

MINUTES

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

April 27, 2010

Department of Water Supply, Operations Center, Conference Room, Hilo

- MEMBERS PRESENT: Mr. Dwayne Mukai, Chairperson
Mr. Robert Meierdiercks, Vice-Chairperson
Mr. George Harai
Mr. Bryan Lindsey
Mr. Joe Reynolds
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
Mr. Ronald Dalessio
Mr. Jerryl Mauhili
Ms. Morag Miranda
Mr. David Corrigan, Big Island Video News
Ms. Althea Bush
Mr. Sam Kaleleiki
Mr. Jason Mattos, Sr.
Mr. Ed Bumatay
- Department of Water Supply Staff
Mr. Quirino Antonio, Jr., Deputy Manager
Mr. Daryl Ikeda, Chief of Operations
Mr. Rick Sumada, Waterworks Controller
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Analyst
Mr. Keith Okamoto, Engineering Division
Mr. Terry Nago, Engineering Division
Ms. Shari Komata, Engineering Division
Mr. Ryan Quitariano, Engineering Division
Mr. Clyde Young, Operations Division

CALL TO ORDER - Chairperson Mukai called the Meeting to order at 10:02 a.m.

STATEMENTS FROM THE PUBLIC:

Ms. Morag Miranda, a resident of Honoka‘a, testified regarding a water bill issue. The following is Ms. Miranda’s verbatim testimony:

“Excuse me, I’ll just give you the background. We received a bill for water usage for August through October 2007 for using 547,000 gallons of water. The meter was for a seven-acre piece of property that we’ve been using to put cattle and horses on. We monitor it daily. It’s right above our driveway, above our neighbor’s house. When I received the bill, I called Waimea immediately and said there’s a problem. We pay our bill on a regular basis. Our normal bill ranged between \$35 and \$75. When I called them, they said they would come out and we checked the meter together. We checked the meter; there was no sign of any leakage or break in the line. The meter seemed to be working properly. I said there’s some mistake someplace along the line. Something is wrong. I don’t know what it is; there is something wrong. We did not use 500,000 gallons of water in a billing period. So they said to address it to the Hilo office. I sent a letter in January of 2008, addressing the issue. It took a while. I received a response earlier this year. In the meantime, I had made several phone calls and been told that it was still being discussed, looked at. So in March of this year, I received a letter stating that the meter was in working order and that we had to pay the bill. So I proceeded to what my next course of action was, and it was to come here. In the meantime, I had called the office and an employee I spoke with – I’m sorry I don’t have the name – told me that she had researched our issue and that the water meter was checked but then the following month, Waimea decided to change the meter and the new meter was working fine, which I know it is because immediately, our water bill went down to the normal amount of \$35 to \$75, depending on the usage, and it’s been the same since. The usage on that meter, sometimes there is not any usage because we are on the Hāmākua Ditch and our cattle drinks out of the ditch if there’s water in the ditch, and we just pay the service charge, the monthly fee. So this was my next course of action. A mistake has been made somewhere along the line someplace. I don’t know what it is, but we did not use... I’m not asking for an adjustment, because we did not use the water. We’ve continued to pay our regular bill in good faith for the water we’re using, but I don’t know what needs to happen. I just know we didn’t use 547,000 gallons of water in two months. Our neighbor, as I said, lives right above us. If that much water had come out of our line, it would’ve rushed through his yard. Our driveway is right there, which we go up and down. We go in and out of our house daily, my husband and I. There was no sign of leakage. So that’s it; that’s my case. I don’t think we should pay \$2,700 for water we didn’t use in a two-month time period.”

(At this point, Ms. Garson suggested that if the Board were so inclined, the issue might be included as an Agenda item for next month’s Water Board meeting. In the meantime, she said that DWS could gather more information and communicate with Ms. Miranda. By agendaizing the item, the issue could be discussed by the Water Board, she added.)

Ms. Miranda: “I didn’t know – this is just the next thing we were told to do. We want to go through the right process, whatever needs to be done. It’s been since 2007, and we’re continuing to pay our regular bill. So whatever you guys decide, but I’d like to proceed because something’s wrong.”

(Ms. Garson asked if the Board was inclined to agendaize the item. Chairperson Mukai assented.)

(Mr. Reynolds, noting that the issue arose in 2007, asked why it had taken so long to reach this point.)

Ms. Miranda: “I wrote a letter in January 2008; I have a copy of it and I don’t know. I received a letter in March of this year apologizing that it had taken so long, advising that they would be better about responding sooner, and that matter had been investigated and I needed to pay the bill.”

(Mr. Reynolds said the Board would be getting some information about this delay.)

Ms. Miranda: “So what do I need to do?”

(Chairperson Mukai said that the Board could not discuss the issue today, but would do background research in the meantime. Ms. Garson agreed, adding that the issue would be on the Agenda for next month’s Water Board meeting.)

Ms. Miranda: “That’s fine. Thank you for hearing me.”

(Ms. Miranda left the meeting at 10:12 a.m.)

Mr. Jerryl Mauhili, a resident of Honomū, testified regarding water availability on Hawaiian Home Lands.

The following is Mr. Mauhili’s verbatim testimony:

“Again, I would like to at least start with Aloha. This is the first time I’ve come before the Water Commission. I bring to the table today the very interesting topic of water availability to Hawaiian Home Lands. We have lands right now – I handed out a map and a little description of what my problem is, and my request for water up in the Honomū area. Again, it’s Hawaiian Home Lands. I have a map that’s there. What I did was approach Mr. Pavao in asking him was there any water pipe that was within our land jurisdiction, because we did not want to pull the pipes up out of the ground when we were doing tractor work or anything else. So my next question was, was there any chance that we could get water through that system, and I understand what the system is. It’s a surface water intake system. So the response that came back to me was, the water that’s up there right now, currently, is untreated water, so he cannot give the water availability, because of it’s being untreated. I’m looking for agricultural water, irrigation water, not necessarily drinking water so I feel that, okay, if we can bypass that, that’s not drinking water, I’m looking for irrigation water. The second part was the PSI, pounds per square inch, was a problem. It was only 10-15 PSI, versus the standard 40, and I’m looking at ways and means of getting water so that we can suffice our agricultural project up there, and if we need to build a water tank or need to put in a water reservoir through NRCS, and do whatever we have to do, we feel we could create our own pressure system just by having available water. So that’s as I say, the second issue. The third issue is that currently the Department of Water has issued a meter to the Division of Forestry for the purpose of using the toilets up at Akaka Falls State park. So right now, it has a sign that says no drinking; it’s not potable water, and I’m not interested in potable water right now. So I feel that right now we would do every precaution to, if water was available for us, to make sure, if we have to lock the pipes up, we would lock the pipes up. We want to use it for irrigation. I

understand right now with what you just said, if we're not on the Agenda, this is just discussion. I would like, as my bottom paragraph says, that we are here to see what can be done for now, you know, clearing the obstacles, and if we could be put on the Agenda for the next public hearing. This is what I have to say. Right now, another topic on my report here is, this decision is in Corporation Counsel right now for review on how the Hawaiian Homes Commission Act of Section 221(B) can apply to water issuance. And I have not gotten any word back from Corporation Counsel with regards to their ruling, or how they're going to deal with this matter. So if we could be put on the next Agenda, we would love to address our concerns and possibilities of how we can get on to a situation, because with the Department of Hawaiian Home Lands, we believe that this land deal also includes rent and water availability, and we're seeking the water availability. As I was instructed, Mr. Pavao was saying that, it's not in his hands. It's both in the administration of DHHL and how the ruling from the law's standpoint can regulate it, make it available, or, for that matter, deny it. And that's where I'm at, too."

(Ms. Garson noted that the next Water Board meeting is in Kona, and asked Mr. Mauhili if he wished to attend the Kona meeting, or wait till the next meeting in Hilo, in June.)

Mr. Mauhili: "How soon do I have to give you that answer, because I have to check my calendar on when you say the next meeting is in Kona."

(Chairperson Mukai noted that the next meeting, in Kona, is on May 25, 2010. The following meeting, in Hilo, is on June 15, 2010.)

Mr. Mauhili: "May 25 in Kona, and June 15 in Hilo? I'll definitely get back. I think this is a very important issue that we'd like to resolve. Thank you very much."

Mr. Jason Mattos, Sr. testified regarding water availability in Honomū.

