

MINUTES

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

January 26, 2010

Department of Water Supply, Operations Center Conference Room

- MEMBERS PRESENT: Mr. Dwayne Mukai, Chairperson
Mr. Robert Meierdiercks, Vice-Chairperson
Mr. George Harai
Mr. Bryan Lindsey
Mr. Riley Smith
Mr. Art Taniguchi
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)
- ABSENT: 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 Hajnosz, RW Beck, Inc.
Ms. Nancy Cook Lauer, West Hawai'i Today
Mr. Will Rolston, Energy Coordinator, Department of Research and Development
Mr. Dean Au, Carpenters Union Local 745
Ms. Krissy Halemanu
Mr. Kamaha'o Halemanu
- 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
Mr. Keith Okamoto, Engineering
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Analyst
Mr. Clyde Young, Operations
Ms. Crestita Hudman, Customer Service Supervisor
Mr. Caleb Halemanu, Meter Reader I

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

STATEMENTS FROM THE PUBLIC:

None.

APPROVAL OF MINUTES:

Chairperson Mukai entertained a Motion to approve the Minutes of the December 15, 2009, regular Water Board meeting.

MOTION: Mr. Meierdiercks so moved; seconded by Mr. Lindsey, and carried unanimously by voice vote.

Chairperson Mukai entertained a Motion to approve the Minutes of the January 7, 2010, special Water Board meeting.

MOTION: Mr. Meierdiercks so moved; seconded by Mr. Smith, and carried unanimously by voice vote.

ACTION TO MOVE AGENDA ITEMS:

Chairperson Mukai noted a request to move Item No. 9(G), WATER RATE STUDY, to the top of the Agenda, ahead of Item 5(A) MATERIAL BID NO. 2009-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS AND ANALOG & DIGITAL RADIO TEST PLATFORM FOR THE DEPARTMENT OF WATER SUPPLY.

MISCELLANEOUS

G. WATER RATE STUDY:

Ms. Ann Hajnosz from consultant RW Beck, Inc. made a presentation to the Water Board, with preliminary results of the rate study that her company conducted for the Department.

RW Beck was hired to do a five-year projection of water rates, including revenue requirements analysis, cost of service analysis and rate design. The scope of work includes today's presentation to the Board, as well as public hearings in April or May, and a final report to the Board in late July or early August.

Ms. Hajnosz cited key assumptions for DWS for the next five years through FY2015:

- Water sales growth at 0.92 percent per year;
- Customer growth at 0.80 percent per year;
- Operating expense escalator at 1.9 percent;
- Power cost escalator at **5.6 percent** per year;
- Capital expenditures at \$12 million per year (average);
- Staffing -- no new staffing through FY 2015.

Over the past three years, the study found that DWS's water sales growth fell by 3.7 percent, a pattern mirrored throughout the state and the entire nation. The main reason was a widespread trend toward conserving water. Meanwhile, customer growth over the last three years stood at about 0.7 percent.

Ms. Hajnosz noted that the Power Cost Charge here is pretty high, and is a big part of DWS's operating expenses. Even though RW Beck is escalating DWS's overall operating expenses by 1.9 percent, with the Power Cost Charge included, the overall operating expense calculator

is going to rise by about three percent per year, she said. As noted above, the Power Cost escalator is projected to rise by 5.6 percent per year over the next five years.

Mr. Smith asked if RW Beck's analysis evaluates separately DWS's ability to recover the Power Cost Charge.

Ms. Hajnosz said that was all part of the analysis, and RW Beck does not separate out the Power Cost Charge while realizing that DWS has the facility to recover it. However, it cannot be assumed that it is a one-for-one recovery because there is a lag, she noted. Meanwhile, DWS needs that revenue to pay for whatever Power Cost the Department will have in the future. She noted that the study does not concern itself too much with the Power Cost Charge because DWS has the facility to recover it.

Turning to capital expenditures, Ms. Hajnosz noted that making projections here is very difficult. While there is so much need for more rehabilitation and replacement of aging infrastructure, the funds are not there. After consulting with DWS engineers, RW Beck came up with a projected \$12 million per year average on capital expenditures. This figure is pretty low compared to what DWS has spent in previous years, she said. The initial projection had been for almost double, at \$20-25 million, she added. However, amid the strained economic situation, RW Beck sought to keep rate increases as low as possible, and therefore capital expenditure projections were cut back dramatically.

On staffing, the situation is similar. No new staff is projected through FY2015.

On water usage, there was a steep decline in most of 2009. However, in November and December, usage spiked upwards amid an extremely dry winter, Ms. Hajnosz noted.

Returning to staffing, Ms. Hajnosz originally had included 18 new staff positions in the projections through FY2015, but those positions have been taken out entirely. RW Beck has also figured in the assumption that furloughs will take place at DWS, although union negotiations are still ongoing.

On debt service ratios, RW Beck had wanted to put in a higher debt service coverage ratio (at 1.2 or 1.25) to give DWS an extra cushion. However, DWS has lately gone below 1.0, and has had to draw on cash reserves. Therefore, RW Beck put the ratio at 1.0. As a result, DWS has almost nothing going back to reserves, and so it is a very bare bones budget.

The Manager noted that with construction down across the island, the Facilities Charge contribution that funds C.I.P. projects is dwindling.

Ms. Hajnosz said that the gap between historical and projected debt service is pretty dire. In the past, DWS was pretty comfortable in terms of cash flow, with much of the revenue coming from sales, deposits and Facilities Charges. However, that has dwindled, and DWS in the past two or three years has had to draw on cash reserves for debt service and other needs. She noted that in FY2014, DWS will start having to service the debt on the \$30 million bond issue.

Ms. Hajnosz then turned to the Board's decision regarding what level of overall water system rate increase should be implemented in FY2011, and in the following years through FY2015. The RW Beck study proposed the following increases:

- FY2011 5.8 percent
- FY2012 3.7 percent

- FY2013 2.2 percent
- FY2014 4.3 percent
- FY2015 2.7 percent

Alternatively, the study also proposed increases every other year, *instead of annually*, starting in FY2011:

- FY2011 9.7 percent
- FY2012 0.0 percent
- FY2013 6.2 percent
- FY2014 0.0 percent
- FY2015 2.7 percent

The Board's decision on whether to approve annual increases or increases every other year depends on how customers are likely to react amid these difficult economic times.

Mr. Meierdiercks asked whether the fuel costs had been figured into the projections.

Ms. Hajnosz confirmed this, saying the projection is for an escalator of 5.6 percent annually over the five years. Basically, the projection for expenditures includes power, and the projection for revenues includes the Power Cost Charge. How DWS recovers *the difference between the two*, the **5.8 percent**, will depend on how the rate design is done, she said. Ms. Hajnosz noted that DWS has three components of its rates: the standby charge, the consumption charge, and the power cost charge. If DWS really wants to have revenue stability, it needs to have fixed revenues (i.e., fixed charges) coming in as close to *cost of service* as possible. With that in mind, DWS would want to have the standby charge capture all of DWS's fixed costs as much as possible; what DWS collects in consumption charges and power cost charges could then be determined. This would help keep people's water bills as constant as possible. That is one option to consider, she said.

Ms. Hajnosz offered a summary of what other counties are doing on water rate increases. Maui and Kauai had sizeable rate increases in FY2007 and FY2008, driven by their capital needs. (DWS has not raised its water system rates since FY2004, when the rates rose by 15 percent.) RW Beck looked at DWS's rates in FY2006, and recommended at that time that DWS have the facility to adjust the power cost charge on a more timely basis. However, at that time, DWS had a lot of cash on its books and RW Beck did not then recommend another rate increase.

A discussion ensued on whether the other counties capture the power cost charge, and whether the power cost charge was a separate item on their bills. Kauai, for example, does not show a separate item for power cost charge, she noted. Kauai raised its water system rate by 8.5 percent every year from FY2006 through FY2010, she said.

The 5.8 percent increase that RW Beck is recommending for FY2011 is the overall rate increase to recover all of DWS's revenue requirements, Ms. Hajnosz said.

The Manager noted that the Board has the right to raise rates in FY2011 by 5.8 percent, but if DWS's costs go up or down thereafter, the Board has the right to go back and revisit the rates.

