repair of one of the pumps in the Kahalu'u Shaft. DWS has 4-5 pumps up there, and this job involves the repair of one of the pumps. He noted that not all of the pumps are being used, because the pumps can pump 10 million gallons a day. Currently, DWS is trying to pump no more than three million gallons a day, due to the power rates.

Chairperson Smith said the contractor, Derrick's Well Drilling and Pump Services, LLC., had committed to a schedule of the project. He did not see how this item that accommodates a delay under the contractor's control is DWS's responsibility.

The Manager said he did not believe that the contractor has control over this delay; the contractor has to buy the pump from somebody else.

Mr. Young noted that the contractor buys the pump through a third-party middle-man, Promark Corporation. The contractor got a tentative schedule for delivery, but the manufacturer, Ruhrpumpen, changed the schedule. There can be a lot of reasons for the change; all of the pumps are custom-made and in some cases there are defects that necessitate re-casting or even re-doing the molds, etc. These cases are not unusual, he noted.

Chairperson Smith said the contractor knew what the schedule and the scope of the project were; the schedule and the scope have not changed. The Department is going to pay the contractor a certain amount of money to do what DWS contracted Derrick's to do. Derrick's gets his subcontractor to get the materials and supplies lined up. DWS has nothing to do with, and has no control over, the subcontractors or suppliers. The Chairperson asked why DWS has to accommodate the contractor when the subcontractor cannot meet the schedule. He asked if there are liquidated damages on the contract.

The Manager said that all contracts have liquidated damages.

Chairperson Smith asked what the liquidated damages are.

The Manager said that liquidated damages are determined by the contract amount; it is in DWS's General Requirements and Covenants. The liquidated damages follow a table, he said.

Mr. Young said he would have to check what the liquidated damages are, but he estimated them at \$125 a day.

Chairperson Smith said that DWS is being damaged by the delay. He said that there was a concern in the Kona community that DWS needs to keep the water source active and make sure that the water is suitable. He was unclear why DWS would agree to an extension of time at no cost to the contractor.

The Manager asked if the Chairperson was proposing liquidated damages to a contractor who has no control over the manufacturer of the pump.

Chairperson Smith said that the contractor has control over his subcontractors. When the contractor put in his bid, he would have notified his subcontractor, Promark, about the schedule and told Promark that he was to provide the pump so that the pump could be installed by the completion date.

The Manager said it was not good for DWS to have a delay, but he believed it was not the contractor's fault, and therefore, the contractor should not be penalized by DWS with liquidated damages. The contractor relied on his subcontractor for information, and in this case, the information was no longer correct. He cited the example of a job which specifies a pump. The manufacturer makes the pump, and the pump undergoes a certified pump test under DWS requirements. If the pump does not meet the certification criteria, DWS rejects the pump. The Manager asked whether DWS should assess liquidated damages to the contractor for something that the contractor had no control over, as in this case.

Ms. Garson said that she knew that this situation is contained in the Hawai'i Administrative Rules (HAR) as a permissive use of granting an extension of time. She said she was not sure whether it was mandatory, but she said it was typical to grant an extension of time when a delay is due to no fault of the contractor. Such wording is usually within the contract terms, she added. In this case, it is permissive per the HAR, whether or not it is something DWS wants to go along with. She believed that granting an extension under these circumstances was discretionary. She noted that DWS has granted extensions for delays caused by factors beyond the contractor's control.

The Manager cited rain-out days as one factor out of the contractor's control, and asked if liquidated damages would be levied for rain-out days.

Chairperson Smith said rain-out days are an act of God, and therefore beyond the contractor's control.

The Manager said the same thing would apply to a pump; it is beyond the contractor's control.

Chairperson Smith disagreed, saying the contractor could have gone to a different pump manufacturer, who could have met the schedule.

Mr. Mukai said that when a contractor goes out for a bid, the supplier knows what the time frame is. In the private sector, it does not hold water to say matters are out of one's control.

The Manager said that this would be a total shift from what DWS has been doing, because the Department has been recommending that contractors be granted extensions.

Ms. Garson said that it was totally dependent on the contract terms. She said that there is a provision for granting such extensions in the Hawai'i Administrative Rules. She suggested that the Board defer the item to the January 26, 2010, Water Board meeting, noting that the completion date was January 29th. At the next meeting, Ms. Garson would be able to inform the Board of the contract terms regarding whether granting extensions is discretionary. She noted that typically the Department ascertains that the contractor has placed the order on time. To grant an extension, the delay must be through no fault of the contractor. *If the contractor* delays in placing the order and then there is a delay with the manufacturer, there would be a case for liquidated damages, she said. Ms. Garson offered to research the contract and report back to the Board.

Chairperson Smith said in this case that he believed that the contractor did have control over the delay, and that the contractor should put the burden of the delay on his subcontractors and hold them responsible. He agreed with Ms. Garson on deferring the item, to allow for Ms. Garson to research what the contract says.

Mr. Young said that the contract allows for \$215,459.00. He noted that all of the parts of a pump must be custom-made, and must be tested. Under these circumstances, small things can cause the pump to fail the test, and the whole process must be re-coordinated again.

Chairperson Smith said that he was concerned that competing bidders might contest the granting of an extension, saying that if the time frame were longer they could have beat the contractor's price. He was concerned that the Department was exposing itself when they approve a change order at no consequence to the contractor for something that is under the contractor's control.

The Manager noted that in the case of pumps, the various contractors are likely to wind up with the same manufacturer, due to the specified nature of the pumps that DWS calls for. He said that at the time of bidding, the other contractors would have known that problems like this could arise, so their prices would not have changed.

Mr. Mukai said that the other bidders may have been thinking that they would need to air-freight the pump in, and therefore their prices were higher. In any case, he said he agreed with the Chairperson for the need to hold the contractors to some degree of responsibility. In the private sector, the contractor would be made to absorb the additional costs.

Chairperson Smith said that he would charge the contractor liquidated damages, at \$125 a day for the 90 days. Ms. Garson noted that the liquidated damages were more like \$150 a day.

Chairperson Smith said he would feel more comfortable deferring the item to the January meeting, and asked for more information on the contract. He also sought information on the bid spread and which other contractors bid on the contract.

Mr. Harai asked if DWS has to show that the Department had actual damages, in order for the contractor to pass the cost on to the supplier.