The following is Mr. Mattos's verbatim testimony:

"I just want to say, I'm neighbors with Jerryl. I just got the property below him, and I raise cattle inside there, and right now, I've been hauling water every other day to my cows up there. Like Jerryl was saying, the water, I guess, get one line come down, somehow if we could – like I said, it's only for cattle water and I'm not going to be drinking the water or anything. I wanted for put one tank so I can supply my cattle, you know, feed the troughs and fill up my tanks. And all my troughs, I put this filter. When that cattle drain goes down, the tank feeds the trough. Like I say, it's only for cattle use, and right now, I go from Hilo every other day, and I haul water up there. Right above my place is Jerryl's place. There's this cement thing, I don't know, the pressure breaker, yeah. Plenty times I pass there, and the water is just pouring out of there. The water flow out there and just go into that ditch. If somewhere I can hook up to there, just to that tank, would be a blessing, instead of hauling. Now I gotta make my catchment or go through the river or something, but it's plenty expensive. So like Jerryl says, take into consideration that I'd love to get some line I gotta pay, or put in some kind of meter or something. I would do that. Like I say, this is cattle water, no drinking water involved, nothing."

Mr. Sam Kaleleiki, a Kea‘au resident representing Moku O Keawe, testified about Hawaiian sovereignty issues.

The following is Mr. Kaleleiki’s verbatim testimony:

“Aloha kakou. My name is Samuel Kaleleiki. My reason for being here, I want all of your understandings. I need your understandings. I need your understandings. Who here can tell me the true translation of ‘Ua Mau Ke Ea O Ka ‘Āina I Ka Pono’”?

(Ms. Aton said it was “The life of the land is perpetuated in righteousness.”)

Mr. Kaleleiki: “Anybody else? Anybody else? That’s wrong. That is wrong. That is why we’ve been going haywire for so long. This is why we’ve been going haywire for so long. I look here, and I see Asians and Caucasians. One Kanaka Maoli. One Kanaka Maoli, and the translation came out wrong. What she was taught, what her parents was taught what it was. The true translation of ‘Ua Mau Ke Ea O Ka ‘Āina I Ka Pono’ is ‘Sovereignty,’ or ‘Rule,’ or ‘Independence,’ but the State of Hawai‘i don’t qualify for neither one of this. They use ‘life’. The Hawaiian word for ‘life’ is ‘ola’ – it does not say ‘Ua Mau Ola I Ka Pono.’ Yet you gonna sit here with the audacity to tell me and these Kanakas right here how it would live, how it would get water, who controls our water? Caucasians and Asians. Blood’s thicker than water. Blood is thicker than water. Where we Hawaiians go for water, ah, can taste it. And the incident is pointed right out here. I met a bus driver yesterday; he run a red light right in here. If there was no children on the bus, I would have left him alone. I went to the police. The police said, you gotta call this guy. I call this guy. This guy tells me, oh, there was no more the bus. They gave me the State salute, I dunno. It’s not satisfactory. It’s not satisfactory. This is why you gotta know what you’re doing. This is why I need your understanding. Why is it we gotta pass the buck? Do your job. I put 30 years in the United States Marines, from 1950 to 1980. I been to Korea, been to Vietnam five times. I handled anywhere from 4 to 40,000 men. You know why I handle so many people like this. I train ‘em correctly. I make sure they’re paid correctly. I made sure they had something to eat. I made sure they’re warm. I made sure they had something under their head, a pillow under their head, a blanket for their body. You satisfied, you got this thing going. You got a warrior. This is my main purpose here. In Hawai‘i, I don’t know if you all know it, but you’re violating international law. This is not the United States. You find me one place that says this is the United States. I can tell you. There’s a memorandum that says the Queen of England and the King of France recognize Hawai‘i as an independent country. Once you’re independent, you can never, ever lose it. This is why the State of Hawai‘i don’t use ‘sovereignty’; they use ‘life’. That’s the second paragraph. That’s the second paragraph. When we say, oh, that other woman who sat up here? You know, handwriting’s on the wall.”

(Chairperson Mukai intervened, noting that four minutes of Mr. Kaleleiki’s testimony had passed.)

Mr. Kaleleiki: “I don’t want to take up any more of your time, but I just want you to digest. That’s real. That’s real. That incident yesterday, and now we gotta sit here to ask Caucasians and Asians, descendants of immigrants. Descendants of immigrants. We gotta ask you, how we gonna live in this country. Don’t be comfortable. Don’t be comfortable. They got the

Akaka Bill up there in Congress. Why they gotta go to Congress, no more Hawaiians in Congress. Hawaiians all here. Germany lost the First World War. Japan surrendered to the United States, unconditional surrender. You tell me that it's the United States, or is it Japan? Germany, no longer? But the United States stays here. Kanaka Maoli by birth, all Kanaka Maoli by birth. American citizen by gunpoint. Our acts gonna be the same way. Ladies and gentlemen, thank you for your time. Semper Fi. That means 'Always Faithful'."

(Mr. Mauhili, Mr. Mattos, Mr. Bumatay, and Mr. Kaleleiki left the meeting at 10:40 a.m.)

ACTION TO MOVE AGENDA ITEMS:

Chairperson Mukai asked for a Motion to move up on the Agenda, Item 9(J)(4), the Employee of the Quarter presentation.

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

The Deputy Manager presented Ms. Aton as the Employee of the Quarter. He noted that in the 2 ½ years Ms. Aton has been with DWS, she has learned a lot about operations, finance, administration and engineering. He noted that she had done the Department's newsletter until budgetary constraints curtailed it. Ms. Aton has been involved with the Kona Water Round Table, Civil Defense coordination, public relations work, etc. Today, Ms. Aton is headed to Kauai to participate in a Water Education for Teachers conference. Because of her cultural background, Ms. Aton has participated in community and cultural activities and has visited numerous public schools on the island to provide educational programs related to water and sustainability.

The Manager noted that he and Ms. Aton attend many public meetings around the island. He said he has learned a great deal about Ms. Aton's perspective on life.

Ms. Aton noted that her learning curve has been steep, and she was grateful to everyone for their support.

Chairperson Mukai then entertained for a Motion to move up Item 5(B), WATER AVAILABILITY FOR TMK: (3) 2-5-006:143, followed by Item 8(B), HAWAIIAN OCEAN VIEW ESTATES.

Mr. Harai asked if written testimony from the public regarding the water rates should be taken up first. Copies of the testimony had been distributed to the Board.

The Manager said that the written testimony was to be read at the upcoming Public Hearings on the water rates.

ACTION: Mr. Taniguchi so moved, seconded by Mr. Harai, and carried unanimously by voice vote.

APPROVAL OF MINUTES:

Chairperson Mukai entertained a Motion to approve the Minutes of the Public Hearing on the Proposed Operating and Capital Improvement Budgets for Fiscal Year 2010-2011 on March 23, 2010.

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

Chairperson Mukai entertained a Motion to approve the Minutes of the Public Hearing on the Power Cost Adjustment on March 23, 2010.

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

Chairperson Mukai entertained a Motion to approve the Minutes of the regular meeting of the Water Board on March 23, 2010.

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

SOUTH HILO:

B. WATER AVAILABILITY FOR TMK: (3) 2-5-006:143:

Mr. Ronald Dalessio, owner of the subject property, addressed the Water Board about the decision made in response to his complaint filed with the Mayor's Office dated March 3, 2010.

The Department's response letter had addressed the existing conditions of the water system and his property. Further, the Department's letter States the water availability policy in the area and the requirements necessary to provide water for a subdivision. This property is zoned A-3a and has a land area of 12.573 acres.

Mr. Dalessio is a resident of 147 Akala Road, near Kaūmana Cave.

Mr. Dalessio told the Board that he asked DWS for a meter for his property about three years ago. Mr. Dalessio said that a DWS employee told him that he would need to bring in a 6-inch line from Akala Road to Kaūmana Drive. Three years later, someone else put in a 2-inch waterline. Mr. Dalessio said that when he went back to speak to the DWS employee identified as Bill, the DWS employee told him to wait until the 6-inch line was installed because now it was going to be on Akala Road, and not on Kaūmana Drive. Mr. Dalessio said he was told that once the 6-inch line was installed, Mr. Dalessio would be able to join into that line. Meantime, there was another subdivision coming in, where the developer put in a 2-inch line, over 1,500 feet, past Mr. Dalessio's property. Mr. Dalessio said he had about 800 feet of frontage on his property. Mr. Dalessio was told that the contractor on the job could not tap into the 6-inch line with the 2-inch line. Mr. Dalessio said about six months into the work, he was going down Akala Road when he saw DWS tapping into the 6-inch line to put in a water meter for the subdivision. That was where his problem started, Mr. Dalessio said. He wrote letters and was told by someone in the County that he would need to run 3,000 feet of line if he wanted a subdivision. He did not think it was fair that somebody else could get water and he could not, Mr. Dalessio said. Mr. Dalessio said that somebody else was given more than 1,500 feet. Mr. Dalessio said he was told that he did not have enough water pressure. He said that he wanted to be treated fairly.

The Manager assured Mr. Dalessio that DWS strives to be fair and equitable to everyone. He noted that the engineer handling Mr. Dalessio's issue, Mr. Quitariano, was in attendance to explain what happened and how the decision was made regarding his request for a meter.