Ms. Hajnosz said now that the Board knows what the overall rate increase needs to be, it is time to look at the revenue requirements analysis, allocating those costs into three main components:

- Average demand cost;
- Peak demand cost; and
- Customer cost.

In addition, there are two customer categories:

- General use; and
- Agricultural use.

For the test year of the rate study, FY2011, the peaking factor is 1.5, an important assumption that RW Beck has used for a long time, and a tough number to obtain.

Among the key assumptions for test year FY2011, the cost of service analysis has 67 percent of extra capacity allocated to the monthly consumption charge. Extra capacity is building a pipe bigger so that DWS can provide that extra capacity during peak hours. RW Beck recommends recovering that extra capacity not only from the consumption charge, but also from the standby charge.

The Manager asked what the proposed increase in the standby charge is.

Ms. Hajnosz said that this has not been done yet because RW Beck has not yet reached the rate design stage. However, the standby charge could go to about 90 percent of cost of service. She showed a comparison of unit costs among DWS in FY2011, Maui in FY2008, and Kauai in FY2006. From a cost of service standpoint, DWS is higher in FY2011 than the other two counties, at \$4.36 per 1,000 gallons. She acknowledged that the comparison is of different time periods, but the comparison gives a flavor of where the numbers are.

On the peaking factor, the assumption is that for the most part, the general use and agricultural use combined, on a total basis, have a peaking factor of 1.5. This takes into account the fact that when residential users are not using water, agricultural users could be using water. Basically, this is a low peaking factor. She noted that technology used to measure these peaks has dramatically improved, offering a more accurate peaking factor, peaking data, etc. Getting a more accurate peaking factor helps achieve a more accurate picture of the true costs of serving DWS's agricultural or general users.

Ms. Hajnosz moved to a comparison of cost of service charges on an actual rate basis, with a monthly standby charge on a 5/8-inch meter in FY2011 at \$13.45. Currently it is \$12.00, which as a percentage of cost of service is about 89 percent. With a 10-inch meter, DWS is right at cost of service, which is a good thing. DWS has generally higher standby charges, which means more revenue stability.

Turning to Rate Design, Ms. Hajnosz said this step in the water rate study process involves another policy-making task for the Board.

The questions Ms. Hajnosz posed were:

- Is the water rate equitable? (Is it based on cost of service?)
- Is it fair? (Is it fair to go from \$180 for standby charge, for example, on a 4" meter, and go up 25 percent in one fell swoop? Is it a fair thing to do, when there is such a difference from cost of service?)

Ms. Hajnosz observed that while DWS might want to move toward cost of service on the principle of equity, this is counter-balanced by the fairness principle with regard to pushing somebody's bill up in one fell swoop (versus other customers who might not have to suffer). The dilemma between establishing equity and establishing fairness is a balancing act.

Mr. Meierdiercks noted that the study gave no breakdown of how many customers have what size of water meters.

Ms. Hajnosz said that generally speaking, most of DWS's customers have 5/8" meters.

Mr. Meierdiercks noted that the other customers were commercial and agricultural (with larger meters).

Simplicity in the rate design was another feature to strive for, Ms. Hajnosz said. It is important that customers can easily understand the water rates. A couple of years ago, RW Beck looked at possibly charging rates according to district. This would reflect how much it costs to provide service and would arguably be more equitable – but it would be more complicated to administer. The current DWS rates are uniform throughout the island, and therefore simpler to administer. Administrative ease is an important feature. If the rates are too complicated to explain even to DWS staff and if the Information Technology system cannot figure it out, it will not work.

Ms. Hajnosz said a key assumption in the rate design phase is that the monthly standby charge will continue to be on a meter-size basis. The other assumption is that the block rate structure will not change; the general use class will see no change to its rate blocks and the agricultural use class will have a uniform rate for all usage. She noted that the uniform rate for all usage is good for agricultural users.

The rate design for the agricultural use class is a perennially thorny issue. The question is: what should agricultural users pay? How important is the agricultural industry in the state of Hawai'i? Is it fair that agricultural users pay less for water than what general users pay? Maybe it *is* fair; or, how much less is fair, she asked. The Board needed to direct RW Beck on how to design rates for agricultural and general use.

Ms. Hajnosz in her presentation asked: "What level of rate increase should be implemented for the agricultural usage class in FY2011?" RW Beck proposed the same rate increase as the general use class: 5.8 percent. The study also proposed possibly moving toward **full cost of service levels** for the agricultural usage class, which currently pays 62 percent. The other alternative is to impose no increase on the agricultural usage class, or to go with something in between.

Mr. Taniguchi asked about the proportion of the agricultural water usage.

The Manager said it was actually a small amount, an estimated 3 to 4 percent of the total usage.

Ms. Hajnosz noted that Maui's block rate for agricultural consumption of between 10,000 and 13,000 gallons is \$2.90 per 1,000 gallons; while DWS's block rate is an across-the-board \$2.43 per 1,000 gallons. Maui's block rate above 13,000 gallons is a generous \$1.00 per 1,000

gallons, she added. She said that assuming the cost of service for Maui's agricultural users is \$2.50, everybody else pays the difference.

At this point, Ms. Hajnosz summed up the two major issues upon which she was seeking the Board's direction:

1. The overall rate increase in FY2011, as well as through FY2015. (Is this to be implemented on an annual basis, or every other year?)
2. What is to be done about agricultural usage rates? (Does DWS set the 5.8 percent as the general system, i.e., system-wide, increase? Or does DWS move the agricultural rate to cost of service levels, or somewhere in between?)

Ms. Hajnosz said that with the Board's direction on the two above items, she can go back and complete the rate design. In March, the Board will approve the draft rates, and in April, Ms. Hajnosz will return to attend public meetings on the rates in Hilo and Kona. In June, the Board will approve the final rates, and on July 1, the new rates will go into effect.

Mr. Taniguchi asked for clarification on whether the line items would be water sales, power charges and standby charges, and whether the overall increase that the Board is looking at is 5.8 percent.

Ms. Hajnosz confirmed this.

Mr. Taniguchi noted that the assumption is for power cost charges to rise by 5.6 percent over the five-year period of the rate study. In this year's budget, 45 percent of revenue was made up of power cost charges, and 35 percent was made up of water sales. Therefore, the water sales portion and the standby charge portion are going to have to make up the difference, he noted.

Ms. Hajnosz confirmed this, saying that in doing the rate design, RW Beck must look at all of these numbers, with the goal of capturing a certain amount of money which is equal to 5.8 percent. How DWS captures that is all in the rate design, she said.

Mr. Taniguchi noted that the power cost is the one unknown element, subject to fluctuation beyond anyone's control. He stressed that whatever the Board decides needs to be explainable to the customer, and the more open, honest and transparent the decision, the better.

Ms. Hajnosz said this was very good food for thought; she was completely open to making the rate design explainable to DWS's customers.

Mr. Smith asked if RW Beck's recommendation was for an overall rate increase of 5.8 percent for the first year.

Ms. Hajnosz confirmed that was the recommendation for the first year, FY2011. Thereafter, the rates would be a 3.7 percent increase in FY2012, a 2.2 percent increase in FY2013, a 4.3 percent increase in FY2014, and a 2.7 percent increase in FY2015.

Mr. Meierdiercks observed that the Board *could* decide to impose overall rate increases **every other year**, with a 9.7 percent increase in FY2011, nothing in FY2012, a 6.2 percent increase in FY2013, nothing in FY2014, and a 2.7 percent increase in FY2015. He said that what the public perceives is what is happening right now, and it would be better to increase on an annual basis over five years (at lower increments) than to increase on an every other year

basis, with big increases. This year is going to be another tough year, and so it would be much better to increase at as small a rate as possible. He noted that the average customer's bill every two months is about \$50, so if you are looking at a 6 percent increase, it would be an increase of about \$3.00 every two months. The public perception of 6 percent is that it is a big increase, but in actuality, it is only about \$1.50 a month.

The Manager said that he agreed with what Mr. Meierdiercks said. When DWS got the initial results from RW Beck, the staff met and decided to cut back a lot. He agreed that it would be much more palatable to keep the rate as low as possible for the initial year because people are having a hard time. If DWS keeps the initial rate increase at 5.8 percent, and goes with the incremental rate schedule over the five years, public perception would be a lot better than if DWS were to push rates up by 9.7 percent in FY2011, and by zero percent the following year. All that people will see is 9.7 percent **now**. The Manager strongly recommended the low incremental increases in lieu of a heavy increase up front. This would be much better for the public, he said.