Chairperson Smith said that he believed that liquidated damages are stipulated in the contract, and that DWS did not have to prove damages; DWS is entitled to damages.

Ms. Garson said that this was what liquidated damages are for; it is difficult to assess what *actual* damages would be. For that reason, a contract has a liquidated damages clause, which is not a penalty per se. Liquidated damages are supposed to *estimate* the amount of damages that would be incurred by a delay.

The Manager asked if the matter were to be pursued, would the Department ultimately have to prove damages.

Ms. Garson said not with liquidated damages. With liquidated damages, DWS would have to prove that at the time that a contract was entered into, the \$150 a day would have been a reasonable estimate of how much in *actual* damages that the Department would incur, although DWS cannot actually calculate the damages. She noted that liquidated damages cannot be a penalty. DWS would have to show that at the beginning of the contract, that \$150 a day was a reasonable estimate of what *might* happen should there be a breach of contract.

Mr. Young noted that in this case, DWS has excess capacity, with three other pumps.

The Manager said the main focus was the whole philosophy of what DWS holds a contractor to, and what DWS would consider not the contractor's fault. He wondered if the Chairperson was saying that it does not matter that it is not the contractor's fault; because there is a contract, the contractor should pay.

Chairperson Smith said he was saying that it is the contractor's fault; it is under the contractor's control.

The Manager said that it is under the contractor's control, but it is not the contractor's fault.

Chairperson Smith said everybody who comes under the contractor's contract is under the contractor's control.

The Manager suggested that the Board defer the item.

Chairperson Smith agreed to defer.

Mr. Harai asked a question about "clear custody and control" of the pump, and whether there were any liability issues involved.

Ms. Garson said she was unclear what Mr. Harai meant. She said that if the Board defers the item to the January 26 meeting, the contract completion date is not until January 29th anyway. In the meantime, the contractor is going to continue doing what he is doing. The issue now is whether or not the Board is going to grant the contractor the extension, so right now there is no liability in deferring. She said that by deferring, it would give her an opportunity to look into the contract more carefully.

Mr. Harai gave the example of someone building a house. Everything is under the contractor's care, custody and control, so the insurance company is not liable. He said that to hire a contractor, one must have a liability policy. If the contractor puts in a plate glass window and it breaks, the insurance company would not have any liability because the project is under the contractor's control, he said. Mr. Harai said that he finds in this case, while the contractor may have had care, custody and control as the Manager says, the parts in question were not under the contractor's control. He wondered if this concept would be applicable in this case.

Ms. Garson said that she would look into it.

Mr. Mukai said he was withdrawing his second.

Mr. Meierdiercks said he was withdrawing his Motion.

ACTION: Mr. Mukai moved to defer the item; seconded by Mr. Meierdiercks. Motion carried unanimously by voice vote.

Mr. Ikeda, looking ahead to January's meeting, visualized the scenario of the contractor seeking the extension, and the Department then charging the contractor liquidated damages. He noted that the Department had granted extensions for similar situations or where the contractor had *even more* control. He expressed fears that the contractor could come back and contest, saying he was being singled out unfairly where previously, other contractors were granted extensions.

Chairperson Smith said that was the hazard of not administering the contract according to the contract's terms. Once a precedent has been set, it is hard to change. He suggested voting again on the Motion to defer.

(Motion carried again unanimously by voice vote.)

MISCELLANEOUS:

A. **LEGISLATIVE AUDIT OF DWS:**

No discussion.

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.

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. BILL OF SALE

Seller: Hospice of Hilo	TMK: (3) 2-4-001:179)
E.W.O. 2009-026	
Lots: 2	Zoning: RS-10
Facilities Charge: \$50,690.00	Paid: 4/28/2009
Final Inspection Date: 4/28/2009	
Water System Cost: \$72,729.00	

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

ACTION: Mr. Mukai moved to approve, seconded by Mr. Meierdiercks. and carried unanimously by voice vote.

C. REPORT OF AD HOC FINANCE COMMITTEE:

The Water Board's Ad Hoc Finance Committee Chairperson, Mr. Art Taniguchi, reported on the following areas under the scope of the Committee's investigative work:

1. DWS's vehicle take-home policy;
2. DWS's procedures regarding cash control. (Discussion had been deferred from the November 24, 2009 Board meeting, pending input from the Legislative Auditor.)

On the vehicle take-home policy, Mr. Taniguchi said the Committee had met with the Manager yesterday and had come up with a template, thanks to Mr. Lindsey's expertise. He said that the Department is following the County's policy, which the Manager provided to the Committee. Mr. Taniguchi, noting that the policy was still a work-in-progress, said that the Committee was incorporating the County policy and ironing out details. The Committee will have a formalized report at the next meeting.

On the cash control policy, the Committee is waiting for the completion of the Legislative Audit before tackling this policy.

Chairperson Smith said that at the November Water Board meeting, the Committee had concurred with the Department's policy on credit card use. He said it was important that the Chairperson or Vice-Chairperson approve the Department's credit card charges every month.

Mr. Taniguchi said that was all covered in the policy that the Manager had implemented. He said that the November Minutes state that the Department had adopted a policy, but he does not know where the Minutes state what the policy is.

The Manager said that the Chairperson could get a copy of the policy.

Mr. Taniguchi said the Board had received copies of the policy.

Chairperson Smith said the policy was not submitted as part of the record; he wants it submitted as part of the record.

Mr. Taniguchi said okay, what the Committee did originally was just to share. Mr. Taniguchi had recommended that in case the Chairperson was unavailable to sign the approval of the credit card charges, the Vice-Chairperson could approve them.

Chairperson Smith said he was okay with that.

Mr. Taniguchi noted that in his meeting on the credit card policy with DWS, it transpired that the Manager was already working on a policy anyway and was planning to implement the policy. The Committee tweaked the policy, adding the wording to have the Vice-Chairperson approve the credit card charges if the Chairperson was unavailable. Mr. Taniguchi said the Committee basically just reported back on the policy at the November meeting, so that issue is closed.

Ms. Garson said that the Manager has implemented the policy administratively. She asked if the Chairperson himself was seeking to implement the policy and impose it.

Chairperson Smith said no, the Board had agreed on the policy, but that whatever the policy is should be in the Minutes. The Board had all agreed with the policy, so whatever the policy is should be documented.