Mr. Quitariano showed a map with Mr. Dalessio's two properties. He noted that Mr. Dalessio is requesting one more meter so that he can subdivide the smaller of the two parcels. Currently, this property has a 2-inch line, installed sometime in the 1970s, he said. He noted that there was a moratorium on this 2-inch line, shown on the map in orange on Akala Road. DWS is not allowing any more services on this line. He noted that a lot of people are bringing in waterlines that are up to DWS's standards. He pointed out the subdivision that brought in the new 6-inch line. He noted that one of the developers is Mr. Hank Correa, who is developing a property whose TMK is 2-5-6-115. The house on this property actually had catchment at first, and a prospective buyer wanted County water. Mr. Correa contacted DWS to ask about water availability. The lot was subdivided in 1958, before the Subdivision Code was enacted, and therefore it is considered a pre-existing lot of record. Anyone who has a pre-existing lot of record is entitled to one meter from DWS, he said. That is how this person got a meter. DWS told the person who wanted the 6-inch line that it would have to come off Kaūmana Drive. In the meantime, Mr. Quitariano was told that the subdivision was going in and that the 6-inch line was going in. Mr. Dalessio was told that he could wait and try to get a line to his property, Mr. Quitariano said. After the subdivision went in and the 6-inch line was dedicated to DWS, the new service for TMK 2-5-6-115 went in as an out-of-bounds meter. DWS took a new 2-inch waterline from that meter location all the way down to that Kaūmana property.

The Manager noted that the meter is all the way at the end of the blue line on the map, at the end of the 6-inch line.

Chairperson Mukai noted that DWS is running a 2-inch line after the meter, at that location.

The Manager said it was a private line.

Mr. Meierdiercks said it was a private line off the 6-inch line, so DWS's service ends at the end of the blue line on the map.

Mr. Quitariano confirmed this.

Mr. Harai asked when this happened on TMK 2-5-6-115.

Mr. Quitariano said it was around December, with work starting around July of last year.

Chairperson Mukai asked whether Mr. Quitariano was referring to another development, and asked whether there were two developments.

Mr. Quitariano said there was a 6-inch line and one with the house.

Chairperson Mukai asked whether Mr. Correa was tying into the 6-inch line. He asked if DWS had laid all that line, and also laid a new 2-inch line from the end of the blue line and beyond.

Mr. Quitariano confirmed this, saying it went from the meter, noting that it was a private line.

The Manager said that the developer had to sign documents because it was out of DWS's service area. The term DWS uses is "out of bounds." It is out of DWS's normal service, and that is why the meter is at the end of the blue line and a new line needed to be strung to TMK 2-5-6-115.

Mr. Taniguchi asked who pays for the water.

The Manager said that the developer pays for the waterline, and noted that the meter is at the end of the blue line. Anything beyond that, whoever installs the line pays for it, he added. He noted that the developer probably needed a permit from the Department of Public Works.

Mr. Harai suggested that Mr. Dalessio could do the same thing.

The Manager said that Mr. Dalessio has pressure problems because his lot is higher.

Mr. Quitariano said DWS's minimum pressure line is at 935 feet elevation. The 6-inch line and the 8-line off Kaūmana Drive are off of the tank, labeled Reservoir 2. The minimum pressure off this tank needs to be anything below 935 feet elevation, he said.

Mr. Okamoto said that basically, Mr. Dalessio's property would not have DWS's standard pressure if it was coming off that 6-inch line.

The Manager said that a distinction needs to be made between subdividing and having an existing lot. By having an existing lot, you are entitled to service, he said. If the property is out of DWS's pressure zone, the owner of an existing lot can sign an elevation agreement. DWS feels an obligation to serve existing lots, he added. However, when an owner wants to subdivide, an entirely different set of rules come into play. A County ordinance on subdivisions says that an owner must have a dedicable water system to provide service to the lot. He noted that there are many cases similar to Mr. Dalessio's case, where the owner wants to subdivide. The request to do so is denied, however, because the owner cannot meet all of the requirements. An **existing lot** in the same area is granted service.

Mr. Dalessio said he was not denied approval of a subdivision. He said that three years ago, he and Ms. Bush had been told that they would need to have a line that went by Kaūmana Drive to Akala Road, to Mr. Dalessio's property, with the same 6-inch line. He said he was not denied. He noted that he has a heart problem, and he wanted to move to the smaller of his two properties, which would not require as much upkeep. Mr. Dalessio said he was told he would have to do all kind of work, and therefore he scrapped it. Three years later, he returned to DWS because of the 2-inch line that was coming in through the private road that Mr. Dalessio and his neighbors jointly own. He said that the County owns half of the road, and the other half is owned by Mr. Dalessio and his neighbors. He said that he was in discussions with the Engineering Division, and that they lied.

Mr. Okamoto noted that the Engineering Division in question belongs to the Department of Public Works, not DWS.

Mr. Dalessio acknowledged that DWS was not involved.

Chairperson Mukai said that the Board could not speak for Public Works.

Mr. Dalessio said he went to DWS to ask about DWS tapping the 6-inch line with the 2-inch line. He said he was told by DWS that this could never happen, and asked who he was supposed to believe.

The Manager noted that the line to TMK 2-5-6-115 is for an existing lot, and reminded Mr. Dalessio that this was an important distinction. It is an existing lot of record. DWS is not the

department that makes a decision on what is an existing lot. That decision is made by the Planning Department, and DWS trusts Planning in its answers to DWS. The lot was an existing lot prior to when the Subdivision Code was enacted.

Chairperson Mukai asked about Mr. Dalessio's property.

The Manager said that Mr. Dalessio wanted to subdivide, which is an entirely different matter.

Mr. Meierdiercks asked if Mr. Dalessio's two lots are currently metered.

Mr. Okamoto confirmed that each of the lots have meters.

Mr. Meierdiercks said that the issue at hand is that Mr. Dalessio wants to have another meter for the smaller lot.

The Manager said that if Mr. Dalessio had a vacant lot that was existing prior to the Subdivision Code and if he wanted a meter for that lot, there would be no problem. DWS would give him a meter because every existing lot is entitled to one meter. If an owner comes to subdivide, it puts an added burden on Water Supply. The way that the Subdivision Code is written, an owner must have a water system that meets DWS standards. With a subdivision, you are talking about quantity and pressure, and this does not meet the required conditions. That was the reason that Mr. Dalessio was told, in error, that he could bring in a 6-inch line -- because he would still have pressure problems. However, the pressure problem could be solved with an elevation agreement for an existing lot.

Mr. Okamoto said that it went back to the Subdivision Code, which is not DWS's rule. It is a County code that says if an owner is going to subdivide, the infrastructure has to meet County standards, which includes top-of-the-line pipe, concrete tanks, etc. The existing lot of record and a subdivision are subject to two totally different sets of requirements. DWS does not make that determination. Planning Department may allow a variance to the Subdivision Code in cases of hardship to the applicant. What the applicant must do is go to Planning Department and apply for a variance, citing hardship.

Mr. Harai suggested that DWS could guide Mr. Dalessio on what he needs to do to get a variance.

Mr. Dalessio said he was being punished for making noise, and it was not the first time he was being punished. He noted that while DWS was telling him he had a 2-inch line, his line was replaced in 1995 with a 3-inch line. He noted that he got into an argument today over whether he had a 2-inch or 3-inch line. He said DWS had replaced it, and broke his fence with a backhoe during the work.

The Manager asked if DWS had fixed the fence.

Mr. Dalessio confirmed that DWS fixed the fence. He expressed frustration over the back-and-forth between him and Engineering Division (at Public Works), who he said do not respond to his letters anymore. He asked how he could get a water meter from DWS.

The Manager suggested that Mr. Dalessio make an appointment to see Planning Director Bobby Jean Leithead-Todd and ask for a variance. If she gives Mr. Dalessio a variance, then he can subdivide his lot.

Mr. Harai asked whether the Board could write a letter of support to Planning to help Mr. Dalessio.

Chairperson Mukai said he thought the Board should instead State the facts.

Mr. Dalessio asked where he would get his water from if he gets a variance.

The Manager said that if Mr. Dalessio gets a variance, he would have to get catchment. That would be the only way that Mr. Dalessio could subdivide the lot.

Mr. Dalessio said he would not do catchment, and said he just wanted to be treated fairly.

Chairperson Mukai said that unfortunately, the rules are in place and DWS cannot grant a variance.

Mr. Dalessio said he was given information that led him to believe that he could get a meter, and then all of a sudden, he finds that he is not allowed. He said he asked Mr. Quitoriano to bring the plans that show how far down the waterline goes.

The Manager said that the pressure situation is not because of the 6-inch or the 8-inch lines; it is because of the small line that is in there now. The other problem is with the elevation of Mr. Dalessio's lot.

Mr. Dalessio said that he does not have pressure problems.

The Manager asked if the meter is coming off the high pressure side.

Mr. Okamoto confirmed that Mr. Dalessio's meter is coming off the high pressure side.