Mr. Meierdiercks asked if the figures that RW Beck put together were all real numbers for the projections over the five years; i.e., do these figures project real costs and, as much as possible, take into consideration wherever the power cost might go.

Ms. Hajnosz confirmed this, adding that the numbers also include projections of water sales. She said that because water sales are so difficult to predict, the Board will probably need to do another rate update in a couple of years to see whether water sales have gone through the roof. As it stands now, the Department has a very bare bones C.I.P. budget in these tough economic times. DWS has a responsibility to invest in its systems and cannot put off C.I.P. projects indefinitely, she noted.

On the bare bones \$12 million per year projected for capital expenditures, Mr. Okamoto noted that there was also the \$30 million general obligation bond float.

Ms. Hajnosz said that in FY2014, when the \$30 million bond comes in, DWS's debt burden will really go up. She acknowledged that that was already figured into the rate study.

The Manager said that the Department has scaled back on what it intended to spend, limiting itself to just keeping priority projects going; DWS has really cut back on the \$30 million.

Ms. Hajnosz said she was concerned that DWS has had to scale back dramatically from prior levels of around \$25 million in C.I.P. spending. Because of the economy, DWS is sacrificing C.I.P. spending.

Mr. Meierdiercks asked what was figured in for emergencies and disasters.

Ms. Hajnosz said that right now, DWS is pretty much depending on cash reserves.

The Manager said that budget-wise, DWS always has emergency line items, and if a huge emergency occurs, there are federal disaster funds available. He acknowledged that there is a lag involved in accessing such federal funds.

Chairperson Mukai said he would like to entertain a Motion regarding RW Beck's proposal.

Ms. Garson said the Board would be talking about the frequency of rate increases over the five-year period. She asked what, for purposes of the rate study, would the Board like to see. She noted that just because the Board decides to go with an annual rate increase does not mean that the Board cannot go back and adjust the rates later. Therefore, the decision today, for planning purposes, is on how the Board would like the rate design to be.

Mr. Harai said he would like to make a Motion to that effect: that the Board could implement the rate increase annually, and could go back after two years to adjust the rates if needed.

Ms. Garson confirmed that the Board would direct the Manager to go with an annual rate increase.

Mr. Harai agreed, saying that it would be on an annual basis, looking at it again in two years.

MOTION: Mr. Harai moved to direct RW Beck to go with the projected annual water rate increases in the schedule shown in the rate study; seconded by Mr. Meierdiercks.

The Manager said that while it would be nice for DWS to raise rates every other year at the higher rate because then DWS could do more C.I.P. projects, it is better for the public to have annual increases at lower increments. While this annual increase will be harder for DWS because it cannot do as many projects as it needs, the annual increase is going to be much better for the public.

Mr. Taniguchi asked if the Board has the option of changing the percentage of increase at a later date. He thought that a 7 percent increase might be better.

Ms. Hajnosz said that in this particular rate study, changing the percentage was not included. However, she suggested that in FY2013, the Board might want to take another look at rates. Usually in the middle of a five-year rate setting period, the Board would look at rates again, and that was her recommendation here.

The Manager said that the Board would not be locked in because the Board has the right to adjust the rate.

Mr. Meierdiercks said this was just a projection.

Mr. Taniguchi was concerned whether the proposed rate increase would be enough.

The Manager said DWS would prefer a 9.7 percent increase, but for the public, it would be a hard sell.

ACTION: Motion carried unanimously by voice vote.

Mr. Sumada noted that the Board was still on the current Agenda item, and needed to make a decision on the agricultural usage rate.

Ms. Hajnosz said the Board needed to decide on this. She noted that right now, the agricultural usage rate was about 62 percent of cost of service, with cost of service for agriculture at \$3.94 per 1,000 gallons. The agricultural customer actually pays \$2.32 (per 1,000 gallons), she said.

Mr. Smith said his feeling was that agricultural users should pay the cost for the water they are using. He said he is a residential customer; he is subsidizing the agricultural customers 38 percent of the cost of the water they are using.

Mr. Harai said the Board needed a Motion.

MOTION: Mr. Smith moved that the Board direct RW Beck to adjust the agricultural rates to the actual cost of service to provide water that agricultural customers use. Mr. Meierdiercks seconded.

The Manager said he agreed that nobody should subsidize anybody else, but he thought it would not be in the best interests of the agricultural community to take away the current rates all of a sudden. He suggested that the Board work towards eventual elimination of the agricultural rate, in increments.

Mr. Smith said he would amend his Motion. He said RW Beck in its rate design should determine what the proper agricultural rate should be, and have an implementation schedule that over a period of years, brings the rate up to the full cost of service. He suggested five years as the period.

Ms. Garson confirmed that Mr. Smith was amending the Motion, noting that the Board was able to discuss this in this discussion period.

Mr. Meierdiercks said the Board does not know what the increase will be, and therefore it would be difficult to determine how many years to spread the increases over. To make this determination, the Board would need an exact cost, he added.

Ms. Hajnosz said she would show the Board a draft rate, along with what a rate schedule would look like.

The Manager said that the Board could specify the number of years, but it would be Ms. Hajnosz's job to develop the increments.

Mr. Taniguchi said that the percentage was there; agricultural users are paying only 62 percent of the cost of service, so the Board is looking at a 38 percent increase, spread out over X number of years. Therefore, it would be 38 percent divided by five years, he said.

Mr. Meierdiercks said that would come to a 7.6 percent annual increase over the five years.

Mr. Taniguchi said that would be a huge increase, especially for the agricultural industry. The Board wants the industry to survive, he said.

Mr. Meierdiercks said it would be better to do a lower rate increase during the first few years, and maybe even it up across the board at the end of the period.

Chairperson Mukai said this was a good point.

Mr. Meierdiercks said it would be better than an initial big hit, which would sink some agricultural users entirely.

The Manager agreed, saying an incremental approach to eliminating the agricultural rate would be best.

Mr. Meierdiercks said the increases could be on a sliding scale and not in a straight line.

Mr. Smith asked about the state irrigation system in Waimea, and asked Ms. Hajnosz to show the slide regarding the rates for those (non-DWS) customers.

Ms. Hajnosz, noting the low rates for the state irrigation system customers, said that the water they were getting was non-potable, untreated water – essentially dish water.

The Manager noted that that system is purely gravity-flowed; there is no pumping, no electricity, no nothing. It is a pure gravity system.

Mr. Harai noted that the last time DWS increased rates, about eight or nine years ago, the farmers came out strongly against it. He suggested that Ms. Aton keep the farmers informed so that they know what is being proposed and so that they are not hit really hard. It is important to let the public know about the proposed rate increases.

The Manager said that the discussion about the rate increase is going to be very evident at the public hearings, and it will be Ms. Hajnosz's job to give all of the facts and justify the rate increase. The fact that DWS will be increasing the rates incrementally will mean it will not be as shocking – as it would be if DWS raised rates all of a sudden.

AMENDED MOTION: Mr. Smith moved that the direction to RW Beck is to do the agricultural rate study, based on agricultural rates absorbing 100 percent of the cost of service, and to propose an implementation schedule for the rate increase. He said that doing it over a five-year period seemed reasonable.

Mr. Meierdiercks said it should be on a sliding scale, too.

Chairperson Mukai said the Board should look at both scenarios, and asked Ms. Hajnosz to look at both an across-the-board schedule as well as a sliding scale.

Mr. Smith said yes, Ms. Hajnosz is the expert; she should propose the numbers.

Chairperson Mukai asked if there was a second to the Amended Motion by Mr. Smith, which he said basically puts the agricultural rate increase on a five-year track, at whatever rate Ms. Hajnosz deems appropriate.

Mr. Meierdiercks seconded.

ACTION: Amended Motion carried unanimously by voice vote.

Chairperson Mukai then called for a vote on the Main Motion as amended.

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

(Chairperson Mukai called a recess at 11:14 a.m. Meeting resumed at 11:22 a.m.)