D. ENERGY MANAGEMENT ANALYST UPDATE:

Ms. Myhre covered the following areas:

1. Report on the Lālāmilo Windfarm
2. Mayor's Energy Advisory Commission

Ms. Myhre noted that DWS and HELCO continue to have dialogue on the plans for the Lālāmilo Windfarm, with the goal to decide by the end of the year whether DWS would keep its contract with HELCO there. The most recent meeting was two weeks ago, she noted. Ms. Myhre said she had asked HELCO for the names of the people who are responsible for the Environmental Assessment and the clean-up of the site. She followed up with an email to request the individuals' contact information so that she can obtain a schedule from them.

Chairperson Smith asked if Ms. Myhre thinks the site can be de-commissioned and cleaned up in 12 months.

Ms. Myhre said yes, she believed the site can be de-commissioned and cleaned up. The big outlying question is what the State wants to do with the building that houses a rest room and a cesspool. She said that she has been in communication with the local representative of the Land Board in Hilo; she had briefed the Land Board person on DWS's conversations with

HELCO. Ms. Myhre is waiting to have another meeting with the County's Energy Coordinator, Will Rolston, and the State to hammer out details on what the State wants.

Chairperson Smith confirmed that DWS has written to HELCO President Jay Ignacio for a schedule, but HELCO has not sent the schedule yet. He said that Ms. Myhre should review the schedule to see how long the remediation of the site is going to take, because only 12 months remain to clean the site up. He warned that as the prime lessee, DWS may need to seek an extension of the lease from the Land Board to have enough time to restore the site to its original condition.

Ms. Myhre said that she had met with the National Renewable Energy Laboratory (NREL) people last week. DWS is getting help from NREL in terms of what DWS's energy needs might be from alternative sources including solar, wind and hydro-power at the site, if DWS decides to go down that path.

NREL is running models, and has done a preliminary model which showed about \$1.5 million a year in savings to DWS. Ms. Myhre said that NREL took one year's worth (2008) of DWS's actual energy use data, and data on the wind capability at the site.

Chairperson Smith asked if there were wind turbines on site that took full advantage of the wind capacity on the property, could DWS generate \$1.5 million in energy on the site.

Ms. Myhre said it would generate 5 million kilowatts. NREL looked at how much energy DWS could get from the site, and how much DWS would buy from HELCO. The generators there would not sell any power back to the grid, but if DWS took the wind power from the site (from whoever generated it), and bought power from HELCO, the combined total would be about \$1.5 million less than what DWS paid in 2008, Ms. Myhre said.

Chairperson Smith cautioned Ms. Myhre to make sure she chooses her words carefully, because if DWS generates power on that site, unless DWS has an independent power production contract with HELCO, DWS will not be allowed to send the power across the property line. Therefore, DWS could not own the wind turbines and could not generate power and feed it into DWS's pumps within the Parker Ranch land or on the pumps within the adjacent State land, because DWS would be crossing a property line, he said. Only an independent power producer under a contract with HELCO can do that, he said, citing the recent example of Sopogy. Sopogy has a contract with HELCO to sell power. The Chairperson reiterated that Ms. Myhre must be clear in what she is saying on any such arrangement, which is very complicated. The main thing is to ensure that everything is done to benefit DWS, he said. He asked Ms. Myhre if she plans to give the Secretary a written summary that can be incorporated into the Minutes.

Ms. Myhre confirmed that she would provide a written summary to the Secretary. Moving on to the subject of the Mayor's Energy Advisory Commission, she said that the Subcommittee on Water Use met yesterday. The group discussed identifying the best ways that the Energy Advisory Commission can support DWS's efforts to meet the Hawai'i Clean Energy Initiative's goals. The goals state that by 2030, the State will generate enough renewable energy to meet 70 percent of its energy needs, with 30 percent coming from fossil fuels. The

subcommittee came up some ideas in terms of what the Commission can do to help promote what DWS has already been doing: grant writing, lobbying the Legislature on the procurement process, and exploring opportunities for DWS to work with a third-party power generator.

Chairperson Smith asked if Ms. Myhre could report on the Sopogy project, whose blessing she had attended the previous week in Kona.

Ms. Myhre said she did not have a report prepared.

Chairperson Smith said it would be good for her to have a report on Sopogy at the next meeting. The project involves a third-party power generator selling solar power back to HELCO, he said. He noted that Sopogy stands for **So(lar)Po(wer)(Technolo)Gy**.

E. **MONTHLY PROGRESS REPORT:**

Mr. Taniguchi raised the earlier topic of holding contractors accountable on contracts. He said that he hoped that DWS was not viewed by contractors as a “deep pocket” which would allow projects to drag on forever without consequences to the contractor. He said contractors should be held accountable, and if problems arise with the contractor’s suppliers, that is the contractor’s problem. Mr. Taniguchi said that he agreed with Mr. Ikeda’s comment that after granting extensions to contractors, it is hard to stop all of a sudden. However, the longer the practice of granting extensions goes on, the more difficult it is to stop. Mr. Taniguchi said that it is prudent to hold people to certain things; otherwise, contractors will see DWS as having plenty of money and that an extension will be granted. In the private sector, this would not fly, he added.

The Manager said he agreed with Mr. Taniguchi 100 percent. He believed the only question here is: is it the contractor’s fault?

Mr. Taniguchi said that did not matter. Factors like an act of God are identified in the contract. Looking at it from the other side, the contractor should be protecting himself, and the subcontractor should be protecting himself.

The Manager said that DWS has always maintained that if the delay is the contractor’s fault, the contractor should pay for it. DWS has been viewing the circumstances a bit more leniently here, seeing the delay as really not the contractor’s fault and that the contractor should not be penalized.

Mr. Taniguchi said that he sees it costing money on DWS’s side, and that somebody has to pay for it.

Chairperson Smith, noting that the Monthly Progress Report was the item under discussion, adding that if DWS felt it was okay to grant a contractor 90 days more time to finish the job, then DWS should have stated that when the job went out to bid. He noted that there are three basic components of a contract: scope, schedule and how much to pay the contractor. If DWS gives the contractor more time, the contractor can do the job for less money because he can

squeeze in one of his other jobs. What DWS has control over is money; what the contractor has control over is scope and time.

