

**MINUTES**

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

July 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. David Greenwell  
Mr. Kenneth Kaneshiro  
Mr. Bryan Lindsey  
Mr. Delan Perry  
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  
Ms. Molly Lugo, Deputy Corporation Counsel  
Ms. Morag Miranda  
Ms. Colleen Schrandt, Legislative Auditor (arrived 10:17 a.m.)  
Mr. Karl Rad, Office of the Legislative Auditor (arrived 10:17 a.m.)  
Mr. Lane Shibata, Office of the Legislative Auditor (arrived 10:17 a.m.)  
Grant Nakagawa, KPMG  
Mr. Chris English, Hawai‘i Cattlemen’s Council  
Mr. Scott Spence, Hawai‘i Cattlemen’s Association

Department of Water Supply Staff

- Mr. Quirino Antonio, Jr., Deputy Manager  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Daryl Ikeda, Chief of Operations  
Mr. Rick Sumada, Waterworks Controller  
Ms. Candace Pua, Assistant Waterworks Controller  
Ms. Kanani Aton, Public Information and Education Specialist  
Ms. Julie Myhre, Energy Management Analyst  
Mr. Keith Okamoto, Engineering Division  
Mr. Larry Beck, Engineering Division  
Ms. Cris Hudman, Customer Service Supervisor (arrived 10:10 a.m.)  
Ms. Marianne Panoff, Accountant IV (arrived 11:45 a.m.)  
Ms. Anne Higaki, Account Clerk (arrived 11:45 a.m.)  
Ms. Colleen Nakamura, Senior Account Clerk (arrived 11:45 a.m.)  
Ms. Susan Okamoto, Clerk II (arrived 11:45 a.m.)

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

STATEMENTS FROM THE PUBLIC:

None.

ACTION TO MOVE AGENDA ITEMS:

Chairperson Mukai, in order to accommodate the people in attendance today, asked to move Item 9(H), PROPOSED NEW WATER RATE SCHEDULE, to follow Item 5, PRESENTATION OF AUDITED FINANCIAL STATEMENTS – JUNE 30, 2009.

APPROVAL OF MINUTES:

Chairperson Mukai entertained a Motion to approve both the Minutes of the Public Hearing on the Power Cost Charge on June 15, 2010 and the Minutes of the regular Water Board meeting on June 15, 2010.

ACTION: Mr. Reynolds moved to approve; seconded by Mr. Kaneshiro. Motion carried unanimously by voice vote.

APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA:

Chairperson Mukai entertained a Motion to approve the Supplemental Agenda Item 8(A), JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #4 (S. KOHALA, HĀMĀKUA).

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

PRESENTATION OF AUDITED FINANCIAL STATEMENTS – JUNE 30, 2009:

Copies of the Department's Audited Financial Statements for the fiscal year ended June 30, 2009 were distributed to Board members. Mr. Grant Nakagawa, representing KPMG, the Department's independent auditors from Honolulu, answered questions that Board members had regarding the report.

Mr. Nakagawa reported that based on the audit, DWS received a clean opinion; everything in the financial statements looked good. During the course of the audit, there was one allowance for doubtful accounts, allotted for \$1.3 million, which the auditors agreed was reasonable based upon the numbers that they saw and the support that DWS had. While the audit found a few misstatements, none of them were deemed material to the financial statements as a whole. However, per the auditors' requirements, a listing was included on the back of the SAS-114 letter, KPMG's required communication to the Water Board. There were no disagreements or difficulties with DWS during the course of the audit.

Mr. Taniguchi asked what happened about possibly looking into DWS's cash handling procedures, a topic raised by the Board last year. He also asked what the procedure for the next audit will be.

Mr. Nakagawa said that KPMG will not be auditing DWS next year. He noted that last year, he had a discussion with then-Chairperson Riley Smith about possibly looking into DWS's cash handling procedures, but nothing happened. KPMG would have been open to doing such additional work for DWS, he said.

Mr. Taniguchi asked how long it would take to get a quote back.

Mr. Nakagawa said it would not take long to come up with a quote, as long as the Board knows what it wants to do.

At this point, Ms. Garson noted that the Board is not the contracting agency with the auditor. Instead, the Legislative Auditor's office is handling the contracting for the next audit period, per the County Charter. The Board would have to go through the Legislative Auditor (and the rest of the County) regarding how the audit gets done or any supplements to the contract, she said.