Mr. Dalessio asked why he could not tie into the 6-inch line.

The Manager said that was because Mr. Dalessio's lot is at a much higher elevation.

Chairperson Mukai noted that even if Mr. Dalessio gets a variance from Planning Department, he cannot tie into the system. He said that he really feels for Mr. Dalessio, but the Board's hands are tied.

Mr. Dalessio said he said it is hard to fight somebody who is paid by taxpayers' dollars.

The Manager said that DWS is not paid by taxpayers' dollars.

Chairperson Mukai said he was sorry, but the issue was out of DWS's scope.

Mr. Dalessio asked whether what Mr. Correa did was legal or illegal.

The Manager said yes, it was legal.

Chairperson Mukai said that based on the information, it was an existing lot.

Mr. Dalessio said he guessed he would have to go up the chain.

The Manager offered to help Mr. Dalessio if he goes to the Planning Director for a variance.

(Mr. Dalessio left the meeting at 11:10 a.m.)

KA‘U:

A. HAWAIIAN OCEAN VIEW ESTATES:

The Manager noted that there has been a lot of activity involving Hawaiian Ocean View Estates (H.O.V.E) during the past week. Copies of the Deputy Manager’s testimony on April 21 to the State House of Representatives were distributed to the Board earlier. The Manager met with H.O.V.E. residents the same day. There was an article in Saturday’s newspapers regarding DWS’s project in Ocean View. The Manager had drafted a letter to the editor, which he asked the Board to review. There was also an article in the papers today. The Manager said that basically, a very small group of H.O.V.E. residents complained to Representative Bob Herkes, who saw fit to introduce a Resolution to investigate DWS for mismanagement of funds for the Ocean View well project, and for going slow on the project. DWS’s position is that there is nothing to hide because DWS followed all of the rules and regulations, and adhered strictly to the procurement code. The Department welcomes the investigation, the Manager said. The letter to the editor basically States all of this, he added.

The article in today’s papers, by Ms. Erin Miller, contains the same words as expressed in the letter to the editor. The Manager lamented that Representative Herkes did not ask for information from DWS.

Mr. Reynolds said that’s politics.

Chairperson Mukai said he had asked DWS for a chronological sequence of events, and said that his understanding was that the Ocean View residents had been kept in the loop.

The Manager explained that the project was a design/build project, which the Department had to undertake or miss the deadline for encumbering the funds. By its very nature, with a design/build, there is nothing to report *until* the design is finished. The contractor took the design to the community before DWS could review it. The design was not in conformance with the environmental assessment, and DWS told the contractor that he had to revise the design. The contractor went back and made the required changes.

Mr. Reynolds asked for clarification whether the design was not finished until May 2008 and in June 2008, the money was gone.

The Manager said no, DWS secured the money for the project. DWS was able to encumber the money *because* the Department did a design/build process. He confirmed that in May 2008 there was a contract for Phase 2, involving Bolton, Inc. That contract was a design/build, so once Bolton was awarded the contract, the contractor was able to go ahead and design the components and the elements in the general scope of work. He explained that when doing a design/build process, the contractor bids on the contract, and does both design and construction. The Manager said that DWS had to award Phase 2 before Phase 1 was completed, because there was a strict two-year time frame on the money. If DWS went longer than two years, the money would have been lost. DWS did the project this way, precisely so as to encumber the money. (Design/build) was the only way DWS could have done it without losing the money, he said. He noted that the money was not even money to DWS, it was to the County. DWS undertook the project as a favor to then-Mayor Harry Kim, and DWS is getting no compensation at all. The Manager said he was angry that words like “misuse of

funds” were being bandied about. The funds reside on Oahu, with the State. The only time funds are released is when DWS sends a proper invoice and documentation from the contractor showing he had done the work. The State will not release funds without proper documentation.

Chairperson Mukai asked when DWS’s most recent communication with the H.O.V.E. community was.

The Manager said it was last week Wednesday.

Chairperson Mukai asked when the resolution issue came to light.

The Manager said it was on the previous Friday. On the following Wednesday, the Deputy Manager went to Oahu to testify at the Legislature, and the same day, the Manager went to meet with the H.O.V.E. community.

Ms. Aton said that prior to that, the most recent communication with H.O.V.E. was on April 14, 2010. According to the summary of the updates to the H.O.V.E. community, the frequency of communications ranged from every other month to several times per month, depending on what was going on.

Chairperson Mukai said that all of the chronological series of events had indeed been communicated to the public. He noted that from May 2009 to the present, DWS had 10 communications with H.O.V.E.

Ms. Aton noted that the 10 communications with H.O.V.E. did not include meetings at DWS with the same H.O.V.E. residents who lodged complaints with Representative Herkes. Communications involved major changes such as an additional \$400,000.00 for a bigger tank for H.O.V.E. She observed that the H.O.V.E. community is driven, committed to what it needs, and wants it yesterday. In that sense, she said, there is nothing DWS can do to keep them more informed.

Chairperson Mukai said he was stunned to see the article in the paper that spoke of a lack of communication. He asked if anyone else had any comments, but he believed DWS has done an admirable job.

The Manager asked if the Board approved the letter to the editor, which he wanted to send out.

Chairperson Mukai said the letter was all factual, and he did not see any problem. He suggested that the Board take a few minutes to digest the letter during a 10-minute break.

(The Board recessed at 11:21 a.m., and reconvened at 11:32 a.m.)

The Manager noted that Council member Mr. Guy Enriques had taken upon himself to hold monthly meetings with the H.O.V.E. community. Mr. Enriques will ask DWS for information, which he will relay to the community.

Chairperson Mukai asked for Board comments on the letter to the editor.

Mr. Reynolds said it was a very good letter.

Chairperson Mukai said it was a very informative letter, and suggested that the Manager add a few words about the frequency of communications with H.O.V.E.

The Manager asked if the Board approved his wording “calling for government assistance for infrastructure that did not initially come with the purchased lots.”

Mr. Meierdiercks said it was true and fair.

Chairperson Mukai agreed that it was a fact.

Mr. Taniguchi confirmed that this project involved DWS helping the County.

The Manager said this was correct. DWS was helping the County by administering the project. DWS was not getting anything for doing it; DWS was not getting paid for the work.

Mr. Taniguchi asked if ultimately the well would be dedicated to DWS.

The Manager confirmed that DWS will need to come back to the Board for two reasons:

1. To ask if the Board wants DWS to take over the well. He expected that was inevitable that DWS would take it over;
2. To ask if the Board wants DWS to establish a special rate, due to the high costs of pumping from the well, which at 2,000 feet is very deep.

Mr. Reynolds said that if DWS does not establish a special rate, then everybody else will be subsidizing the well. He did not think that was good.

Mr. Meierdiercks said that essentially H.O.V.E. is a State project, so there must be some way that the State tracks progress.

The Manager said that the one way the State keeps track is through payments. The State is really strict about payments, and DWS is obliged to have all of the necessary documentation before the State releases the funds for payments. The State does not send someone out to the project to observe progress on the project. Instead, the State relies on the counties. In this case, the County will submit the request for payments, and they in turn pay the contractor directly.

SOUTH HILO:

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

The contractor, Isemoto Contracting Co., Ltd., requests a 56 calendar-day time extension. This request is due to additional work requested by the Department for the air conditioning system work in the Ka‘u Wing. The additional work involved a variable air volume controller for the customer service vault, which includes the server cabinet.

Staff has reviewed the request and finds that the 56 calendar days are justified. This is the third extension request.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	5/28/2009	11/30/2009	186	Shipping and arrival times of new air handler units.
2	11/30/2009	3/31/2010	121	Shipping and arrival time schedule of critical air conditioning system equipment, unforeseen relocations of existing electrical and structural facilities, unforeseen additional asbestos material removal.
3	3/31/2010	5/26/2010	56	Waiting for arrival of vital air-conditioning system equipment, and to balance the air conditioning system after the equipment is installed.
Total Days (including this request)			363	

RECOMMENDATION: It is recommended that the Board approve a contract time extension to Isemoto Contracting Co., Ltd., of fifty-six (56) calendar days from March 31, 2010 to May 26, 2010, for JOB NO. 2005-862, WAIĀKEA OFFICE PLAZA AIR-CONDITIONING REPLACEMENT.

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

Mr. Taniguchi asked when DWS learned that this equipment was needed.

Mr. Okamoto said that it was not in the initial scope of work. It involves an added duct connected to an area that did not have air circulation in the original plans. Its need was discovered during construction. He said there was a cost involved.

The Manager said that it is included in the contingency funds.

ACTION: Motion carried unanimously by voice vote.

B. WATER AVAILABILITY FOR TMK: (3) 2-5-006:143:

(Item taken up earlier.)