Mr. Mukai asked if henceforth it would be possible, during the bidding process, to put verbiage in contracts to make contractors aware that they are accountable.

Ms. Garson said the verbiage is in there. She said that she is in the process of redoing the verbiage of the Department's General Requirements and Covenants, as well as of the construction forms. All of these terms will be in new projects coming out, she said. Among the things that she is drafting concerns holding contractors accountable. She has had to look at the Hawai'i Administrative Rules and also look at DWS's contracts; she is trying to put everything into one document and update it at the same time. Drafting the new verbiage is a good time to start DWS's process of cracking down, she said.

Mr. Okamoto noted that it costs the contractor money to drag projects out, and the contractor typically does not want to have delays because it costs the contractor. If the accountability issue is brought up during the bid, it would make a difference, he added.

The Manager agreed that the contractor loses money with delays, citing payrolls, etc. The longer a project drags on, generally, the more it costs the contractor.

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

Mr. Taniguchi noted on the Financial Statement that DWS's investments had decreased by \$11 million because DWS had to liquidate investments for C.I.P. projects. He asked Mr. Sumada if DWS has enough money for the C.I.P. projects that DWS has approved.

Mr. Sumada confirmed that the Department has the monies, which are in an account that accumulates funds that are available to allocate to new projects.

The Manager noted that with the slow economy, DWS is not collecting much in the way of Facilities Charges, which are the primary driver of DWS's C.I.P. projects. The Department requested the County to do the \$30 million bond float so that DWS could finance construction projects. This is the perfect time for DWS to do projects because people are eager to work and the Department is able to get good bids.

Mr. Taniguchi asked about Maintenance and Repairs expenses, which reportedly rose due to several factors, including salaries. He asked why salaries were a part of it.

Mr. Sumada said that Maintenance and Repairs is a category of expenses primarily at the DWS Baseyard, where they have people employed to do repairs. This category includes personnel, as well as supplies and materials to perform maintenance functions for the Department. The personnel are regular DWS employees, he said. He explained that it may be confusing because in this Budget, the expenses are grouped by location; with listings under the various sections like the Board, Administration, Finance, etc. The expenses shown on the page entitled Statements and Operations are grouped by function (*not* by location). He gave the example of General and Administrative Function, where salaries for Mr. Sumada, the

Manager, et al, are listed. The maintenance people's salaries, on the other hand, are listed in Maintenance and Repairs.

Mr. Taniguchi asked what is involved in the item entitled Loss of Disposable Property.

Mr. Sumada said it involves things like pumps being retired at various locations. The loss is generated as an accounting (paper) loss, involving retirement of items before the depreciation was over.

The Manager noted that pumps, for example, may last six months, while others last a year. Often the life of a pump depends on its location, he added.

G. POWER COST CHARGE UPDATE:

The Power Cost Adjustment was discussed, with the following action taken by the Board. (Currently, the Power Cost Charge is \$1.68 per 1,000 gallons.)

The Manager asked the Board to defer action on the Power Cost Adjustment. He noted that in November, there was not enough statutory lead time to advertise a Public Hearing for December. Therefore, the decision was made to place the discussion of the Power Cost Adjustment onto today's Agenda. However, *in the interim since the November meeting*, the Power Cost has dropped from the \$1.77 posted in October; the most recent Power Cost is actually two (2) cents **lower** than the current Power Cost Charge -- \$1.66 per 1,000 gallons. The Department is recommending that the Board wait until the January meeting to see where the Power Cost is. DWS will make a recommendation at the January meeting, he said. At this time, there is no need to readjust the Power Cost Charge, he said.

Mr. Taniguchi asked if, then, HELCO's rate increase will not affect DWS.

Mr. Sumada said that it will affect DWS, but it does not affect DWS right now.

The Manager said that currently, DWS is charging \$1.68 whereas the Power Cost right now is \$1.66 (as of November, the latest available figure). At last month's meeting, the latest available figure was \$1.77, which is why the Department thought the Power Cost Charge should be raised. However, since then, the Power Cost has dropped down to \$1.66, only a two cent difference.

Mr. Taniguchi said that if the Power Cost Charge remains at \$1.68, the Department will recoup what was lost the previous month.

The Manager said the Power Cost Adjustment can only be done every two months, so DWS must be very careful when it does it.

Mr. Taniguchi said that because the Department is watching the Power Cost very closely, the Department can take timely action to adjust it when the need arises.

Chairperson Smith asked Ms. Garson if the Board should take action at this time to concur with the Department on deferring the Power Cost Adjustment, in light of the two cent

difference between the current Power Cost Charge at \$1.68, vis a vis the latest available figure of \$1.66. He believed that it was better for the Board to take the responsibility for the decision, by concurring. He asked the Board if they agreed with this.

Mr. Mukai said yes.

Chairperson Smith asked if there was a Motion to concur with DWS management, to **not hold** a Public Hearing on the Power Cost Adjustment next month (i.e., in January).

MOTION: Mr. Taniguchi so moved; seconded by Mr. Mukai.

Mr. Meierdiercks asked if there were some decision parameters, such as a 3 percent or 5 percent differential, that would trigger the need for a Power Cost Adjustment.

The Manager said he believed that the Board had decided on what the trigger would be.

Ms. Garson said she believed that the Board had decided not to make the trigger a strict percentage or amount, because that might run contrary to the rule allowing the Board discretion.

Mr. Meierdiercks suggested triggers like 3 percent differential (a yellow setting), 5 percent (orange) or 8 percent (red), adding that the higher the differential is, the more urgent the need for a Power Cost Adjustment would be.

Chairperson Smith said that while previously, the Board was considering holding a Public Hearing when the Power Cost rose to \$1.77 versus the current \$1.68, a difference of 9 cents, or 5 percent, the situation now was different. The difference now was only 2 cents, or 1 percent, and therefore the Board does not want to go through the effort of a Power Cost Adjustment at this time.

ACTION: Motion carried unanimously by voice vote.

H. WATER RATE STUDY:

Discussion on the new water rate study that the Department is planning to conduct, to address the shortage of funds being generated from water sales.

Mr. Sumada noted that RW Beck will make their presentation to the Water Board at the January 26, 2010, Board Meeting. RW Beck plans to show what DWS's revenue requirements will be over the next 5 years, based on the Department's cost of service over the same period.