The Manager said that the Board could also do a separate contract, over and beyond what the County does.

Ms. Garson confirmed this, adding that the Board would need to do its own procurement process for such work.

Mr. Reynolds asked about the entry under "Management Discussion and Analysis, Other Information," on Page 3 of the Financial Statements. The entry shows that capital assets exceeded liabilities by \$220.2 million, which represents a \$5.1 million increase. He asked what the capital assets include.

Mr. Nakagawa said it includes all of the assets owned by the Department, including building equipment, vehicles, etc. It does not include investments.

Mr. Reynolds asked what the \$25.1 million under "Unrestricted" (on Page 7) meant.

Mr. Nakagawa said it basically is the net difference between assets and liabilities, and is basically money not tied to any kind of debt. It is basically DWS's net equity that is not tied to any debt.

Mr. Reynolds asked if it meant that DWS had no debt.

Mr. Nakagawa said that DWS has debt, but it has the ability to pay the debt off.

*(Mr. Nakagawa left the meeting at 10:12 a.m.)*

## MISCELLANEOUS

### **H. PROPOSED NEW WATER RATE SCHEDULE:**

Discussion on proposed water rate schedule and testimony provided at public hearing earlier on July 27, 2010, at 9:30 a.m., and action to adopt new water rate schedule.

Pursuant to Chapter 54, Part III, Hawai'i Revised Statutes, the Public Hearing today was held for the purpose of hearing views and comments of all persons interested in the following proposals for increases in the water rate schedules to be applied by the Department of Water Supply, County of Hawai'i, for all districts.

The Water Board had solicited public input on four proposed rate structures for general use and agriculture use rates.

- OPTION "A" reflects graduated levels of annual rate increases for agriculture customers so that by July 1, 2014; agriculture customers are paying their "cost of service."
- OPTION "B" makes no change to the current agriculture rate over a 5 year period. In order to generate sufficient revenues for the Department, the 3<sup>rd</sup> and 4<sup>th</sup> block rates for general use customers are greater than in Option A.
- "CATTLEMEN'S OPTION" reflects a change in rate structure for agriculture customers from 1 consumption rate to 3 block rates. The first 2 blocks are the same as the first 2 blocks for general use customers in Options "A" and "B." The 3<sup>rd</sup> block increases the current \$0.85 agriculture rate by 2 cents on an annual basis.
- "MODIFIED CATTLEMEN'S OPTION" is similar to the "CATTLEMEN'S OPTION" except that annual 3<sup>rd</sup> block rate increases correspond to the system-wide percentage rate increase.

At its last meeting on June 15, 2010, the Water Board adopted Option B, which became effective July 1, 2010.

**OPTION A: PROPOSED GENERAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all general use customers.

Option A	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69
3 <sup>rd</sup> Block	\$2.87	\$2.88	\$2.88	\$2.89	\$2.89
4 <sup>th</sup> Block	\$3.77	\$3.78	\$3.78	\$3.79	\$3.79

**OPTION A: PROPOSED AGRICULTURAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all agricultural use customers.

Option A	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
Option A - All Usage	\$0.92	\$1.07	\$1.21	\$1.42	\$1.69

**OPTION B: GENERAL USE RATES (per 1,000 gallons) CURRENTLY IN EFFECT**

In addition to standby and power cost charges, a consumption charge will be applied to all general use customers.

Option B	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69
3 <sup>rd</sup> Block	\$2.93	\$3.01	\$3.01	\$3.02	\$3.02
4 <sup>th</sup> Block	\$3.89	\$3.99	\$3.99	\$4.00	\$4.00

**OPTION B: AGRICULTURAL USE RATES (per 1,000 gallons) CURRENTLY IN EFFECT**

In addition to standby and power cost charges, a consumption charge will be applied to all agricultural use customers.

Option B	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
Option B - All Usage	\$0.85	\$0.85	\$0.85	\$0.85	\$0.85

**CATTLEMEN'S OPTION: PROPOSED GENERAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all general use customers.

Cattlemen's Option	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69

3 <sup>rd</sup> Block	\$2.87	\$2.88	\$2.88	\$2.89	\$2.89
4 <sup>th</sup> Block	\$3.77	\$3.78	\$3.78	\$3.79	\$3.79

**CATTELMEN’S OPTION: PROPOSED AGRICULTURAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all agricultural use customers.