APPROVAL OF SUPPLEMENTAL AGENDA AND ACTION TO MOVE AGENDA ITEMS:

Chairperson Mukai entertained a Motion to approve the addition to the Agenda of Supplemental Agenda Item No. 5(A), regarding MATERIAL BID NO. 2009-07,

FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS AND ANALOG & DIGITAL RADIO TEST PLATFORM FOR THE DEPARTMENT OF WATER SUPPLY.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Smith, and carried unanimously by voice vote.

Chairperson Mukai asked to move Item 9(B), ENERGY MANAGEMENT ANALYST UPDATE, ahead of Item 5(A), regarding MATERIAL BID NO. 2009-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS AND ANALOG & DIGITAL RADIO TEST PLATFORM FOR THE DEPARTMENT OF WATER SUPPLY.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Harai, and carried unanimously by voice vote.

MISCELLANEOUS

B. ENERGY MANAGEMENT ANALYST UPDATE

Ms. Myhre introduced Mr. Rolston, the Energy Coordinator with the County Department of Research and Development, who gave a brief report on the Sopogy solar thermal project in Kona.

Mr. Rolston noted that Sopogy, which recently launched a solar thermal generation facility in Kona, is one of the first of its kind in the United States, and the first-ever in Hawai'i. HELCO uses power generated by Sopogy, whose solar thermal storage can power turbines two hours into peak demand time. He noted that Hawai'i County is arguably the nation's leader in generation of renewable energy, using energy sources including wind, solar, geothermal, etc. He encouraged the Board to visit Sopogy's facility. Sopogy, owned by Hilo High School graduate Darren Kimura, will potentially generate up to 500 kilowatts of power, he noted. Lālāmilo would be a good site to do energy generation because it is wide open. Mr. Rolston worked at the Natural Energy Laboratory of Hawai'i Authority for two and a half years before coming to work at the County.

Ms. Myhre distributed to the Board today a draft overview of DWS's energy management activities. She reported that on December 14, 2009, the Investigatory Committee of the Mayor's Energy Advisory Commission met with Water Board Chairperson and Vice-Chairperson to develop a list of things the Department needs to do to advertise what DWS is doing on energy management. The Investigatory Committee has now dissolved. The Advisory Commission is now focusing more on going out to the community, rather than focusing solely on in-house County activities regarding energy management.

Mr. Smith asked what will happen next with the draft overview of DWS's energy management.

Ms. Myhre said that she has been working closely with Ms. Aton on the document, which Ms. Aton will use to inform the public, mainly through the DWS website.

Ms. Aton said that the document was requested by the Investigatory Committee.

The Manager said that what emerged from the December 14 meeting was a important issue for DWS: the fact that state procurement procedures have become a hindrance to DWS doing

renewable energy projects. One recommendation has been to go to the Legislature to ask them to relax some of the procurement procedures regarding renewable energy, to enable DWS to deal directly with third-party providers. The Manager cited the recent example of a solar power company that offered to put up a facility for DWS, but under the current procurement procedures, DWS cannot do so.

Mr. Rolston said that he was meeting tomorrow with Ted Liu, the head of the state Department of Business, Economic Development and Tourism (DBEDT) to discuss renewable energy projects in Hawai'i County.

The Manager asked Mr. Rolston if he had submitted anything to the Legislature regarding the procurement procedures.

Mr. Rolston said no, he was unaware that there was a problem facing DWS regarding procurement procedures. He said he would look into it, and speak with Mr. Liu about it.

Ms. Aton apologized for not including in the overview the initiative to get the Legislature to relax the procurement procedures for renewable energy projects.

Ms. Myhre reported on the Lālāmilo Windfarm project. DWS had been meeting regularly with HELCO to determine its plans for using the site. However, those talks are on hold because the monies that HELCO slated for renewing the windfarm have been transferred to Hawaiian Electric Industries (HEI) which is HELCO's parent company and the actual operator of the windfarm. DWS is meeting with HELCO on the site on February 19 to get HELCO's schedule for cleaning up the site. A group from DWS will be there, along with Mr. Rolston, HELCO personnel and personnel from HEI. Ms. Myhre is working with Mr. Rolston on negotiations with the site's owner, the Department of Land and Natural Resources, on extending DWS's lease on the parcel. Note: HELCO is the sub-lessee on the parcel, leasing from DWS.

Chairperson Mukai said that basically, DWS is at the clean-up stage of talks with HELCO.

Ms. Myhre noted that the windfarm is on a parcel adjacent to DWS's Lālāmilo wells.

Mr. Meierdiercks asked whether or not DWS had any future use for the parcel.

Ms. Myhre said DWS is working on it, and hopes to have a use for the parcel within the next couple of months. DWS is working with the National Renewable Energy Laboratory on doing studies to explore what it would take to re-power the site. It may end up being something that would be staged over several years, depending on how DWS pays for it.

Mr. Meierdiercks asked whether HELCO could take over the lease in the event that it is unable to clean up the site.

Ms. Myhre said no, the parent company, HEI, has the money to pay for the clean-up.

The Manager said that HELCO got the sub-lease from DWS with the proviso that HELCO used the site for a windfarm to provide power to DWS, which is not happening anymore.

Mr. Smith asked whether DWS had received a response to the Manager's letter to HELCO president Mr. Jay Ignacio in November, requesting the clean-up schedule.

Ms. Myhre said no written response has been received by DWS, as far as she knows. The February 19 meeting is basically HELCO's response, she said.

Mr. Smith suggested that Ms. Myhre send the same letter the Manager wrote to Mr. Ignacio to the president of HEI, explaining the liability exposure that HELCO is putting DWS under by its inaction over the clean-up. He noted that DWS's lease expires in December 2010, and as the prime lessee DWS needs not only HELCO to clean up the site by that time, it also needs a Phase I Environmental Site Assessment (ESA) to certify that the site is cleaned up. Mr. Smith also suggested that Ms. Myhre keep Mr. Rob Pacheco, the Land Board's Big Island representative, informed about DWS's efforts.

Mr. Taniguchi asked whether the letter to HEI should come from the Board or DWS.

The Manager said he thought the letter should come from DWS, and suggested waiting to see what transpires from the February 19 meeting.

SOUTH HILO:

A. **MATERIAL BID NO. 2009-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS AND ANALOG & DIGITAL RADIO TEST PLATFORM FOR THE DEPARTMENT OF WATER SUPPLY:**

Bids for this project were received and opened on January 21, 2010, at 2:00 p.m.

The contract period for all Parts is from the date of the Notice to Proceed, to June 30, 2010. All Parts are to establish price agreements for materials on an "As-Needed Basis."

Only one qualifying bid was received.

PART NO.	DESCRIPTION	BIDDER	AMOUNT
1	DIGITAL MOBILE RADIOS	Pacific Wireless Communications, LLC	\$64,705.80
2	ANALOG & DIGITAL RADIO TEST PLATFORM	Pacific Wireless Communications, LLC	\$41,436.80

The Manager recommended that the Board award the contract to **Pacific Wireless Communications, LLC**, for Parts 1 and 2 of MATERIAL BID NO. 2009-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS AND ANALOG & DIGITAL RADIO TEST PLATFORM FOR THE DEPARTMENT OF WATER SUPPLY, on an as-needed basis, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract(s), subject to review as to form and legality of the contract(s) by Corporation Counsel. The contract period shall be from the date of the Notice to Proceed, to June 30, 2010.

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

Mr. Smith asked whether the bid package was put together in-house.

Mr. Inaba confirmed that it was done in-house.

The Manager said the Department consulted with suppliers, and DWS knew what it wanted and needed.

Mr. Ikeda said DWS's electronics technicians put the specifications together, so the Department knew what it wanted and needed.

Mr. Smith asked what recourse the Department has in case the radios do not work.

Ms. Garson said the recourse was to sue for breach of contract, and there are warranties that cover any problems with the equipment.

Mr. Smith noted the Police Department's perennial problems with its radio system.

The Manager said that these are radios that work on DWS's existing frequencies, so there is no major change involved that might cause problems similar to the Police Department's radio system.

Mr. Taniguchi asked whether the equipment was budgeted for.

Mr. Ikeda confirmed this.

ACTION: Motion carried unanimously by voice vote.