The Board needed to provide input as to:

1. When rate increases, if any, are to become effective beginning July 1, 2010;
2. Percentage increases for the water rates; and
3. How the agricultural rate will be adjusted, if at all.

Mr. Sumada said that the Board needs to come to some agreement on when the Board wants the rate increase to go into effect, whether the Board wants an incremental increase over five years, or a larger increase in the first and fourth years of the five years, etc. The other decision is what the Board wants to do with agricultural rates, which is always a controversial subject. RW Beck will want to know how the Board feels about maintaining the agricultural rate, eliminating it, or tweaking the rate slightly.

Chairperson Smith asked if RW Beck wants to have the Board's responses after RW Beck makes its presentation on January 26th.

Mr. Sumada confirmed this. He said that RW Beck will take the information that they get from the Board and come up with a specific plan and a recommendation that the Board can take to a Public Hearing.

Chairperson Smith said that for the benefit of the more recent Board members, RW Beck should recap where the Department is, including where the deficits are, so that the Board can offer reasonable input. He suggested that the Board discuss it at the next meeting, and then possibly assign the Ad Hoc Finance Committee to get the Board's thoughts together to reach a conclusion. Having the Ad Hoc Finance Committee talk about the water rate study would give more latitude to discussing it, rather than just talking about it at a Board meeting and coming to a conclusion right then. The Chairperson said he thought this might be a possible outcome that could be put on the January Agenda, when the next chairperson is in place.

The Manager said that normally what happens is that there is a very good dialogue between the Board members and RW Beck, with RW Beck giving the Board enough information and recommendations *at the meeting*, which tends to lead smoothly to an agreement.

Chairperson Smith agreed that should be the goal.

Mr. Taniguchi noted that at the most recent water conference there was a comparison of the different counties, but the comparisons were not always consistent. He asked that when RW Beck does the presentation, it should compare "apples with apples," so that it is easier for the Board to make a determination.

The Manager said that DWS can ask RW Beck to compare the **actual cost** of service among the four counties.

Mr. Taniguchi agreed that would be good – comparing *like things to like things*.

The Manager said that the cost of service is the basis. He noted that Hawai'i County's cost of service is higher than the other counties, based on the Big Island's special characteristics: the Big Island's size, spot communities, and separate water sources. Factors like this make Hawai'i County's water rates higher than the other counties.

Chairperson Smith asked Mr. Sumada to request that RW Beck address the Lālāmilo Water System in Waimea, and the rates that it charges. This would illustrate what rate another agricultural water supplier charges.

Chairperson Smith called a **recess** from 11:28 a.m. to 11:35 a.m.

Meeting resumed at 11:35 a.m.

I. **MANAGER'S REPORT:**

The Manager provided an update on the following:

- a. Update on use agreement on KIC wells – Mr. Beck recently took a couple of KIC Board members to see the well sites, as well as the Kahalu‘u Shaft and DWS’s hydro-generator. One of the Board members, Mr. Bill Mielke, said he would ask the rest of the Board to consider reinitiating discussions with DWS on partnering to develop the wells. While it looked unlikely, under the current economic conditions, that KIC was ready to develop its subdivision in the area, these discussions could set the stage for when times improve. Chairperson Smith noted that the new acting KIC president is Mr. John Rocha (currently also KIC controller). He suggested that DWS write to Mr. Rocha, and cc the letter to KIC’s Board members Mr. Doug Ing, Mr. Komo Kalama and Mr. Micah Kāne.
- b. Palani Road Transmission Project – DWS has had three community meetings in the Palani Road area, most recently last night. The concerns are basically noise, traffic and dust control. DWS is asking the contractor to put up signage in the area. DWS is working to let the residents know that the contractor’s access to the worksite is not permanent. DWS does not want to disrupt the community. Residents asked if there were an opportunity to bring DWS pipelines into their subdivisions, whereby their water meters would front their properties. The Manager explained to the residents about the Improvement District process, along with the USDA loan grant program, giving the example of Coastview/Wonderview subdivisions. DWS will be doing a rough estimate on how much it would cost. However, because there are only eight homes in the subdivision, the price split among only eight homes is likely to be prohibitive. In any case, DWS is running the numbers for them. Mr. Harai asked if there have been any comments from the residents in Coastview/Wonderview. The Manager said that the last he heard was that the residents there are very happy with the water service. The Manager at last night’s meeting explained how the Improvement District/USDA loan grant program works, and told them that the initial step is to get their Council member to do a Resolution that initiates the process. Chairperson Smith asked whether DWS had addressed the concerns expressed by Kona resident Mr. Fred Housel at the November meeting; specifically, did DWS post the Palani work schedule on the DWS website, etc. The Manager confirmed that DWS addressed all of the concerns expressed by Mr. Housel.
- c. Ainaloa Pipeline update – Before introducing DWS’s service retirements, the Manager asked to skip ahead to this Ainaloa item. Late Water Board member Mr. Kuailani had requested this item, he noted. The Manager noted that several years ago, a Japanese developer had contemplated putting in a well for a golf course on the mauka end of Ainaloa subdivision. While that plan fell through, residents in the area requested water, and DWS provided an estimate for how much it would cost to bring in water. The problem with the area is that it lies within two different pressure zones. With the reservoir that DWS has on the Kea‘au-Pāhoā Highway (at an elevation of 603 feet), DWS can only serve a very short way up Ainaloa. Beyond that point, DWS would

need a booster pump, along with another tank. DWS provided all of this information to the residents during community meetings held four or five years ago, the Manager said. However, at that time, the then Council member for the district indicated that he would get money for the project for the residents. The Council member got an appropriation of \$750,000.00, but no **allocation**. The residents remembered the appropriation, and went to the current Council member. However, the fact remains that the money, although appropriated, has not been allocated (i.e., it is not physically there). The residents are working on it. Meanwhile, the interesting fact is that Ainaloa on the Pāhoa side is represented by one Council member, and on the Kea‘au side the area is represented by another Council member. The Manager said he believed that both Council members are working to resurrect some of the monies for the project. DWS met with the two Council members, who asked the Department how much it would cost to design a system. DWS gave them a figure, and the last that DWS has heard is that the Council members are trying to get the monies for at least the planning and design. It was not clear where the construction money was going to come from, he noted. Mr. Mukai asked what kind of money DWS is looking at for this project; the Manager said it would be in the millions, with the initial phase at around \$1 million. To serve up to the Ainaloa Long House, DWS would need a booster pump and another tank, which would bring the figure up to around \$5 million, he said. Back when Mr. Gary Safarik was the Council member, one of the options discussed was that at the end of DWS’s existing system, where the system’s pressure allows, DWS would provide a standpipe for the volunteer fire department to fill up their tankers. At this time, it appears to be up to the Council members to find the money for the planning, and to look for money for construction as well. In talks with the community, DWS raised the concept of the Improvement District process, and said that process is available to them. Chairperson Smith said that while he sympathized with the community and wanted to work with them, residents of subdivisions such as Hawaiian Paradise Park that lack modern infrastructure (as reflected in lower real estate prices) are not entitled to a standard water system, unless they pay for it. The Manager confirmed that he had made this clear to the community.