Cattlemen’s Option	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69
3 <sup>rd</sup> Block	\$0.87	\$0.89	\$0.91	\$0.93	\$0.95

**MODIFIED CATTELMEN’S OPTION: PROPOSED GENERAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all agricultural use customers.

Modified Cattlemen’s Option	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69
3 <sup>rd</sup> Block	\$2.87	\$2.88	\$2.88	\$2.89	\$2.89
4 <sup>th</sup> Block	\$3.77	\$3.78	\$3.78	\$3.79	\$3.79

**MODIFIED CATTELMEN’S OPTION: PROPOSED AGRICULTURAL USE RATES (per 1,000 gallons)**

In addition to standby and power cost charges, a consumption charge will be applied to all agricultural use customers.

Modified Cattlemen’s Option	Effective July 1, 2010	Effective July 1, 2011	Effective July 1, 2012	Effective July 1, 2013	Effective July 1, 2014
1 <sup>st</sup> Block	\$0.81	\$0.86	\$0.86	\$0.87	\$0.87
2 <sup>nd</sup> Block	\$1.67	\$1.68	\$1.68	\$1.69	\$1.69
3 <sup>rd</sup> Block	\$0.94	\$0.98	\$0.98	\$0.99	\$0.99

**ALL PROPOSALS: GENERAL USE BLOCK THRESHOLDS (gallons per month)**

Meter Size (inches)	1 <sup>st</sup> Block	2 <sup>nd</sup> Block	3 <sup>rd</sup> Block	4 <sup>th</sup> Block
5/8"	5,000	5,001 - 15,000	15,001 - 40,000	> 40,000
1"	5,000	5,001 - 100,000	100,001 - 300,000	> 300,000
1½"	5,000	5,001 - 400,000	400,001 - 1,000,000	> 1,000,000
2"	5,000	5,001 - 900,000	900,001 - 2,000,000	> 2,000,000
3"	5,000	5,001 - 2,000,000	2,000,001 - 5,000,000	> 5,000,000
4"	5,000	5,001 - 4,700,000	4,700,001 - 10,000,000	> 10,000,000
6"	5,000	5,001 - 10,000,000	10,000,001 - 25,000,000	> 25,000,000
8"	5,000	5,001 - 20,000,000	20,000,001 - 50,000,000	> 50,000,000

10"	5,000	5,001	-	40,000,000	40,000,001	-	100,000,000	>	100,000,000
12"	5,000	5,001	-	60,000,000	60,000,001	-	150,000,000	>	150,000,000

**CATTLEMEN’S & MODIFIED CATTLEMEN’S OPTIONS: AGRICULTURE RATE BLOCK THRESHOLDS (gallons per month)**

Meter Size	1 <sup>st</sup> Block	2 <sup>nd</sup> Block	3 <sup>rd</sup> Block
All Sizes	5,000	5,001 - 15,000	> 15,000

**ALL PROPOSALS: AGRICULTURAL USE**

In order to qualify for agricultural rates, applicants shall file annually with the Department, a written application and furnish upon request, satisfactory proof (as determined by the Department), of engagement in agriculture, stock raising or dairy farming on a commercial basis, and that water used in addition to the above is limited to one dwelling. The Department reserves the right to limit or restrict water flow to agricultural users in the event of water shortage or in the event water service to domestic users is disrupted or lowered because of agricultural water use. Applicants shall install backflow preventers which shall be inspected and approved by the Department before water service is granted. Agricultural rates are not applicable to canneries, mills or markets or other establishments engaged in the conversion or treatment or packaging of agricultural products.

**MOTION:** Mr. Taniguchi moved to accept the Modified Cattlemen’s Option; seconded by Mr. Meierdiercks.

The Manager spoke in favor of the Motion because under the Modified Cattlemen’s Option, the agricultural (ag) rates will sustain the same 5.6 percent rate of increase as DWS’s general use customers. This would be fair and equitable. He noted that he believed that the State of Hawai‘i should be subsidizing ag users, but that was not likely to happen anytime soon.