SOUTH KOHALA:

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

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

1. Technical review and response for groundwater seepage into the reservoir and its impact to liner system installation.

Consultant's Fees Requested: \$ 5,270.00

2. Prepare memorandum to DLNR to address their concerns for additional documentation regarding the earthwork test results.
Consultant's Fees Requested: \$ 2,550.00
3. Prepare memorandum with recommendation regarding options for the Zone 1 material.
Consultant's Fees Requested: \$ 1,275.00
4. Additional fees for Task 5 of the Consultant's construction services. The description for Task 5 is: *Coordination Work with Construction Manager, Geotechnical Engineer, and the Department*. The requested amount will cover the months of January through May 2010.
Consultant's Fees Requested: \$ 25,238.00
5. Additional fees for Task 2 of the Consultant's construction services. The description for Task 2 is: *Provide Review, Comments, and Recommendations to Contractor's Submittals*. The requested amount will cover the months of March through May 2010.
Consultant's Fees Requested: \$ 4,700.00
6. Kleinfelder's representative (A. Hastings) for two weeks of full time inspection of the 6-inch minus native material placement.
Consultant's Fees Requested: \$ 16,305.00
7. Kleinfelder's representative (C. Williams) for two weeks of full-time inspection of the 2 ½ -inch base course imported material placement.
Consultant's Fees Requested: \$ 16,096.00

SUMMARY TABLE:

ITEM	TASK DESCRIPTION	FEE AMOUNT
1.	Technical review and response for groundwater seepage into reservoir.	\$ 5,270.00
2.	Prepare memorandum to DLNR.	\$ 2,550.00
3.	Prepare memorandum regarding options for the Zone 1 material.	\$ 1,275.00
4.	Additional fees for Task 5 - Coordination Work with Construction Manager, Geotechnical Engineer, and the Department.	\$ 25,238.00
5	Additional fees for Task 2 – Submittal Reviews	\$ 4,700.00
6	Kleinfelder's engineer for two weeks of full time inspection.	\$ 16,305.00
7	Kleinfelder's technician for two weeks of full-time inspection.	\$ 16,096.00
	TOTAL (Not To Exceed)	\$ 71,434.00

Staff has reviewed the request and finds the \$ 71,434.00 additional fees are justified.

RECOMMENDATION: It is recommended that the Board grant this request for additional funds of \$71,434.00 to Kleinfelder West, Inc. and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval by Corporation Counsel.

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

Mr. Nago explained that the project is in the construction phase. He went down the above list of seven items.

1. Technical review and response for groundwater seepage into the reservoir and its impact to liner system installation. DWS got a Request For Information (RFI) from the contractor because there was groundwater seeping into the reservoir. The liner installer had a lot of questions and recommendations, and so DWS asked Kleinfelder, the consultant, to do research and respond to the contractor.
2. Prepare memorandum to DLNR to address their concerns for additional documentation regarding the earthwork test results. Construction is under the jurisdiction of Department of Land and Natural Resources (DLNR), which gave DWS a permit to do construction. This project involves dam safety, so DLNR's engineers periodically go to the site to look at the progress of construction. The contractor has been using native material as backfilling to reinforce the embankment. This native material is very sensitive to moisture, and it is difficult to compact. The climate up there by the reservoir is very rainy, so it makes working with the native material very difficult. DLNR engineers at the site expressed concerns about this, and requested that additional documentation be submitted. DWS asked the consultant, Kleinfelder, to respond to DLNR. Mr. Nago noted that this item is directly linked to Item 6(B), involving a change order with the contractor.
3. Prepare memorandum with recommendation regarding options for the Zone 1 material. Zone 1 material refers to native material. This is the term that the consultant uses in referring to it in the plans and specifications. Because the native material is so difficult to work with, DWS asked the contractor for his assessment. The contractor wrote back to say that if DWS continues to use the native material, it will add five additional months in order to condition the soil and dry the soil out. The contractor said that five additional months of good, dry weather would be needed, which is meteorologically impossible in the area. The contractor stipulated five months to condition the soil, and two months to place it. DWS is therefore faced with a dilemma, because one of the requirements from DLNR is that the consultant certifies the construction. This means that DLNR is requiring Kleinfelder to certify that the construction is per plans and specifications. This is a very unusual request for the consultant, Mr. Nago said. It means that the consultant must stick his neck out and say that the construction is per plans and specifications. In order for Kleinfelder to do that, DWS is being asked to have a full-time representative on the site to inspect the work if the Department continues to work with the native material. The cost for that would be \$32,000.00 a month, times five months plus two months, plus whatever bad weather that extends that time frame. The estimate is for at least 10 months times \$32,000.00, for a total of \$320,000.00. DWS needed to think of something else, and the consultant proposed bringing in imported material, because it is so much easier to work with.
4. Additional fees for Task 5 of the Consultant's construction services. The description for Task 5 is: *Coordination Work with Construction Manager, Geotechnical Engineer, and the Department.* The requested amount will cover the months of January through May 2010. DWS is coordinating the work of the contractor and the consultant. A construction services agreement is currently ongoing. The initial coordination work covered four months of construction time, which has been zeroed out already. At the

October Board meeting, DWS asked for additional fees, for three additional months. That has already been used up and now DWS is asking for an additional five months, covering from January through May. DWS is thinking of granting only a small portion at a time, to keep things more manageable. The funds will be used for coordination work between DWS, the contractor and the construction manager.

5. Additional fees for Task 2 of the Consultant's construction services. The description for Task 2 is: Provide Review, Comments, and Recommendations to Contractor's Submittals. The requested amount will cover the months of March through May 2010. This is to provide review, comment and recommendations to the contractor's submittals. DWS has zeroed that out as well, as of the end of February. There are several more contractor submittals that will be coming in, so DWS needs to replenish that fund.
6. Kleinfelder's representative (A. Hastings) for two weeks of full time inspection of the 6-inch minus native material placement. Because DLNR required the consultant to certify the construction and DWS needs the construction to move forward, DWS told Kleinfelder that it would be okay to have one of their engineers be on site for two weeks while DWS mulls over the various options. This person needed to be on-site to do the full-time observation. Mr. Hastings has already been at the site and done his two weeks of inspections.
7. Kleinfelder's representative (C. Williams) for two weeks of full-time inspection of the 2 ½ -inch base course imported material placement. This is for another representative of Kleinfelder to do two weeks of full-time inspection of the 2 ½-inch base course imported material placement. This 2 ½-inch base course material will have to go through some testing because that backfill is part of a filtration system, which in turn is part of the design and part of the safety of the embankment. If there is any leakage through the embankment, it will go through that filter system, through a pipe network. DWS will be able to see exactly what is coming out of the embankment that has to meet specifications. The Kleinfelder representative will be there to test the material. DWS is pretty confident that the base course material will pass the test. DWS is working with the representative, who has done the tests and has gone back to the mainland. Tomorrow, DWS will be talking with Kleinfelder to see if the 2 ½-inch base course material passed the test. So far, the Kleinfelder representative has given positive feedback on it.

The Manager said that this project will appear on Board agendas over and over again. Among the reasons are the uncertainty about what lies below the structure itself and the unpredictable weather conditions that require waiting for the soil to dry out. Changing requirements from DLNR are another factor. Following the dam break on Kauai, DLNR is extremely cautious about dams. This reservoir qualifies as a dam because of the height of its embankment and because of the quantity of storage. As time passes, DWS will discover more and more things that must be addressed. There will be requests for more funds, but the saving grace is that 75 percent of the funds are reimbursable by FEMA, providing it complies with proper design.

Mr. Reynolds noted that FEMA does not send anyone out to investigate projects, and instead relies on the engineers and technicians involved.

The Manager agreed, and said hiring a consultant from the mainland who is recognized by FEMA makes it a lot easier to get reimbursed.

Mr. Nago confirmed that Kleinfelder has been an extremely good consultant for DWS; their expertise is beyond question.

Chairperson Mukai said that DWS was between a rock and a hard place, so the Department is doing what it has to do.

ACTION: Motion carried unanimously by voice vote.

(Ms. Aton and Ms. Komata left meeting at 11:40 a.m.)

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

The contractor, Goodfellow Bros., Inc., has submitted a change proposal to furnish imported soil for use as backfill for the remaining exterior slope, trench, and berm areas of the reservoir. The total cost for the imported soil will be \$229,741.44. This cost is for furnishing the imported soil material only.

The imported material will save approximately five months of construction time, and provide a superior end product. It will also provide for much more reliable quality control, as required by the Department of Land and Natural Resources (DLNR). The original scope of work, which specified use of native material, was developed during very dry weather conditions. The scope went through peer review by a consultant hired by the State, and the scope was deemed appropriate at that time.

The contractor has also submitted a change proposal for additional coring and grouting to fill the voids behind the existing concrete slope panels. The total cost for the additional coring and grouting will be \$285,154.02.

The actual field conditions did not reflect the scope of the FEMA project work sheet, from which the original bid quantities for the grout were based. This material, which is required to completely fill the voids, will subsequently provide the necessary support of the new liner system.