SOUTH KOHALA:

A. JOB NO. 2007-943, 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 73-calendar day time extension. This request consists of 19 calendar days to accomplish the work for Change Order No. 3 (additional testing and engineering analysis to revise the Zone 2 material, including approval from DLNR); 10 calendar days for the additional work of Change Order No. 4 (Ground Penetrating Radar (GPR) survey work for six additional concrete slope panels, including incorporating results into GPR survey report); 36 calendar days for the additional work of Change Order No. 5 (12 calendar days for water seepage repair and 24 calendar days for additional crack repair); and 8 calendar days for rain-outs and unworkable conditions from November 1, 2009 to December 31, 2009.

Note: This is the third time extension request. There is no additional cost associated with this time extension.

Staff has reviewed the request and finds that the 73 calendar days are justified.

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.
3	2/25/2010	5/9/2010	73	<i>Additional work for Change Order Nos. 3, 4, and 5; and rain-out days.</i>
Total Days (including this request)			181	

The Manager recommended that the Board approve a contract time extension to Goodfellow Bros., Inc. of seventy-three (73) calendar days from February 25, 2010 to May 9, 2010, for JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS.

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

Mr. Inaba confirmed that the third extension was in the approved change orders, under contingency funds.

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: This item was deferred from the December 15, 2009, meeting.

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. Smith.

Ms. Garson said that after the notice to commence work was issued to the contractor on July 23, 2009, Derrick’s Well Drilling and Pump Services, LLC (Derrick’s) sent in the purchase order for the pump, with a delivery date listed as TBA (“to be announced”). The pump manufacturer, Promark Corporation, sent back an acknowledgement. She said there is nothing in the General Terms and Conditions regarding manufacturer delays except for one regarding strikes, embargoes, and similar events considered unforeseen delays. There is nothing that says “not the contractor’s fault”. During the previous discussion on this item (at

the December meeting), the question arose whether there was anything in the contract that said if a delay is not the contractor's fault, the contractor can have an extension. As it turns out, there is no provision for that. Furthermore, DWS's General Requirements and Covenants have a liquidated damages provision; for a contract of this amount, the liquidated damages for a delay would be \$150 a day.

Chairperson Mukai asked who wrote "TBA" regarding the delivery date for the pump.

Ms. Garson said it was on the purchase order from the contractor. The contract itself has a completion date for 180 days, with the date set at January 29, 2010. The purchase order did not have a date, she said. Ms. Garson said that Mr. Young explained to her that typically the contractor does not put in a delivery date. Because the manufacturing of the pump is so specialized, when someone puts in an order, the person has to get in line behind the other customers. The manufacturer dictates when the pump gets delivered. Even if the contractor had put in a specific delivery date, the manufacturer would have disregarded it.

The Manager said that these pumps are specially made as to *head*, which is how much pressure it can pump, and *capacity*, which is how much water it can pump. The design of the impellers on the pump is highly specialized, and therefore the pump cannot be just bought off the shelf – it must be specially made.

Ms. Garson noted that Derrick's did not submit anything to delay the order; it did not stipulate additional specifications, nor were there missing information or design changes, etc. In short, Derrick's did nothing to cause the delay.

Chairperson Mukai asked if DWS has anything in writing from the vendor that acknowledges they won the receipt of the purchase.

Ms. Garson confirmed this.

Chairperson Mukai asked if there was any mention that there would be a problem with delivering the pump.

Ms. Garson said no.

Mr. Smith asked if there was any exclusion in Derrick's bid that says, "Here is our price, however, we cannot meet the schedule".

Ms. Garson said no, Derrick's had not put an exclusion in the contract. She acknowledged that if Derrick's had done so, it would have meant the contractor was non-responsive.

Mr. Smith said that if Derrick's had put in an exclusion, DWS would have thrown his bid out and gone to the next bidder up. By submitting his bid at this price, Derrick's was saying he could meet the schedule. Mr. Smith said nothing has changed on the contract and now, less than 180 days later, Derrick's is saying that he needs 50 percent more time to do what he said he could do in 180 days.

The Manager said that is basically what happened, but it is not that simple.

Mr. Inaba said that there is an assumption that when DWS designs and specifies a pump, the pump would be available and the vendor would deliver the pump to the contractor to do the

project on time. For another contractor to put in additional funding, for example, would not be practical because DWS would wind up with a higher bid. Therefore, if there was some kind of time issue and the contractor *knew* they could not meet the schedule, then the contractor would submit a Request for Information (RFI) to DWS to make everybody bid on the same level playing field. There would be no advantage for a contractor to say he could meet the schedule, and not to state to anybody else that he would have to bid say, \$50,000.00 extra for the project. The contractor would obviously not get the bid in such a case, he said. He noted that even the bidders want to bid on everything the same.

Mr. Smith asked who had set the 180 days.

The Manager said DWS set the 180 days.

Mr. Smith said that DWS, by setting the 180 days, thought the project would be completed in 180 days, and none of the contractors who bid on the project excluded and said they needed more time. If any contractor had submitted an exclusion, DWS would have thrown out the bid as non-responsive.

Mr. Inaba agreed that typically in such a case, the contractor would come in prior to bid opening time with a Request for Information (RFI).

Mr. Smith said Derrick's knew, on the day the bid was opened and he signed the contract, that he could not perform. When Derrick's asked for prices from his sub-contractors, the sub-contractors would have told him they could do the job for a certain amount but would tell Derrick's that they needed to wait in line.

The Manager said he did not think that was an accurate statement. The Manager said he did not believe that Derrick's knew that he could not perform; otherwise, Derrick's would not have bid. Derrick's is subject to someone else's time table. Because of the specialized nature of the pump, Derrick's cannot go to another pump manufacturer.

Chairperson Mukai said that, coming from the private sector, it seemed to him that Derrick's and others are not calling their vendors to see if they can deliver in 180 days. The contractor needs to see if he can actually acquire all of the materials to do the job.

Ms. Garson said that when DWS got the acknowledgement from Derrick's, there was no date in there that she could find. She is missing pages 2, 3 and 4, and wondered whether the date could have been on one of those pages. She said that in the General Terms and Conditions, there is a term where the seller, "in the event of seller's unexcused delayed delivery, seller will pay purchaser liquidated damages." So that language is in the contract that Derrick's has with the manufacturer, but there is no delivery date, so far as Ms. Garson can see.

Mr. Smith asked if the manufacturer was told about the 180-day contract that Derrick's has.

Ms. Garson said she did not know.

Mr. Smith said the only exclusion he could see under unforeseen circumstances would be if the company went out of business, but that is not the situation here. He said that Derrick's cannot just say it is beyond his control; Derrick's could pay to fly the pump in, or pay a premium to get the pump built on time.

Chairperson Mukai said during his short stint doing procurement with the government, when a purchase was made and if the contractor did not deliver it within 30 days, the options were to cancel the contract, make the contractor deliver it and absorb the costs, fly it in, etc.

The Manager said the issue is not flying the pump in; the issue is that the pump is not going to be manufactured and available in time.

Chairperson Mukai said that he and Mr. Smith are on the same page; the contractor should have done his homework. If Derrick's had put a date in there and the vendor responded that there is no way that he could build the pump in time, there might be a little more ground to consider.

The Manager asked Mr. Young if there was a particular reason that the pump was not made fast enough.

Mr. Young said that he knows Derrick's spoke to the vendor, who made a commitment. He was not sure whether it was in writing (i.e., a letter), or an e-mail, or verbal, but Derrick's felt they could meet the deadline. However, along the way, a couple of months later, the vendor came back and said they cannot make the deadline. Derrick's was relying on the vendor to meet the deadline.

Chairperson Mukai said that to him, the issue was not between Derrick's and DWS; the issue is between Derrick's and Promark.

Mr. Smith said that next time, DWS should put in 270 days; DWS put Derrick's in a box with 180 days. Derrick's does not have an alternative so he is going to fudge his numbers and hope DWS is going to give him more time later. He said that DWS perpetuates a bad situation.

Mr. Harai asked how DWS's relationship with Derrick's is.

The Manager said the relationship was very good; Derrick's is a very good contractor, not only in furnishing pumps. They also repair pumps and are in the well drilling business. Derrick's has been very responsive, he added.

Ms. Garson asked whether, regardless of the relationship, DWS is going to apply whatever the Department decides to apply evenly.