Mr. Kaneshiro said that some of Mr. Goya’s ideas, expressed during the Public Hearing on water rates earlier today, were pretty good. He noted in particular the initiatives on DWS promoting hydroelectric power and public education, as well as reducing costs. Mr. Kaneshiro also noted Mr. Goya’s proposed 5-cent surcharge for public education and other purposes. To introduce such a surcharge, DWS would need to inform the public about what the money would be used for. He was confident that the public would be willing to pay the surcharge if it was made clear that the money was targeted for specific purposes, and would not just go into the general fund where it could be used for anything.

Chairperson Mukai said that Mr. Kaneshiro’s comments were well taken, but the only options that the Board can vote on today are what the Board has before it. The Board may choose to consider Mr. Goya’s proposal at a later date, he added. Regarding the approval of water rates, the Board can only vote on what has been circulated for the Public Hearing.

Mr. Kaneshiro said that was fine; the Board needs to think about things like this down the road.

The Manager said that it would be ill-advised and detrimental to the Department to consider any other option at this time, because it is already two months into the new fiscal year. He urged the Board to approve something that is on the table today. Regarding Mr. Kaneshiro’s concerns, the Manager said DWS has a hydro-generator program, with 300 generators on-line that are making money. He noted the best scenario is the Kahalu‘u Shaft whereby DWS uses all of the energy that it generates. DWS also has a hydro-generator on Hinalani Street, whose energy is being sold back to HELCO, albeit at a reduced rate. DWS’s hydro-generator at the Waimea Water Treatment Plant runs the entire plant. DWS has an Energy Management Specialist, who is tasked with looking at different areas where DWS can include more hydro-generators. Regarding public education, DWS hired a Public Education and Information Specialist about two and a half years ago. Ms. Aton goes throughout the island educating

students and the public. Whenever DWS is asked to speak at a community meeting, Ms. Aton comes along so that she learns all of the knowledge that the Manager has, in the hope that eventually Ms. Aton can do what the Manager has been doing in terms of speaking at community meetings. In summary, DWS has a strong alternative energy and public education program.

Mr. Kaneshiro said this was very good.

Ms. Garson said that before the Board votes on the Main Motion, an effective date for the new rates is needed. She said that Mr. Sumada had just told her that the Department could implement a rate change effective August 1. She said that adding an effective date would be a friendly Amendment.

Chairperson Mukai asked if there was an Amendment to the Main Motion.

AMENDMENT TO THE MAIN MOTION: Mr. Taniguchi amended his Motion to have an effective date of August 1, 2010; seconded by Mr. Meierdiercks. Amendment to the Main Motion carried unanimously by voice vote.

Mr. Perry noted that right now, the Department is at Option B, which the Board approved last month. He asked for a comparison of the impacts to the Budget from the Modified Cattlemen's Option versus Option B.

The Manager said that basically there was no difference because the two rate structures were established by the Department's rate consultant to generate the same income.

Mr. Reynolds noted that the amounts for the effective years are quite different. There is no fourth block in the Cattlemen's Option, while there is a fourth block in the Modified Cattlemen's Option, he said. Mr. Reynolds said the Modified Cattlemen's Option seems a little excessive, compared with the straight Cattlemen's Option.

The Manager said he liked both the Cattlemen's Option and the Modified Cattlemen's Option because they maintain the first and second blocks for everybody, which is basically the same amount of water that people need to live anyway. These first and second blocks apply to ag users, too. It is when the usage exceeds the second block that the subsidized rate kicks in. The theory is that beyond the second block, most of the water would be used for ag purposes, and therefore the ag user should get the subsidy.

Mr. Reynolds noted that on the bottom of page 8 of the Agenda, where the Modified Cattlemen's Option is, Blocks 3 and 4 are quite a bit higher than the Block 3 in the Cattlemen's Option. He asked if the reason for Block 4 is that there are not that many people using that much water.

The Manager said no, this block rate schedule was developed many years ago as a punitive way to promote conservation. The idea was, the more you use, the more you pay.

Mr. Reynolds asked how many people would get into this fourth block.

The Manager said that it depends on the size of the meter; it varies for different sizes of meter.

Mr. Reynolds asked if there were a lot of people who would get into the fourth block.

The Manager said just a few people would, those who use the water for filling swimming pools, keeping their yards green, washing boats, etc. These would be luxury-type uses of water, he said.

Chairperson Mukai asked Ms. Shirota to read back the Motion as Amended.

Ms. Shirota said the Motion as Amended is to accept the Modified Cattlemen's Option, effective August 1, 2010.