- d. Meeting Schedule/Venues for Water Board meetings in 2010 -- Looking at the tentative meeting schedule and venues, Chairperson Smith suggested confirming the first two meetings (for January and February 2010), while confirming the remainder of the year at future meetings. Ms. Garson said that was fine; The January 26 meeting will be in Hilo and the February 23 meeting will be in Kona. Mr. Meierdiercks noted that the dates for subsequent meetings this year will be on the fourth Tuesday of each month, with the exception of June and December, which will be on the third Tuesday of those respective months (due to the American Water Works Association meeting in June and the Christmas holidays in December). Chairperson Smith said that for March and beyond, the decision on the venues of the meetings would be on the January Agenda. Ms. Garson suggested looking into video-conferencing. Chairperson Smith asked the Secretary to look into video-conferencing venues. The Manager asked if there were a cost involved in video-conferencing, and asked the Secretary to look into whether there was a cost. Chairperson Smith asked if the Board meeting would stop if a video-conferencing link goes down. Ms. Garson said that if the link goes down with a member at a video-conferencing site, the Board could lose its quorum; the Board is taking a risk. Chairperson Smith noted that Keck Observatory has video-conferencing.

- e. Announcement of DWS service retirements – The Manager said that this year, all of the three service retirements are from the Operations Division, and he called on Operations chief Mr. Ikeda to introduce the three retirees. Mr. Ikeda said that two of the retirees were based in Hilo, while the third retiree was based in Waimea. The Hilo retirees could not make today’s meeting. Mr. Ikeda said that Hilo retiree Mr. Wayne Miyashiro has been a Building Maintenance Worker, starting with DWS in 1994 as a Water Works Helper and working his way up to his present position. Mr. Young spoke about retiree Mr. Alvin Kawauchi, who has been a Water Plant Operator in Hilo, starting with DWS in 1985 as a Meter Reader. Mr. Kawauchi was awarded Employee of the Quarter in 2000. Mr. Yamamoto introduced the Waimea retiree in attendance, Mr. Earles, who has been Lead Water Treatment Plant Operator IV since January 1999. Mr. Yamamoto noted how Waimea’s surface water had won a coveted drinking water award at the American Water Works Association conference in 2000, and credited Mr. Earles and his colleagues for continuing to provide Waimea area customers with good, safe drinking water. Chairperson Smith presented Mr. Earles with a retirement gift, a handsome koa clock made by DWS staff. Mr. Okamoto added his voice to praising the hard work of Mr. Earles and his colleagues, serving DWS’s customers in a very wide area.

On a separate topic, Chairperson Smith reminded the Manager to follow up on a list of DWS’s surplus property. The Manager confirmed that the list has been given to Engineering Division, and DWS’s surveyor is verifying the list. Chairperson Smith noted that a couple of months ago, he had noticed that DWS property in Kona included an abandoned water tank, and that he had asked the Manager whether DWS has a lot of abandoned sites or equipment that are not in service. He asked the Manager to provide a list to the Water Board.

J. **BOARD MEMBERS’ SERVICE:**

Section 13-4(d) of the County Charter allows a Board Member whose term has expired to serve an additional 90 days or until a successor is appointed and confirmed, whichever comes first.

The Department recommended that, pursuant to Section 13-4(d) of the County Charter, expired term Board Members will be allowed to serve an additional 90 days or until their successor is appointed and confirmed, whichever comes first, if so desired.

MOTION: Mr. Mukai so moved; seconded by Mr. Taniguchi.

Chairperson Smith noted that he believed that this Motion would apply in this case only to himself. (Ms. Kim was absent.)

ACTION: Motion carried unanimously by voice vote.

K. **ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2010:**

Ms. Garson said that the Board would be voting for a slate, comprised of a new Chairperson and Vice-Chairperson for 2010.

ACTION: Mr. Taniguchi proposed Mr. Mukai for Chairperson, and Mr. Meierdiercks for Vice-Chairperson; seconded by Mr. Harai. Motion carried unanimously by voice vote.

Ms. Garson noted that what just took place was the nomination of the slate and the election of the slate all in one. She said that outgoing Chairperson Smith would continue to preside at this meeting, since his term officially ends on December 31, 2009. Mr. Mukai assumes the Chairperson's position from January 1, 2010, she added.

L. **EXECUTIVE SESSION:**

The Manager waived his right to an Executive Session.

M. **MANAGER'S EVALUATION:**

Mr. Mukai at the November Board meeting had provided the Board with a summary of the evaluation results. In addition to the summary, the Board's packets included information regarding the salary levels of the Water Board managers of all four counties. The packets also included salaries for the Mayor, Managing Director, Deputy Managing Director, Police Chief, Fire Chief, Director of Human Resources and Director of Public Works.

Chairperson Smith noted that the United Public Workers (UPW) had not yet decided on a contract, while the Hawai'i Government Employees Association (HGEA) was looking at 24 furlough days in 2010, equivalent to a 9.2 percent salary decrease for its members. He said this was consistent with the economic situation which the State and County face, and how they are dealing with it. He noted that the packet included salary information regarding the Governor, Lieutenant Governor, the other counties' mayors and appointed positions within the State and other counties.

Mr. Mukai summarized the evaluation, saying that overall the evaluations were favorable, and were in tune with the evaluations done last year. Of eight categories, the average for 2009 versus 2006, 2007, and 2008 was six rated Excellent or higher, while two were rated Commendable to Excellent. Overall, it was a favorable rating.