The Manager noted that this is not the first time a situation like this has happened. This has happened before with other suppliers who buy these types of pumps, and they come across the same situation when the manufacturer cannot deliver on time for various reasons. In the past, DWS has granted extensions because it is not the contractor's fault. The Manager said in this particular case, he did not believe it was Derrick's fault. The consequences of what is done here today are going to have a drastic impact on prices. If there is uncertainty whether DWS will be willing to grant exceptions with issues that are beyond the bidder's fault, and DWS sticks the bidder with liquidated damages, bidders will surely start upping their bids. DWS will ultimately pay for this.

Chairperson Mukai said he did not agree with that statement.

Mr. Smith said basically what the Manager is saying is that there was no way the contractor could perform; Derrick's knew after July 29, 2009 that he could not make the schedule.

The Manager disagreed, saying that Derrick's did not know this. If the contractor *did* know, he should be penalized, but he did not know, the Manager said.

Mr. Smith said that the issue was between Derrick's and Promark.

Chairperson Mukai said all the contractors have to do is a little more homework before they bid.

Ms. Garson said that what is before the Board now is just an extension of time. She said that the matter of assessing liquidated damages might cause some controversy when it comes, but right now all the Board is considering is whether to grant the time extension.

Chairperson Mukai asked the Secretary to read the Recommendation.

Chairperson Mukai said an affirmative vote is to agree to a 91-day extension; a negative vote is to not agree to the extension.

Mr. Taniguchi said a negative vote means Derrick's would have to finish in three days; that is not feasible.

Mr. Meierdiercks said the ramifications are about \$15,000.00 in liquidated damages.

Ms. Garson said that if Derrick's takes it all the way, it means \$13,600.00 in liquidated damages.

Chairperson Mukai started to take a voice vote.

Because there was at least one "nay" vote, Ms. Garson said that a roll call vote was required.

Chairperson Mukai said an affirmative vote is to allow the 91-day extension, and a negative vote is not to grant the extension, and to hold the vendor to the contract.

ACTION: A roll call vote was taken on the Motion to grant the time extension: Motion failed: Ayes: 4 – Messrs. Harai, Meierdiercks, Taniguchi, and Lindsey; Nays: 2 – Mr. Smith and Chairperson Mukai.

Ms. Garson said that an affirmative vote of the entire membership is necessary for something to pass. There are only four affirmative votes. Because the entire membership (when all vacancies are filled) is **nine** members, five affirmative votes are required to pass the Motion. Therefore the Motion fails, she said.

B. KEAHUOLU LANDS WATER DEVELOPMENT AGREEMENT WITH QUEEN LILI'UOKALANI TRUST (QLT) ON COST-SHARING AND CAPACITY-SHARING FOR THE PALANI ROAD TRANSMISSION WATERLINE PROJECT (JOB NO. 2003-823), PALANI ROAD TRANSMISSION WATERLINE, MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR:

The Board is being asked to consider approval of the KEAHUOLU LANDS WATER DEVELOPMENT AGREEMENT between DWS and Queen Lili'uokalani Trust (QLT), covering cost-sharing and pipeline/reservoir capacity-sharing with regard to the facilities being constructed as part of the Palani Road Transmission Waterline Project.

QLT desires to transport some of the water it has available for its use, and some of the water it will have available for its use after development of a new well, through the proposed DWS facilities. These facilities will serve future customers at the makai portion of QLT lands.

DWS desires to acquire and purchase portions of QLT lands for pipeline easements and reservoir sites to construct the necessary facilities which will bring high-quality water from various wells located above the Māmalahoa Highway down into Kailua-Kona.

Doing so will be of great benefit to DWS, as it will improve the taste of water served in Kailua-Kona. It will also reduce the reliance on the Kahalu‘u Shaft, lessening the amount of water pumped from the shaft. This, in turn, is expected to improve the water quality of the water that would still be taken from the shaft.

DWS determined how much excess pipeline capacity it could spare, and is charging QLT a proportional amount for that capacity. DWS also determined the minimum reservoir size (two reservoirs required) and the associated lot size that would be required if QLT were to build their own transmission facilities to serve their makai properties.

QLT will pay those costs, and DWS will pay the oversizing costs to install reservoirs large enough to serve the combined needs of DWS and QLT. DWS will then own the reservoir sites outright. The pipeline easements will be granted to DWS without cost, in recognition that QLT would have had to provide the same easements if they were to build their own system.

The Manager recommended that the Water Board approve the execution of the KEAHUOLU LANDS WATER DEVELOPMENT AGREEMENT, and further that the Chairperson or Vice-Chairperson be authorized to execute the Agreement, subject to review as to form and legality by Corporation Counsel.

Ms. Garson asked the Board to defer this item because the agreement was not final.

MOTION TO DEFER: Mr. Meierdiercks moved to defer; seconded by Mr. Taniguchi, and carried unanimously by voice vote.

C. JOB NO. 2007-919, EARTHQUAKE DAMAGED TANK REPAIRS – GROUP #2:

The contractor, Isemoto Contracting Co., Ltd., has requested a contract time extension of 90 calendar days.

After the 1.0 M.G. Lālāmilo 610’ Tank was drained for interior repairs, inspections revealed a large crack or cold joint in the tank floor that will require significant repairs. The contractor’s tank repair subcontractor, DYK, Inc., is currently investigating the damage and will make a recommendation as to the scope of work required to repair the tank floor.

The project was also delayed because the temporary storage tanks, needed for repairs to the South Kohala Resort 404’ Tank, were unavailable at the start of the project as they were still in use with the Group #1 (North Kona) tank repair project.

Note: This is the first time extension request. There is no additional cost associated with this time extension.

The Manager recommended that the Board grant this time extension of 90 calendar days to Isemoto Contracting Co., Ltd., for JOB NO. 2007-919, EARTHQUAKE DAMAGED TANK

REPAIRS – GROUP #2. If approved, the contract completion date will be extended from February 15, 2010 to May 16, 2010.

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

KA‘U:

A. **JOB NO. 2006-894, THE CONSTRUCTION OF THE HAWAIIAN OCEAN VIEW ESTATES WELL DEVELOPMENT – PHASE I:**

The contractor, Beylik Drilling, Inc., is requesting a time extension in a letter dated January 5, 2010. The 95 additional calendar days requested include 30 calendar days of unavoidable delays due to the well’s remote location in scheduling and delivery of the cement trucks required for additional grout in sealing the annular space, and 65 calendar days for re-design of the site excavation that included extra work and additional elevation surveys that were done at no cost to the Department.

Note: This is the first time extension request. There is no additional cost associated with this time extension.

Staff has reviewed this first time extension request, and finds that the 95 calendar days are justifiable.

The Manager recommended that the Board grant Beylik Drilling, Inc., this extension of contract time on JOB NO. 2006-894, THE CONSTRUCTION OF THE HAWAIIAN OCEAN VIEW ESTATES WELL DEVELOPMENT – PHASE I from November 11, 2008, to February 14, 2009.

Chairperson Mukai said this item was for information purposes only.

Ms. Garson agreed, saying the Board can disregard the Recommendation because this contract is only with the County, not the Department of Water Supply.

Mr. Meierdiercks asked whether the wording should say “at no cost to the County”, instead of DWS.

The Manager said yes, this project was one in which DWS agreed to assist the Mayor, by administering the project. That is why the County and DWS were used interchangeably in the wording.

MISCELLANEOUS:

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

The Water Board’s Ad Hoc Finance Committee Chairperson, Mr. Art Taniguchi, said there was no report this month because the Committee did not meet due to the holidays. There will be a report at the next Water Board meeting, he said.

B. **ENERGY MANAGEMENT ANALYST UPDATE:**

(This item was covered earlier in the meeting.)

C. DWS FACILITIES NOT IN USE:

The Board has received in their packets copies of a listing (by areas) of DWS facilities not in use, with a description of ownership of the area each facility occupies. This information has been provided for informational and discussion purposes.

The Manager noted that DWS has deeds to some of the sites, some are under Executive Order, and some are easements. With Executive Order-type sites, the only alternative DWS has is to return the property back to the state. However, in some cases, DWS would have to pay to demolish facilities on the sites. For the sites that DWS has deeds on, the alternative is for DWS to demolish the facilities and put the land up for auction or public sale. Sites where DWS has easements can be turned back to whoever granted the easement. He said the demolition of facilities will cost DWS a lot of money. It is a financial decision on how much DWS is willing to spend.