ACTION: Motion as amended passed unanimously by voice vote.

SOUTH HILO:

A. **MATERIAL BID NO. 2010-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS, DIGITAL PORTABLE RADIOS, P25 DIGITAL VHF REPEATERS AND TELECOMMUNICATION TOWERS FOR THE DEPARTMENT OF WATER SUPPLY:**

Bids for this project were received and opened on July 8, 2010; at 3:00 p.m. The contract period for all Parts is from August 1, 2010, to June 30, 2011. All Parts are established price agreements for materials on an "As-Needed Basis."

<b>PART NO.</b>	<b>DESCRIPTION</b>	<b>West Hawaii Electronics, Inc.</b>	<b>Pacific Wireless Communications, LLC</b>
1	Digital Mobile Radios	<b>\$107,415.00</b>	\$129,113.60
2	Digital Portable Radios	No Bid	<b>\$156,677.78</b>
3	P25 Digital VHF Repeaters	\$71,495.00	<b>\$69,312.70</b>
4	Telecommunications Towers	No Bid	<b>\$70,013.94</b>

The Manager recommended that the Board award the contract for MATERIAL BID NO. 2010-07, FURNISHING AND DELIVERING DIGITAL MOBILE RADIOS, DIGITAL PORTABLE RADIOS, P25 DIGITAL VHF REPEATERS AND TELECOMMUNICATION TOWERS FOR THE DEPARTMENT OF WATER SUPPLY, on an as-needed basis, by Parts to the following for the amounts shown above, and that either the Chairman or the Vice-Chairman be authorized to sign the contract(s), subject to review as to form and legality of the contract(s) by Corporation Counsel.

**Part 1** – Digital Mobile Radios to **West Hawaii Electronics, Inc.**

**Part 2** – Digital Portable Radios to **Pacific Wireless Communications, LLC**

**Part 3** – P25 Digital VHF Repeaters to **Pacific Wireless Communications, LLC**

**Part 4** – Telecommunication Towers to **Pacific Wireless Communications, LLC**

The contract period shall be from August 1, 2010, to June 30, 2011.

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

The Manager noted there were only two bidders.

Mr. Harai asked how many radios were involved.

Mr. Ikeda said over 100 radios, but he did not have an exact number. The Department put a number for the bidders to bid on for comparison purposes, just to establish a price. DWS chose the lowest price of each item.

The Manager said the prices were effective through June 30, 2011. The Department has to update its radio system to conform to the Police Department's new system. DWS uses the Police repeaters, he added.

Mr. Ikeda said that DWS needs the radios to comply with new Federal Communications Commission (FCC) regulations, whereby by 2013, DWS must change out all of its radios to the new system.

The Manager said that DWS will buy the radios as they need them, and DWS does not need to buy all of the radios at one time.

Mr. Taniguchi suggested that in future, the Department might want to go in with the Police Department in purchasing radios, in hopes of getting a better price.

The Manager said that was a good suggestion, and said that DWS could check with the Police Department to see if DWS could piggyback with the Police's radio contract. He noted that the Police frequencies are different from DWS's. He reiterated that this current contract is good for one year, and these prices are good through June 30, 2011.

Mr. Ikeda said that DWS has budgeted a certain amount for the radios and will budget again next year. DWS has a couple more years to make the changeover (by 2013.)

ACTION: Motion carried unanimously by voice vote.

Chairperson Mukai asked to next take up Item 9(B), LEGISLATIVE AUDITOR'S LIMITED SCOPE PERFORMANCE AUDIT OF THE DEPARTMENT OF WATER SUPPLY'S INTERNAL CONTROLS FOR CASH HANDLING AND FINANCIAL IT SYSTEMS.

MISCELLANEOUS:

**B. LEGISLATIVE AUDITOR'S LIMITED SCOPE PERFORMANCE AUDIT OF THE DEPARTMENT OF WATER SUPPLY'S INTERNAL CONTROLS FOR CASH HANDLING AND FINANCIAL IT SYSTEMS:**

Legislative Auditor Ms. Colleen Schrandt reported on the findings of the June 2010 Limited Scope Performance Audit of the Department of Water Supply's Internal Controls for Cash Handling and Financial IT Systems, followed by discussion.