The Manager said that he had looked at some of the comments, and felt he would be remiss if he did not address some of the concerns. He was not refuting the comments, but wished to provide some information. One of the comments was that DWS has taken only token measures on conservation and reduction of expenses. He wanted to assure the Board that the measures DWS has taken are not token ones. DWS has cut overtime and expenses, and has reduced equipment purchases. Regarding green initiatives, DWS has established a recycling program and has three hydro-generators, with plans for an additional hydro-generator. It was rather surprising that anyone assumed that DWS was taking token measures. He cited yesterday's meeting, where DWS discussed its programs on leak detection, off-peak pumping, as well as looking at Requests for Proposals from solar vendors and wind power distributors. He noted Ms. Myhre's earlier report on DWS initiatives. The Manager noted a comment that DWS staff is not venturing out on their own to seek new ideas. DWS staff routinely generates

new ideas, and is encouraged to think for themselves, coming up with their own solutions to problems. Another puzzling comment was that DWS management personnel rarely comes from the outside. The Manager said that he does not see that as a bad thing, because historical knowledge of the Department is important. The determination to go in-house or outside is the Manager's determination, based on discussions with the respective division head. Many times, DWS does go outside for key supervisory positions, to assure that the Department gets new thinking. He reiterated that to be a division head or to be in charge of this Department, historical knowledge of the Department is very important. Another comment was that construction should be better managed. The Manager said that DWS does a lot better than other departments, and praised DWS's engineers and inspectors for doing a very good job. The prior discussion regarding extensions notwithstanding, the Department does a good job of managing contracts, with contractors often saying that DWS deals with people fairly while in return expecting a good product. Another comment was about an inability to look objectively at the Board's concerns. The Manager said he could not understand how this perception could have arisen; he believed strongly that he was receptive to the Board's concerns, and the Department has worked hard to accommodate any concerns. Another comment was that the Budget could have been better managed the past two years. The Manager noted that he and Mr. Sumada go through the Budget almost constantly. Day-to-day, things occur within the Department that are too trivial to mention but that require flexibility in the Budget so that DWS can accommodate unexpected expenses, breakdowns, etc. The Manager said he could not see how the Budget could have been better managed, and praised Mr. Sumada for doing a great job, keeping him constantly informed on the Budget. One last comment was that the Manager has no firm grasp of financials. The Manager said that may be so, but his job is not to be the financial person; it is to lead the Department. That is why the Manager has people like Mr. Sumada, who has an indisputable grasp of financials.

Mr. Mukai said that in hindsight, not all of the categories received a rating.

Chairperson Smith asked if Mr. Mukai factored the blanks into the average.

Mr. Mukai confirmed that he had, dividing by the number of responses.

Chairperson Smith said he thought that was fair. He said he appreciated the Manager's comments and feedback. He acknowledged that the overall rating given by the Board showed that the Manager is doing an excellent job. The Chairperson noted that the staff exhibits loyalty and teamwork, working well with each other in finding solutions. He acknowledged that the Board only interacts with the Manager and DWS staff two hours a month, whereas everybody else in DWS interacts with each other 40 hours a week. The Chairperson said that the consistent goal of everyone on the Board is for the Department to continue to be the strongest it can be. He said that if there is something constructive and of value in the comments, then they could be incorporated into the Manager's management style and be reflected in DWS staff. Any criticism or input from the Board is directed toward making the Department stronger.

The Manager said that he would have been remiss if he had not addressed comments that he could not agree with. He expressed the belief that DWS is the best department in the County, with some of the most talented and committed engineers there are. The staff really care about

providing good service to DWS's customers. He cited Mr. Sumada's commitment to watching over the Department's finances, and said that customers routinely comment on the good service provided by the Operations crews headed by Mr. Ikeda. The Manager said there is no question in his mind that DWS is the best department in the County, and his goal is to keep it that way.

Chairperson Smith said he agreed.

Mr. Taniguchi said good job.

Chairperson Smith proceeded to the discussion of compensation adjustments for the Manager and Deputy Manager. He called for a Motion to make some kind of adjustment, and then the Board could discuss it. The choices were to keep the compensation the same, to go higher or go lower.

MOTION: Mr. Lindsey moved to discuss a 3 percent increase; seconded by Mr. Mukai.

The Manager noted that in July, he and the Deputy Manager had given up a 3 percent increase, and that the rest of the County management were going to give up the 3 percent increases that they had been scheduled to get. The Manager proposed that the salaries for Manager and Deputy Manager stay the same, to be consistent with the rest of the County.

Chairperson Smith said he wanted to clarify a couple of things. He said that the Board had agreed on a 3 percent increase in July, but that the Manager and Deputy Manager agreed to waive the increase. He said the Mayor and his appointees agreed to one furlough day a month.

The Manager said that was only the Mayor's Office appointed staff, not the rest of the Cabinet.

Chairperson Smith said he thought it applied to all of the Cabinet.

The Manager said no, it was only the Mayor's Office.

Chairperson Smith said he was trying to understand what the HGEA's agreement to two furlough days a month meant.

Ms. Garson said she believed that it was *a range of* up to 24 days a year.

The Manager said that all of the Cabinet and exempted management staff were scheduled for a 3 percent increase.

Ms. Garson confirmed this, adding that the Salary Commission had frozen the 3 percent increase.

The Manager said that the Salary Commission had frozen the proposed 3 percent raise, and that it is definitive that a raise should not be given.

Chairperson Smith asked if the HGEA employees go on furlough, they do not come to work on furlough days and do not get paid for those days.

Ms. Garson confirmed this.

Chairperson Smith said that the Mayor's Office agreed to a salary reduction, which means they come in to work and get paid less.

The Manager said no, what the Mayor's Office agreed to was that each of the appointees takes one day's leave without pay; it does not affect their salary: they take a one-day leave without pay.

Chairperson Smith said that the amount of money they take home is one day's pay less.

The Manager said yes, but their *posted salary* remains the same.

Chairperson Smith said that their salary officially stays the same, but they take less money home. He said he was trying to make a distinction between whether it is a pay cut and they are working 40 hours a week, or whether it is like a furlough where they work fewer days and get paid less.

The Manager said he believed that the Mayor's Office goes to work.