Mr. Taniguchi asked about the site at the top of Puainako Street.

The Manager said that has not been in use for many years, not since he joined DWS, and would not be usable under Environmental Protection Agency (EPA) regulations.

Mr. Harai asked about the tank on Hinalani Street in Kona.

The Manager said that several years ago, the Water Board had agreed to give that to the Department of Environmental Management (DEM). That was where DEM was planning to upgrade their treatment plant to DWS's one; DEM was going to use the tank for storage of their effluent. However, the upgrade never took place, and the tank stands empty. It is still on record that the Board agreed to allow DEM to use the tank, and gave it to DEM.

Mr. Smith thanked the Manager for the list, and suggested that DWS add a couple of more columns to the list, to list the evaluation of the assets' value, along with the demolition value. In so doing, DWS would be making an objective determination that it costs more to return the site. In the meantime, DWS needs to maintain the sites by cutting the grass, the trees, etc. to keep the sites presentable. He also warned about "attractive nuisances" such as a site near Mahilani and Ahikawa Streets, off Māmalahoa Highway in Kona Highlands. Sites like this need to be secured, because they pose potential liability exposure to DWS.

The Manager said he could have each of the Department's district heads have a look at all of the sites, to make sure the sites are secure and pose no liability concerns for DWS.

Mr. Smith said that maintenance of the sites will be an ongoing cost, to ensure DWS does not have problems. He asked DWS to do a risk assessment if there are situations such as the huge boulders that rolled on homes in Kalihi Valley recently, with the Board of Water Supply in Honolulu possibly liable.

Mr. Meierdiercks noted that DWS also has to secure the facilities that are in use, such as the tank above the new Kona Civic Center, whose gates are secured only by chains which are not attached to posts in the ground.

The Manager said this was a good point, because the gates could swing out and a person could squeeze through. He said he would instruct all of the district heads to go out and secure all facilities and do maintenance.

D. **MONTHLY PROGRESS REPORT:**

No discussion.

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

Mr. Taniguchi asked how the Power Cost Charge revenue looks, going forward at the current rate.

The Manager said the next Item, 9(F) would look at the Power Cost Charge, which is going up.

Mr. Sumada said that he looks at this as something that should be breaking even in the course of the year, because the Power Cost Charge lags by a couple of months, going up and going down.

Mr. Taniguchi asked whether at this time there was any need for the Board to do any adjustments of the Power Cost Charge.

Mr. Sumada said that if the Power Cost Charge starts to grow, and if a deficit starts growing, then the Board should start addressing it.

Mr. Taniguchi said that the Board should maybe look at next month's Power Cost Charge, and if it shows another \$300,000.00 deficit, the Board should take some kind of action.

The Manager said the Board would be looking at the Power Cost Charge in the next item, 9(F).

F. **POWER COST CHARGE:**

The Power Cost Adjustment will be discussed, with possible action by the Board. Currently, the Power Cost Charge is \$1.68 per 1,000 gallons. The most recent Power Cost Charge is \$1.74, as of December 2009.

The Manager noted that the difference was over the 5 percent that the Board set as a trigger to hold a Public Hearing on adjusting the Power Cost Charge.

Mr. Smith said the trigger was five cents.

The Manager said that based on that, the Board should seek a Public Hearing and raise the Power Cost Charge accordingly, unless the indication is that it could go back down or go even higher.

Mr. Taniguchi asked if there was any indication.

Mr. Sumada said that next month it looks like the Power Cost Charge is likely to be down to \$1.66 or \$1.70, so by the time the Board holds a Public Hearing, the Power Cost Charge is not going to be very different from where it is now, \$1.68 per 1,000 gallons.

The Manager said that the Board needs to be aware that the rate depends on what month you get the Power Cost Charge, and it depends on variables that are not the same every month. Therefore, it is not a true characterization of what the Power Cost Charge really is.

Mr. Taniguchi said the Board needs to keep on top of the trend. If the Board knows that the trend is going to be up, the Board does not want to be on the bad side of the trend.

The Manager said that based on the most recent available Power Cost Charge, at \$1.74, he would recommend that the Board goes to Public Hearing and raise it to \$1.74 per 1,000 gallons.

Mr. Smith said the Board could hold a Public Hearing, and can decide, based on the latest data, whether or not to adjust the Power Cost Charge.

MOTION: Mr. Meierdiercks moved to hold a Public Hearing; seconded by Mr. Taniguchi.

Ms. Garson asked whether the Board was doing a Public Hearing at the next Water Board meeting in Kona, at 9:45 a.m.

The Secretary pointed out that there may not be enough days' statutory lead time to do a Public Notice for a Public Hearing on February 23.

The Manager said the staff will check. The main thing is that the Board is giving the Department authority to post a Public Notice of the Public Hearing, and if there is not enough statutory lead time, then the date of the Public Hearing will have to be changed.

Ms. Garson agreed, saying that a Public Hearing would be timed to coordinate with a Water Board meeting date as soon as possible.

ACTION: Motion carried unanimously by voice vote.

G. **WATER RATE STUDY:**

(This item was moved to the top of the Agenda.)

H. **MANAGER'S REPORT:**

The Manager provided an update or status on the following:

- a. **Employee of the Quarter presentation** – The Manager moved this item forward to accommodate the young family of honoree Mr. Caleb Halemanu, a Meter Reader I in Hilo. His supervisor, Ms. Hudman, was fulsome in her praise of this exemplary employee, who began his DWS career in 2003 as a temporary Customer Service Representative. After working for DWS in numerous temporary positions, including ones in Kona and Waimea, Mr. Halemanu finally reached permanent status in 2008 as a Meter Reader I, his current position. Ms. Hudman praised Mr. Halemanu for his superb attitude and envisioned him as a future leader in the Department. Chairperson Mukai invited Mr. Halemanu to attend the Board's year-end luncheon, along with this year's other Employees of the Quarter.

The Manager said that the Department had received a letter of thanks from Mrs. Linda Kuailani, the widow of recently deceased Water Board member Mr. Francis Kuailani. Mrs. Kuailani thanked the Board and DWS staff for their support of her and her family.

- b. **Update on use agreement with KIC wells** – No response back from the KIC Board, which is discussing the resumption of talks with DWS.

- c. Palani Road Transmission Project – The Manager noted various problems involving dust control, access to the back of residents’ properties created by the project, as well as scheduling of the work. DWS has had trouble getting timely updates from the contractor, to post on the DWS website at residents’ request. Mr. Smith said he had complaints from resident Mr. Fred Housel that his e-mails to project engineer Mr. Larry Beck, currently on leave, had bounced back. Mr. Inaba said that he was taking care of that, and was meeting with Mr. Housel and other residents on site tomorrow.

The Manager noted that he would be attending the Kona-Kohala Chamber of Commerce’s luncheon with the Mayor and his Cabinet on Thursday, and was expecting to answer attendees’ questions. He added, for the Board’s information, that DWS has cut back a lot on overtime, was adding zero new personnel, had cut back on equipment, and would not be sending a representative this year to the annual Ulu Mau leadership program.