Mr. Taniguchi said that prior to the external audit by KPMG and the Legislative Audit, the Board had discussed possibly including a review of cash handling procedures into the external audit. He explained that he had asked the KPMG auditor earlier today about the procedure for expanding the scope of an audit.

Ms. Schrandt said that if the Board formally decided to expand the scope, the Board would send a request to that effect to the Legislative Auditor.

Mr. Taniguchi he just wanted to know what the procedure was for future reference.

Chairperson Mukai commented that the Board's Ad Hoc Finance Committee reviewed the Legislative Auditor's report.

Mr. Taniguchi asked Ms. Schrandt about a passage in her report that mentioned water bill payments not being processed in a timely manner, and asked what she meant by "timely." He asked if "timely" meant one day, two days, three days, or a week.

Ms. Schrandt said that on the issue of timeliness, deposits should be made daily. If the payments are non-cash and there are controls in place to ensure that cash is physically safeguarded in the time period before Finance deposits the money, daily deposits are not necessarily a requirement. However, if significant amounts of cash are taken in daily and the safeguarding control are not as strong as they could be, it is more important that deposits are made daily, she said.

Mr. Taniguchi asked about cash payments that are deposited in the bank but not logged into the system until tomorrow and yet backdated to today.

Ms. Schrandt said that there are instances, not necessarily in DWS, where that is the process. She said that there are reasons that that process could be made to work, but it depends on the safeguards to make sure that the Department goes back and reconciles what gets put into the bank to the actual date.

Mr. Taniguchi asked about the report's recommendation to scan incoming mail envelopes.

Ms. Schrandt said that was actually something that DWS had talked about or suggested to the auditors. Ms. Schrandt said that she personally did not think it was a very good control mechanism because one would not know what was inside the envelopes. The Department needs to make sure that the amount or number tallies out of the depositary receipts. Scanning envelopes gives no independent control over the amounts posted or deposited, she added. The important thing is to look at the whole picture and decide whether adequate control is provided, she said.

Mr. Greenwell asked if there was a way of finding out where delinquent accounts come into the picture, so that delinquent accounts do not get behind.

Ms. Schrandt said that was an entirely separate issue, not related to the actual timing of deposits or safeguarding of cash.

Mr. Sumada noted that DWS has a credit and collections clerk on staff, whose main function is to look at receivables and their age. The clerk looks at the whole list of delinquencies, and contacts customers to set up payment plans. The alternative is to turn off the delinquent customer's water, if they do not make payments.

Mr. Greenwell asked if DWS is losing revenue through the cracks due to delinquencies.

Ms. Garson noted that the Legislative Audit did not cover delinquencies; only cash handling and DWS's Information Technology (IT) system were covered. She suggested that the question of delinquencies be posed later in the meeting, during the Monthly Financial Statements segment.

Mr. Taniguchi asked about the report's comment that "batch processing is considered to be outdated." He asked if batch processing was seen as a problem for DWS and whether it was a security issue.

Ms. Schrandt said it would depend on the scope of the audit. Looking at the ranking of findings, Ms. Schrandt said that she did not think batch processing in and of itself was a finding. Instead, it was part of the whole picture and the controls in place.

Mr. Taniguchi said he asked the question to get a feel for the magnitude of that particular issue, and had wondered whether batch processing would come up as an issue in a future audit and whether it was a high priority to address.

Ms. Schrandt noted that by itself, batch processing would not be a major issue. In any event, Mr. Sumada and his staff are looking at a new system, and she counseled taking time to get the right system rather than rush and wind up in a worse situation.

Chairperson Mukai said that the Ad Hoc Finance Committee went over the report's recommendations with a fine tooth comb.

Ms. Schrandt noted that historically, governments have not necessarily focused on providing services in the most efficient manner. The audit looks at the broader picture of DWS, not so much at individuals in the organization, with the emphasis on the importance of having controls in place. She noted that in any industry, the accounting and finance function is the one area that is shortest-staffed, while carrying a huge responsibility. Part of the report's purpose was to point out to the Board that its job is to ensure that DWS management has the resources they need to put the necessary controls in place.