The original bid quantity was 12 percent of the actual required amount of grout. The consultant did a random survey of the slope panels, but the results did not indicate the severity of the actual conditions. This was an unforeseen condition.

Staff also requests \$69,500.00 for contingency.

There is no additional contract time requested by the Contractor for the imported soil change proposal and a contract time extension of 63 calendar days for the additional coring and grouting change proposal. Staff has reviewed the change proposals and finds it acceptable as submitted.

RECOMMENDATION: It is recommended that the Board grant this request for additional funds of \$514,895.46 to cover these two change proposals and \$69,500.00 for contingency. The total requested is \$584,395.46. Funds will be from CIP reserves.

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

Mr. Nago noted that this item involves substituting the native material with the 2 ½ inch imported material. He acknowledged that the amount was large, but that DWS was actually saving. It is a matter of either doing this, or paying for the full-time observation work. When Kleinfelder took a look at the 2 ½-inch imported material, Mr. Nago asked whether it would be a better product. The answer was yes, it would make the reservoir stronger. When the reservoir is filled with water, it does not matter what soil is used because it is just a mass of the embankment. However, in an earthquake which moves the earth back and forth, the 2 ½-inch material is superior. The bottom line is that DWS will get a superior product.

Chairperson Mukai asked whether going way beyond the scope of the initial contract would pose problems in getting reimbursed by FEMA.

The Manager said that there might be a problem with FEMA’s interpretation of what was done, but DWS intends to sit down with FEMA to justify everything possible. The reason is that these things are necessary; not to do so would mean building an inferior reservoir.

ACTION: Motion carried unanimously by voice vote.

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

The Contractor, Goodfellow Bros., Inc., has requested a 26 calendar-day time extension. This request consists of 3 calendar days to accomplish the work for Change Order No. 6, (2 calendar days to apply the Armatec 110 coating on the existing rebars and one calendar day to install the additional cleanout assembly); 15 calendar days for the additional work of Change Order No. 7 (100 linear feet of wet crack repair); and 8 calendar days for rain-outs and unworkable conditions from January 1, 2010 to March 31, 2010.

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

Staff has reviewed the request and finds that the 26 calendar days are justified.

This is the fourth time extension request.

Ext . #	From (Date)	To (Date)	Days (Calendar)	Reason
1	11/9/2009	1/30/2010	82	Rainout days and Hypalon polymer supply issues.
2	1/30/2010	2/25/2010	26	Additional cleanout installation work and rainout days.
3	2/25/2010	5/9/2010	73	Additional work for Change Order Nos. 3, 4, and 5; and rainout days.
4	5/9/2010	6/4/2010	26	Additional work for Change Order Nos. 6 and 7; and rainout days.
Total Days (including this request)			207	

RECOMMENDATION: It is recommended that the Board approve a contract time extension to Goodfellow Bros., Inc. of twenty-six (26) calendar days from May 9, 2010 to June 4, 2010,

for JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS.

ACTION: Mr. Taniguchi moved to approve; seconded by Mr. Meierdiercks. Motion carried unanimously by voice vote.

NORTH KONA:

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

The contractor, Isemoto Contracting Co., Ltd., has requested a contract time extension of 30 calendar days.

The project has been delayed due to unanticipated leaks in the Kailua View Estates 0.1 MG tank that developed after the post-repair leak test. The adjacent Pines Offsite 0.3 MG tank, which is the last tank to be repaired for this project, cannot be repaired until the Kailua View Estates tank is fully repaired and operational.

This would be the second time extension request for this project.

Ext . #	From (Date)	To (Date)	Days (Calendar)	Reason
1	2/15/2010	5/16/2010	90	Additional interior repairs at Lālāmilo 610' 1.0 MG tank and delays in acquisition of temporary tanks for South Kohala Resort 404' 0.5 MG tank.

The first time extension extended the project 90 calendar days to provide for additional interior repairs at the Lālāmilo 610' 1.0 MG tank and because of delays in acquiring the temporary storage tanks needed to repair the South Kohala Resort 404' 0.5 MG tank.

RECOMMENDATION: It is recommended that the Board grant this contract time extension of 30 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 May 16, 2010 to June 15, 2010.

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

Mr. Okamoto noted that the Department had completed the two-part repair process on the tank, but after filling the tank with water, there were still some leaks. DWS therefore needed to do additional work to seal cracks on the exterior walls with epoxy.

Mr. Reynolds noted that he is the president of the Nani Kailua subdivision, where the tanks are located. He said he gets complaints about debris at the site and unsightly signs on the chain-link fence. He asked if DWS could take a look and clean it up.

The Manager asked that the Board notify DWS of any such problems around the Department's tanks, so that DWS can take care of it.

ACTION: Motion carried unanimously by voice vote.

KA'U:

B. JOB NO. 2009-959, PĀHALA WELL #1 REPAIR:

(This item was deferred from the 3-23-10 Water Board Meeting.)

Bid opening was on March 11, 2010, at 2:30 p.m., and the following are the bid results.

Bidder	Amount
Beylik Drilling and Pumping Service	\$162,143.00
Derrick's Well Drilling and Pump Service	\$136,223.31

Project Scope: This project generally consists of the removal and replacement of the existing deep well submersible motor, pump, power cable, column pipe and appurtenances.

Project Cost:

1) Low Bidder (Derrick's Well Drilling & Pump Services, LLC)	\$136,223.31
2) Construction Contingency (10%)	<u>13,622.33</u>
Total Construction Cost:	<u>\$149,845.64</u>

Funding for this project will be from DWS's CIP Budget under Deepwell Pump Replacement. The contractor will have 240 calendar days to complete this project.

RECOMMENDATION: It is recommended that the Board cancel the award of this project. It is the intent of the Department of Water Supply to re-bid the project due to a procurement violation.

Ms. Garson said that there was a typo in the Recommendation, which should have said: "It is recommended that the Board cancel the **bid** for this project." The reason is that this project had never been awarded. The Motion should be to cancel the **bid** for this project, she said.

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

The Manager explained that information was provided that was inconsistent with the procurement code. A novice engineer, through no fault of his own, gave information without knowing the contractual provisions for providing information. It should have been done through an addendum, where all of the bidders are given the same information. Apparently the engineer was not trained sufficiently; it is not his fault. It is basically the Department's fault for not providing him with that training. An error was made; not everyone was treated fairly and so therefore it was only proper to cancel the bid. DWS got a protest, which the Department sustained, acknowledging that the protester was right.

Chairperson Mukai asked if the error was caught internally or by the public.

The Manager said it was caught internally, when DWS investigated the letter of protest. DWS unearthed what happened and wrote back telling the protester that he was right and DWS would re-bid the project.

Chairperson Mukai asked if there were an internal mechanism to check for errors.

Mr. Okamoto said that the information was given out informally.

The Manager said it was not done formally through an addendum. He added that he was sure the engineer would not make the same mistake again.

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

Maps of the three properties were shown.

ACTION: Motion carried unanimously by voice vote.

B. **DEPARTMENT OF WATER SUPPLY PROPOSED OPERATING AND CAPITAL BUDGETS FOR FISCAL YEAR 2011:**

Fiscal Year 2011 Operating and C.I.P. Budgets for approval. A Public Hearing was scheduled to receive testimony on the Department's proposed budgets for FY2011 on March 23, 2010 at 9:30 a.m., before the Board meeting. The first reading of the Budgets took place at the Water Board Meeting on March 23, 2010.

This is the **second reading** of the Budgets.

RECOMMENDATION: It is recommended that the Water Board adopt the Fiscal Year 2010-2011 Operating and Capital Improvement Budgets.

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

Mr. Sumada noted that this year's Operating Budget is a slight increase over the previous year's Budget. This Budget includes the furloughs of DWS staff beginning on July 1. It also includes rate increases factored in at 5.8 percent, about which DWS will be holding public hearings in May. The C.I.P. Budget of \$19.7 million includes \$8 million from the State Revolving Fund and \$11.7 million from general obligation bonds that will be issued in July.

Ms. Garson noted that the Budgets must be approved by June 30, 2010.

Chairperson Mukai asked if the Board could postpone approval of the Budgets until the May meeting. The public hearings regarding the rate increase are coming up, he noted.

Mr. Reynolds started to move to defer.

Ms. Garson said there was still a Motion on the floor to adopt the Budgets.

Mr. Sumada noted that the rate increase is meant to not only provide funds for construction. More importantly, the rate increase is meant to provide operating funds for the Department, which currently is not generating enough money for day-to-day operations. The Department basically needs a rate increase to break even.

Chairperson Mukai said that the rate increase is a matter of the funding source. Both plans that have been proposed have rate increases; it is just a matter of what the agricultural rate is going to be.

Mr. Reynolds said that in light of the problems that the Board may have in the public hearings, it would be prudent for the Board to not adopt the Budgets. To adopt them would make it seem as if the Board had already decided about the rate increase.