- d. Meeting Venues for Water Board meetings in 2010 – Mr. Harai said that he and Mr. Meierdiercks, were both willing to drive to Hilo to the meetings. The Manager said that would be a big cost savings, since having meetings in Kona costs in excess of \$2,000 each time, considering the extra travel time spent, paying for the venue, etc. He suggested holding meetings in Kona if there is an issue specific to Kona which would require Kona input. Otherwise, it would probably be better to have the meetings in Hilo, but that decision is up to the Board. Mr. Harai said he agreed. Mr. Smith raised the issue of video-conferencing. The Manager said that the staff had done a lot of research on video-conferencing, and asked Ms. Janet Snyder to read her findings. Ms. Snyder had asked Council Services chief Ms. Glynis Yamada if Council had had any problems with videoconferencing (as in having to postpone or cancel a meeting). She also asked Ms. Yamada if there were a fee for using Council’s videoconferencing. According to an e-mail dated January 5, 2010, from Ms. Yamada, *“In the past, we have cancelled meetings but only if it was noticed on our agenda that Council Members will be present at another site. If videoconferencing is not established at the beginning of the meeting, then it’s cancelled OR if videoconferencing is interrupted during the meeting, we usually can conduct the meeting via audio (telephone) and not cancel the meeting. The sites we presently have are located here in the Council Room, the Waimea Council Office, and the Kona Council Office (or at the Sheraton when we are out in Kona for the meeting). There are other County departments/agencies that also have videoconferencing available (i.e. Kona Mayor’s Office, the Prosecuting Attorney’s Office). **We are charged a fee for use of the VC, but I’m not sure how that works.**”* Chairperson Mukai asked if Mr. Harai or Mr. Meierdiercks are at a video-conferencing site in Kona and if the video feed goes down, would there be a quorum anymore. Ms. Garson said no, even if there were a quorum at one site, and the video went down with members at another site, the meeting would need to be cancelled. If all of the members were at one site, and the video went down, so long as DWS had a notice in the Agenda regarding public testifiers appearing at the other video-conferencing site at their own risk, the meeting could continue. But if there is one member at a video-conferencing site and the video goes down, the meeting must be cancelled. Mr. Taniguchi noted one Council member who failed to report that he planned to be at another site, and therefore his vote could not be counted.

Ms. Garson confirmed this, and said that DWS would need to put in the notice that there were going to be members attending at a video conference site. Mr. Smith said that so long as Mr. Harai and Mr. Meierdiercks do not mind driving to Hilo, then there would at least be no risk of cancelling the meeting if the video feed goes down. Mr. Smith said the value of video-conferencing is giving the public the opportunity to testify in Kona and Waimea. The Manager said that that if Mr. Harai and Mr. Meierdiercks are willing to drive to Hilo, it would not be advantageous to have video-conferencing because the Department would be running into problems and an expense that would be unnecessary; why would the Board want to do that, he wondered. Chairperson Mukai asked the cost of video-conferencing, and said he thought the Board should ensure the public has the opportunity to testify in Kona. The Manager said he agreed about making opportunities for testimony available, but when the Board has met in Kona, nobody from the public shows up. The Manager did not see why the Board would want to rent video-conferencing sites and pay for it if nobody shows up. Chairperson Mukai asked the staff to research the cost first before the Board makes any decision. Mr. Meierdiercks noted that the public has the opportunity to testify by submitting written testimony any time prior to the meeting, on any Agenda item. The Manager agreed, noting the seven-day posting period for Agendas. Mr. Smith said the perception in West Hawai'i is that they are being excluded by East Hawai'i; if video-conferencing does not cost anything, it could be provided as an option. The Manager asked Ms. Snyder to check on the costs and find out all of the video-conferencing sites available islandwide. A report would be forthcoming at the next Board meeting, he said.

I. MANAGER'S COMPENSATION:

The Manager suggested that this item be deferred pending developments on the County's part.

MOTION: Mr. Meierdiercks moved to keep the item as an Agenda item; seconded by Mr. Taniguchi.

Mr. Smith said he thought the Water Board should make a conscious decision to confirm the existing salary levels, pending future adjustments that might occur to the United Public Workers (UPW) and Hawai'i Government Employees Association (HGEA) employees. The Water Board might want to consider an adjustment, rather than say the Board is taking action by no action. This would be a positive affirmation that the Board is keeping the Manager's and Deputy Manager's salaries at the same levels. He said it would be a stronger message to say that the Board had made a decision to confirm that these were the appropriate salary levels, based on the existing situation. He said he would prefer that headline, rather than that the Board was deciding not to take action.

Chairperson Mukai noted that the Motion was to defer, and asked if there was further discussion.

Ms. Garson confirmed that the Motion was to keep it as an Agenda item, i.e., a deferral.

Chairperson Mukai said that is the Motion. He suggested to Mr. Meierdiercks that the Board vote on his Motion, yea or nay, or amend the Motion and start all over. To vote affirmative would be to defer this item to the next Board meeting; if the Board votes nay, the whole thing drops.

Mr. Meierdiercks started to amend his Motion, to approve the current compensation.

Chairperson Mukai said he thought it would be cleaner if the Board either voted the (original) Motion down, or if Mr. Meierdiercks retracted his Motion.

Mr. Taniguchi suggested that Mr. Meierdiercks just retract his Motion and then pose a new Motion.

Ms. Garson said it really does not make a difference.

AMENDED MOTION: Mr. Meierdiercks amended his Motion, to approve the current compensation (as an Amendment to the Motion); seconded by Mr. Taniguchi, and carried unanimously by voice vote.

ACTION: The Main Motion as amended was then carried unanimously by voice vote.

Ms. Garson, in what she called a delayed reaction, asked to clarify that the Board was confirming the Manager's and Deputy Manager's compensation until moved upon again. She asked for confirmation that there was no definite time.

Mr. Meierdiercks confirmed this.

Ms. Garson noted that the compensation issue is usually decided by the Board by year. She confirmed that today's decision was just for now.

Mr. Smith asked the Manager whether the Mayor's Office had given any indication on filling the vacancies on the Board.

The Manager said there was an official communication to DWS which nominated Mr. Joe Reynolds to replace the late Mr. Kuailani. The letter from the Mayor's Office was sent to Council, and the nomination will be appearing on the Council's (Planning Committee) Agenda. The Manager said there was no word regarding the other three vacancies.

J. **CHAIRPERSON'S REPORT:**

None.

K. **REFERRAL FOR EXECUTIVE SESSION:**

WATER BOARD OF THE COUNTY OF HAWAI'I V MARK G. JERNIGAN, ET AL., CIV. NO. 09-1-155K (CIRCUIT COURT OF THE THIRD CIRCUIT, STATE OF HAWAI'I:

The Water Board anticipates convening an executive meeting, closed to the public, regarding the foregoing matter, pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), for the purpose of consulting with Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

WATER BOARD OF THE COUNTY OF HAWAI'I V. WESLEY R. SEGAWA AND ASSOCIATES, CIV.NO. 09-1-0319 (CIRCUIT COURT OF THE THIRD CIRCUIT, STATE OF HAWAI'I)

The Water Board anticipates convening an executive meeting, closed to the public, regarding the foregoing matter, pursuant to HRS Sections 92-4 and 92-5(a)(4), for the purpose of consulting with Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

CLAIM BY DTRIC INSURANCE RE: JOHN PAGAY (CLAIM 10-002) DATE OF INCIDENT: SEPTEMBER 9, 2009:

The Water Board anticipates convening an executive meeting, closed to the public, regarding the foregoing matter, pursuant to HRS Sections 92-4 and 92-5(a)(4), for the purpose of consulting with Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

Ms. Garson said the Chairperson could ask the Board to move all of the three items into Executive Session at once.

MOTION: Mr. Meierdiercks moved to enter Executive Session to cover all three items; seconded by Mr. Smith, and carried unanimously by voice vote.

(Mr. Harai left the meeting at this time, 12:55 p.m.)

At 12:57 p.m., the conference room was cleared of everyone, except the remaining Water Board members, the Manager, as ex-officio member of the Board, and Ms. Garson.

The Meeting reconvened in open session at 1:05 p.m.

MOTION: Mr. Meierdiercks moved to approve the final terms and conditions regarding *Civ. No. 09-1-155K* (the Jernigan case); seconded by Mr. Smith and carried unanimously by voice vote.

MOTION: Mr. Meierdiercks moved to approve the recommendation by Corporation Counsel regarding the DTRIC Insurance claim; seconded by Mr. Taniguchi and carried unanimously by voice vote.

ANNOUNCEMENTS:

1. Next Meeting:

The next Meeting of the Water Board will be held on February 23, 2010 at 10:00 a.m., at the Royal Kona Resort, Resolution Room, 75-5852 Ali'i Drive, Kailua-Kona, HI.

2. Following Meeting:

The following meeting of the Water Board will be held on March 23, 2009 at 10:00 a.m., at the Department of Water Supply, Operations Conference Room, 889 Leilani Street, Hilo, HI.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Mukai called for a Motion to adjourn. Mr. Meierdiercks so moved; seconded by Mr. Taniguchi, and approved unanimously by voice vote. The Meeting adjourned at 1:10 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 Shiota, 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.