Chairperson Smith said that all of the DWS staff who are represented by HGEA will be impacted by whatever the furlough policy is.

The Manager said that the caveat that he discussed with Ms. Garson a while back was, because of the nature of the work DWS does (regarding health, safety and welfare), to see if the Board has the authority to make a separate agreement with the unions so that certain people in the Department are not subject to the furloughs. The issue has not come about because the furloughs are not in place yet. He had asked Ms. Garson to do research into whether the Board has the authority to reach a separate agreement with the unions or with the Mayor, because the Department has its own revenue. Therefore, it is the intent that not all of the Department staff will be furloughed, due to the nature of what DWS does.

Chairperson Smith asked Ms. Garson to comment.

Ms. Garson said that the Mayor has not yet decided on what he is going to do regarding County workers, what the terms are, essential personnel versus non-essential personnel, etc.

Mr. Harai asked if DWS was going to follow the County's lead.

Chairperson Smith said that this would be what the Board would have to discuss. He wanted to be sure that the Board all agrees on what the base information is. He asked the Manager who among the DWS staff is represented by HGEA.

The Manager said all of the white-collar employees except the Manager and the Deputy Manager.

Chairperson Smith said he thought that if all of the Manager's subordinates were going to be impacted by the furloughs, it would be difficult to keep the Manager and Deputy Manager's salaries the same. He said he thinks it shows leadership and example, but said it may be sort of unclear now, and that the Board may not have all of the facts.

Ms. Garson confirmed that the policy has not yet been decided by the Mayor, and it has not been decided what exactly will happen at the end of this fiscal year.

The Manager said a lot depends on what kind of income the Mayor is going to expect, noting that the Transient Accommodations Tax (TAT) will be a big factor in his decision (with the Governor calling for the counties' share of the TAT to go to the State instead). Real property revenues will be another key factor that will come into play.

Chairperson Smith said that over the past three or four years, whenever the Board considered compensation adjustments, the Board looked at what the DWS's bargaining unit employees were getting as step raises. The Board tried to match those percentage raises (e.g., 2 or 4 percent), so that the Manager and Deputy Manager did not find themselves making less than the people reporting to them. He believed that if something happens that impacts the compensation of DWS subordinates, there should be a corresponding adjustment to the Manager and Deputy Manager's salaries as well.

The Manager suggested deferring the matter, amid so much uncertainty.

Chairperson Smith said he would be comfortable with deferring a compensation adjustment, and proposed keeping the compensation the same until it was clear what will happen with the HGEA employees. He believed that would be fair and defensible, because at this point the Board does not have all of the data.

The Manager said he agreed.

Mr. Mukai said he would favor withdrawing the Motion to adjust the compensation.

Mr. Lindsey withdrew his second.

Mr. Mukai moved to defer.

Chairperson Smith said there should be a time frame for a deferral, and that the deferral should be until the HGEA situation becomes clear.

Ms. Garson asked whether the Board really wants to defer as a discussion item, or whether the Board wants to keep the compensation the same until the new fiscal year begins in July.

Mr. Taniguchi said the compensation should stay the same, and asked what the deadline for a decision is.

The Manager said that the Board has the right to bring up the compensation at any time.

Mr. Harai suggested deferring it.

The Deputy Manager suggested deferral. He noted that the Department will be going through its Budget process over the next few months, and if for any reason that the Department cannot balance the Budget, a discussion on compensation can be brought up. He suggested keeping the compensation the same while Mr. Sumada and his staff comes up with a balanced Budget for the Board's approval over the next few months.

Chairperson Smith noted that at issue were two persons' salaries, whose incremental difference would have no major consequence on the Budget. However, he wanted to give the right message amid the poor economy.

Mr. Meierdiercks recommended that the Board leave the compensation adjustment as an Agenda item on a monthly basis, which the Board can continue deferring, or bring up as appropriate.

The Manager suggested that the Board simply defer it, noting that the Board has a right to bring it up at any time the Board wishes.

Mr. Mukai said that was a good point, because that way the item would not have to be put on the Agenda.

Mr. Meierdiercks said the Board could choose to pass by the item.

Mr. Taniguchi said that if the item is on the Agenda, at least it would be there so that the Board could make adjustments.

Chairperson Smith noted that there was a Motion on the floor by Mr. Meierdiercks, seconded by Mr. Mukai, to leave this as an Agenda item for discussion/adjustment at a future date.

Mr. Mukai said no, actually he made a Motion to defer, but it was not seconded. (Mr. Taniguchi at this point said "Second.") Mr. Mukai moved to leave the item as agendaized, but then said Mr. Meierdiercks should make the Motion because it was Mr. Meierdiercks's idea.

Chairperson Smith said Mr. Meierdiercks so moved.

Mr. Taniguchi said that then Mr. Mukai seconded.

Mr. Mukai asked if he, Mr. Mukai, had seconded.

Mr. Taniguchi confirmed this.

Mr. Mukai said okay, Mr. Meierdiercks made a Motion (to leave the item agendaized) and Mr. Taniguchi and Mr. Mukai jumped on it to second.

Mr. Taniguchi said no, Mr. Mukai had seconded.

Ms. Garson said that the Board had deferred it, and so automatically it will go on to January's Agenda. She confirmed that the Board had not said the compensation would stay the same until July; the Board did defer (to the January meeting), she added.

ACTION: Motion to defer carried unanimously.

Ms. Garson asked whether Mr. Meierdiercks had moved to defer, seconded by Mr. Mukai.

Mr. Taniguchi confirmed this.

N. **CHAIRPERSON'S REPORT:**

Chairperson Smith offered valedictory remarks, commending the Manager, Deputy Manager and Department staff. He said that the Board is not here to micro-manage the Department, but to give suggestions to do a better job and to support DWS's efforts. He thanked everyone for their contributions to the community, providing safe drinking water to all of DWS's customers.

ANNOUNCEMENTS:

1. **Next Meeting:**

The next 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.

2. **Following Meeting:**

The following meeting of the Water Board will be held on February 23, 2009 at 10:00 a.m., in Kona, at a venue to be announced.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Smith called for a Motion to adjourn. Mr. Meierdiercks so moved; seconded by Mr. Taniguchi, and approved unanimously by voice vote. The Meeting adjourned at 12:30 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.