Chairperson Mukai entertained a withdrawal of the Motion to adopt, and a withdrawal of the second.

Mr. Meierdiercks withdrew his Motion to adopt; Mr. Lindsey withdrew his second.

MOTION: Mr. Reynolds moved to table the adoption of the Budgets until the May Board meeting; seconded by Mr. Taniguchi. Motion carried unanimously by voice vote.

C. REPORT OF AD HOC FINANCE COMMITTEE:

The Water Board's Ad Hoc Finance Committee Chairperson, Mr. Art Taniguchi, has been investigating the three focus areas (DWS's policies on credit card use, cash control and vehicle take-home), which encompass the scope of the Committee's work. At this meeting, the Committee may do the following:

- Report/discussion on vehicle take-home policy.

Ms. Garson noted that the item today involved only a report, not a discussion. Under the Sunshine Law, an Ad Hoc Committee first forms a committee, then the Committee makes a report, and finally a discussion is held on the report's findings. Discussion can take place at the May Water Board meeting.

Mr. Taniguchi said that the Ad Hoc Committee met at 4:00 p.m. on April 14, 2010 at DWS headquarters. The attendees were Chairperson Mukai, Mr. Lindsey, the Manager and Mr. Taniguchi. The Committee discussed the take-home policy, along with a draft policy that Mr. Lindsey put together. Mr. Lindsey is the head of Hawaiian Telcom, which has a vehicle policy. DWS does not currently have a specific vehicle policy, so the Committee studied the County's very detailed policy. The Committee also discussed a policy regarding the vehicles used by the Manager and Deputy Manager. At present, there is no specific policy regarding the Manager and Deputy Manager's use of DWS vehicles. DWS does not have a specific policy regarding personal use of vehicles, details on vehicles, or on take-home vehicles for first responders. The County policy was considered so cumbersome that the Committee decided to ask the Manager to present a recommendation on what the vehicle policy at DWS should be. The result will be a combination of County, State, and the Department's own policies. The Committee will meet again in early May. Mr. Taniguchi noted that the Mayor, by ordinance, can take his County car home. The manager of the Board of Water Supply in Honolulu can also bring his vehicle home, by ordinance.

Mr. Reynolds suggested that DWS find out what the other counties are doing regarding take-home vehicles for first responders.

Mr. Taniguchi said it was a good suggestion.

D. RENEWAL OF CONTRACT FOR MAINTENANCE AGREEMENT – SOUTH KOHALA, HĀMĀKUA, AND LAUPĀHOEHOE SITES (BRANTLEY CENTER, INC.):

Brantley Center, Inc., presently has a Maintenance Agreement for site maintenance for the Department's South Kohala, Hāmākua, and Laupāhoehoe tank and pump sites. They are requesting to renew the Agreement for two years from July 1, 2010, to June 30, 2012. The new rates would be as follows:

Hāmākua	--	\$2,446.00/month
Laupāhoehoe	--	\$691.00/month
South Kohala	--	\$3,183.00/month

The Department has the right to award the contract to Brantley Center, Inc., without advertising or calling for bids, according to Subsection 103D-1010 of the Hawai'i Public Procurement Code. Brantley Center, Inc., has submitted the necessary documents to meet the requirement as a qualified rehabilitation facility.

There is no increase in their cost from the previous two years. Brantley Center's performance has been satisfactory, and the costs are reasonable.

RECOMMENDATION: It is recommended that the Board award the contract for the RENEWAL OF CONTRACT FOR MAINTENANCE AGREEMENT – SOUTH KOHALA, HĀMĀKUA, AND LAUPĀHOEHOE SITES (BRANTLEY CENTER, INC.), to Brantley Center, Inc., for a period of two years from July 1, 2010, to June 30, 2012 at the rates as follows, and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval by Corporation Counsel:

South Kohala Sites (\$3,183.00/month x 2 years)	\$76,392.00
Hāmākua Sites (\$2,446.00/month x 2 years)	58,704.00
Laupāhoehoe Sites (\$691.00/month x 2 years)	<u>16,584.00</u>
TWO-YEAR TOTAL:	<u>\$151,680.00</u>

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

Chairperson Mukai, noting that by statute this contract does not need to go out for bid, asked how DWS knows that the price is competitive.

The Manager said that DWS looks at what other people are paying for similar types of services.

Ms. Garson said that part of the statute stipulates that an analysis of the costs be done; a comparison of the costs is made.

Mr. Ikeda said that before the new rule which mandates that the County must hire its own groundskeepers, Brantley Center's prices were always the lowest. Before the new rule, DWS always used to get private contractors to do on-site maintenance. Brantley Center was always the lowest in costs. Brantley Center has cheaper labor and they are a non-profit. DWS has all of the documentation regarding this, he added.

The Manager said that was why DWS can hire Brantley Center, under the Hawai'i Revised Statutes. Brantley Center is a non-profit which employs disabled workers, and so it gets preference. DWS does keep track and check prices. If it ever reaches the point where Brantley Center's prices are coming in too high, then DWS will go out for competitive bid. Normally, DWS cannot do that because the Department is obliged to hire groundskeepers as staff.

Mr. Harai asked about the situation in Kona a couple of years ago, where a contract was not awarded because of the union. In that case, DWS had to hire groundskeepers.

The Manager confirmed this. He said that if DWS stopped using Brantley Center, the Department would have to hire its own staff to clean the offices.

Ms. Garson said that at the time the settlement was done, DWS already had in place a qualified cleaning and rehabilitation center, or was using Arc (of Hilo). DWS was allowed to do that, but was not allowed to expand the work. If DWS ever stopped using Brantley Center or Arc of Hilo, DWS would have to hire janitorial staff.

The Manager said there were three places listed above where DWS is using Brantley Center, and Arc of Hilo is cleaning DWS's Baseyard building. These are the only places that DWS is allowed to use outside workers.

Mr. Ikeda noted that DWS also uses Kona Krafts in Kona.

ACTION: Motion was carried unanimously by voice vote.

E. **ENERGY MANAGEMENT ANALYST UPDATE:**

The following areas will be covered:

- Lālāmilo Update
 - a. Progress on clean-up;
 - b. Discussion on possible renewal of the lease.
- DWS's Green Initiatives

Ms. Myhre said that she had contacted Hawai'i Electric Industries (HEI) yesterday to request a copy of their Phase I Environmental Assessment report. The project manager at HEI promised to get Ms. Myhre a copy of the formal report when it is ready. She said she would keep pushing to get the report. Meanwhile, HEI plans to hire a contractor to take down the towers and do the clean-up of the area around the third week of May. Regarding the possible renewal of the lease with DLNR, Ms. Myhre has done a draft lease renewal application and asked the National Renewable Energy Laboratory (NREL) representative who recently made a presentation to the Water Board to review it. Ms. Myhre expects the comments to come in next week, and then she will be routing the draft application for internal review.

On the Green Initiatives, Ms. Myhre noted that the Board had received her report via email.

Chairperson Mukai said he was glad that her report was part of the public record. The reason that he wanted the Green Initiatives to be a fixture on the Agenda is because DWS is ahead of the curve on going green. He wanted to make sure that what DWS is doing is on public record in the Water Board Minutes.

The Manager agreed that DWS is ahead of the curve on going green, and also on energy sustainability. DWS is far ahead of the rest of the County in its search for alternative energy. DWS has been very proactive, as evidenced by the creation of the Energy Specialist program, with Ms. Myhre as the Energy Management Analyst.

Ms. Garson asked if the report was emailed to the Board.

Ms. Myhre said that it was emailed, and hard copies were included in the Board packets as well.

F. **MONTHLY PROGRESS REPORT:**

Mr. Taniguchi asked about the Waikoloa Reservoir #2 discussed earlier, and noted that the project cost was \$2 million.

Mr. Nago said the initial cost was \$1.87 million, and with the change orders, the cost is approaching \$2 million.

Mr. Taniguchi noted that the contingency was \$185,000.00, and that to date DWS had paid \$700,000.00. Therefore, DWS still has approximately \$100,000.00 remaining on the project.

Mr. Nago explained that most of the cost is for the liner installation. Right now, the work involves preparing the concrete panels to accept the liner. Once the liner goes in, the total cost should shoot up.

Mr. Taniguchi said that now the cost will exceed the monies allotted.

Mr. Nago confirmed this.

The Manager said that this is the nature of projects like this, where there are so many unknown factors that only surface once the work starts. He said that Mr. Nago told him that ground-penetrating radar (GDR) is used in hopes of getting an accurate reading of conditions underground. Nonetheless, even the GDR cannot give an accurate estimation of conditions, according to Mr. Nago.

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

Mr. Taniguchi asked about DWS's cash position, which has dropped by \$15 million.

Mr. Sumada said that it was a result of DWS's water rates being unable to generate enough money to fund operations.

Mr. Taniguchi noted that investment income had also dropped.

Mr. Sumada confirmed that investment income had dropped to nearly nothing. Basically, DWS is borrowing from construction funds to pay bills, he said.

Mr. Taniguchi noted that DWS will be floating bonds to fund DWS projects, and that debt service is going to pose a burden.

Mr. Sumada said that debt service is worked into the Budget.

Mr. Taniguchi said that DWS needs income to pay for debt service.

Chairperson Mukai said the fact is that DWS really needs the rate adjustment.

Mr. Taniguchi asked about the increase of \$600,000.00 in long-term debt.

Mr. Sumada said it was mainly due to State Revolving Fund (SRF) projects. DWS has been borrowing to fund a couple of projects which are really ramping up.

Mr. Taniguchi asked about the Power Cost Charge, about which the Board last month held a Public Hearing. At that time, the Power Cost was increased.

Mr. Sumada confirmed that the Power Cost Charge was raised to \$1.77, effective April 1.

Mr. Taniguchi asked if by raising the Power Cost Charge that DWS came out ahead.

Mr. Meierdiercks said it would take two months to see if this was the case.

The Manager explained that DWS does not raise the Power Cost Charge with the aim of recouping losses. The Power Cost Charge is adjusted to match the current rate. It is based on the actual rate, he said.

Mr. Sumada confirmed this, saying it was the actual power cost divided by actual consumption, from the last time DWS recalculated it.

The Manager said that therefore, DWS does not set the Power Cost Charge to recoup losses; it is set to what the rate actually is. The word “recoup” is not used. Sometimes the Power Cost Charge comes in DWS’s favor, but it is not set to balance things out. Instead, it is set to accommodate what the rate is that month.

Mr. Meierdiercks agreed that it was more of an equalizer.

Mr. Taniguchi asked the status on DWS’s rental space.

The Manager said that Mr. Sumada has been in constant contact with the County, which is going to rent the space.

Mr. Sumada confirmed that two County departments are going to move in. Public Works people are going to do the renovations, and they are currently drawing up plans of what they will do.

The Manager said that DWS’s Engineering personnel are in the process of executing a change order to the Waiākea Office Plaza project, to provide a roadway out in the back to comply with Americans with Disabilities Act (ADA) access requirements.

Mr. Taniguchi asked who was paying the \$2,000 in rent now.

Mr. Sumada said it was the State Department of Commerce and Consumer Affairs (DCCA).

Mr. Meierdiercks asked about delinquencies.

Mr. Sumada said that DWS has a full-time employee who is working on delinquencies. He noted that more people are setting up payment plans, and paying less than the full bill at once.

The Manager said that on a positive note, the economy seems to be slowly improving. Unfortunately, the upturn will not affect the County for a while because its finances are based on land values. However, DWS should be seeing an increase in revenues relatively soon. More plans are coming into DWS, and a lot more people are transmitting things to DWS. It appears that the bottom has been reached, and the recovery is starting, he said.

H. **POWER COST CHARGE:**

The Board will discuss whether to authorize the Department to publish a Notice of Public Hearing on the Power Cost Adjustment, for a Public Hearing to be held on May 25, 2010.

The Manager said DWS had determined that the Power Cost Charge had remained pretty much the same, compared with the previous month.

Chairperson Mukai confirmed that there was no need to hold a Public Hearing next month.

I. **WATER RATE STUDY:**

Chairperson Mukai reminded the Board that the Public Hearings on the water rates are scheduled for Tuesday, May 4, from 6:00 p.m. at Aupuni Center in Hilo, and on Wednesday, May 5, from 6:00 p.m. at King Kamehameha's Kona Beach Hotel in Kona.

Ms. Garson said that Mr. Kenneth Kaneshiro, the nominee for the District 1 vacancy on the Board is undergoing the Council confirmation process. Assuming Mr. Kaneshiro is sworn in at the Council meeting in Kona on May 5, he may be able to attend the Public Hearing as a member. (*Mr. Kaneshiro, present at this meeting today, said he would be unavailable to attend the May 5 Public Hearing.*) Ms. Garson said that she wanted to know who is going to be at each of the Public Hearings, because there may be Sunshine Law issues. Ms. Garson said she had assumed that a quorum of five members would attend each of the Public Hearings, but it appears that the Hilo hearing will lack a quorum. She asked the Board to tell her right now who can make the Hilo hearing and who can make the Kona hearing.

Ms. Garson said it was very important to know whether there was a quorum or not. Under Sunshine Law, a Public Hearing is considered a meeting, and as such it requires a quorum. It is treated like a Water Board meeting, with the Agenda posted with the County Clerk's Office. If there is *not* a quorum of five, the maximum number of members who can attend is just two. The minute that a quorum is lacking, it ceases to be a meeting, and if more than two members are present, it becomes an **unpermitted action** under Sunshine Law. The bottom line: either a quorum of five, or no more than two members. Ms. Garson said there was another option, which she preferred not to bring up.

Chairperson Mukai asked for a show of hands of how many members would be able to attend the Hilo hearing on May 4.

(A show of hands indicated that only four Board members planned to attend the Hilo Public Hearing.)

Chairperson Mukai noted that there were only four.

Ms. Garson asked Mr. Reynolds if he had a conflict.

Mr. Reynolds said that he had a meeting scheduled in Kona that afternoon. He thought he might be able to get out of it, but he would have to let the Board know later. His meeting in Kona, he noted, would mean that he could not reach Hilo by 6:00 p.m.

Ms. Garson said that this means that there were only four members available for the Kona meeting. Therefore, she would have to tell two of the members to go home.

Mr. Meierdiercks asked if it were possible to let members know before they set out for the meeting.

Mr. Reynolds suggested just deciding which two members go to which hearings.

Ms. Garson said the water rates are such an important issue that Water Board members should make every effort to attend. She said that once she hears back from Mr. Reynolds about his attendance in Kona, she will let the rest of the Board know. She asked the Board, in the meantime, to decide now which two members would attend which hearing.

Chairperson Mukai said that he should attend because he is the Chairperson.

Mr. Meierdiercks said he planned on attending.

Mr. Lindsey asked whether a Board member could attend, even if two members were already set to attend (i.e., could a third member attend?)

The Manager said no, a third member cannot, under Sunshine Law.

Mr. Taniguchi asked if a member could attend by phone.

Ms. Garson said no, if a member attended someplace else, the hearing would have to be videotaped and a public notice would have to be published (and posted with the County Clerk).

Mr. Reynolds said he would let the Board know tomorrow about his attendance in Hilo.

Chairperson Mukai took a show of hands for attending the Kona hearing.

(Only four hands went up.)

Ms. Garson broached the third option, involving setting up two committees of three members each, three members to attend in Hilo, three in Kona. All six members could attend different meetings, she said. Upon establishing the committees, the next step is to report and the final step is to take action.

Chairperson Mukai said this option was out of the question.

The Manager said it would mean setting up committees today.

Mr. Taniguchi said he just did not understand the Sunshine Law. He said he thought the law was designed so that Board business could not be done in private, and a Public Hearing is a public event, with the public present.

Mr. Reynolds asked the penalty for violating the Sunshine Law.

Ms. Garson said an intentional violation of the Sunshine Law is a criminal offense.

Mr. Taniguchi asked why the Board could not hold a hearing with four members. After all, it was not business being conducted behind closed doors.

Ms. Garson said that is the law. She said that if there is no quorum in Kona, one Board member will be barred from attending both hearings. This is because only two can attend in Hilo, and two in Kona, with the fifth Board member the odd man out.

J. MANAGER'S REPORT:

The Manager will provide an update or status on the following:

- a. Update on use agreement on KIC wells -- Nothing to report since the last meeting with KIC board members.

- b. Palani Road Transmission Waterline Project -- Manager is to meet with Deputy Managing Director Wally Lau next week to discuss concerns of Queen Lili'uokalani subdivision residents and Kona resident Mr. Fred Housel.
- c. Department plans for implementation of furloughs -- No update on how the furloughs will be implemented, pending word from the Mayor at the next Cabinet meeting.
- d. Employee of the Quarter presentation (item moved up earlier)

K. CHAIRPERSON'S REPORT:

Regarding the American Water Works Association Hawai'i Section Conference – May 19 to 21, 2010, Hawai'i Convention Center, Oahu, Chairperson Mukai said that DWS would only be paying the registration fee for Board members who wished to attend. He said that he himself planned to attend, but due to the Department's financial constraints, he would be paying his airfare, lodging and other expenses.

ANNOUNCEMENTS:

1. Next Meeting:

The next meeting of the Water Board will be held on May 25, 2010, at 10:00 a.m. in Kona 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 **June 15**, at 10:00 a.m. at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

Chairperson Mukai said the Board would be updating the Department on who would be attending the Public Hearings in Hilo on May 4 and in Kona on May 5.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Mukai adjourned the meeting at 12:52 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.