*(Ms. Schrandt, Mr. Rad and Mr. Shibata left meeting at 10:45 a.m.)*

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

The contractor, Isemoto Contracting Co., Ltd., requires 62 calendar days from the date of approval from the Water Board to perform additional work beyond the scope of work. The additional work is as follows:

- Construct driveway and appurtenant concrete work around new building (30 calendar days);
- Ka‘u Wing, Main Data Processing Room air conditioning retrofit (15 calendar days);
- Chain link fence enclosures at ACCU units and CRM (concrete rubble masonry) Wall (12 calendar days); and
- Remove selected rubber trees for driveway (5 calendar days).

Staff has reviewed this time extension request and finds that the 62 calendar days are justified. The *total* time extension will be for 124 calendar days from the last contract time extension. This is the fourth time 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.
4	5/26/2010	9/27/2010	124	Construct driveway and appurtenant concrete work around new building; retrofit data processing room a/c; chain link fence around ACCU units and build CRM Wall; and remove selected rubber trees for driveway.
<b>Total Days (including this request)</b>			<b>487</b>	

The Manager recommended that the Board grant Isemoto Contracting, Co., Ltd. this extension of contract time of one hundred twenty-four (124) calendar days from May 26, 2010, to September 27, 2010 for JOB NO. 2005-862, WAIĀKEA OFFICE PLAZA AIR CONDITIONING REPLACEMENT.

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

Mr. Reynolds asked for an explanation of the request for a time extension on top of the 62 days' extension that the Board already approved.

The Manager noted that the extension request was retroactive to May 26, to ensure that it is done legally and per contract. The time had expired while the contractor formulated his extension request. The Manager noted that the State Judiciary moved out, and now DWS must provide an Americans with Disability Act (ADA)-compliant access to the downstairs for future tenants. (The Judiciary was one

big unit and so only one ADA access was needed, he explained. With new tenants, DWS cannot rely on that single access.)

Mr. Reynolds said that all of the extensions make a joke out of how people do things in Hawai'i. He said that giving extensions and overruns encourage people to do a poor job of planning.

Mr. Inaba noted that the contractor had actually completed the air conditioning project a day before schedule. Mr. Inaba noted that a driveway is to be installed in the back to provide vehicle access to the building. Building a driveway was not included in the original scope of the project, he added. The driveway was among the things DWS needs to do that were not in the original scope. DWS needs a permit to install the driveway, he added. There was no driveway in the original design, but DWS decided a driveway was also needed because without one, vehicles going to do maintenance were tearing up DWS's yard. He acknowledged that the need for a driveway should have occurred to someone from the beginning.

Mr. Reynolds asked how much the driveway would cost.

Mr. Inaba said the Department received a quote that was seen as a bit excessive, so DWS is doing it on a force-account basis, while still remaining within the contingency which is 7.5-10 percent.

ACTION: Motion carried unanimously by voice vote.

NORTH HILO:

A. **JOB NO. 2010-963, LAUPĀHOEHOE DEEP WELL NO. 2 REPAIR:**

This project generally consists of the replacement of the existing line shaft pump, with a submersible pump and motor, power cable, column pipe and appurtenances.

Bids for this project were opened on July 8, 2010, at 2:00 p.m., and following are the bid results:

<b>Bidder</b>	<b>Bid Amount</b>
Derrick's Well Drilling & Pump Services, LLC	\$68,663.02
Beylik Drilling & Pump Service, Inc.	\$87,423.00

Project Cost:

1) Low Bidder (Derrick's Well Drilling & Pump Services, LLC)	\$68,663.02
2) Construction Contingency (10%)	<u>\$ 6,866.30</u>
<b>Total Construction Cost:</b>	<b>\$75,529.32</b>

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.

The Manager recommended that the Board award the contract for JOB NO. 2010-963, LAUPĀHOEHOE DEEP WELL NO. 2 REPAIR, to the lowest responsible bidder, Derrick's Well Drilling & Pump Services, LLC, for their bid amount of \$68,663.02, plus \$6,866.30 in construction contingency, for a total contract amount of **\$75,529.32**. He further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel.

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

The Manager explained that this is basically a routine well repair, and that any piece of equipment or anything with moving parts is bound to break at some point.

Mr. Taniguchi asked if DWS has any language in a contract that pins the contractor down to a completion date, or face a penalty. He asked if there is a penalty associated with coming back and asking for a time extension.

The Manager said it depends on the justification for the delay. If it is a bona fide delay beyond the contractor's control, DWS will grant the extension. If it is a delay caused by DWS because the Department wants a different kind of work, DWS grants the extension. The General Requirements and Covenants spells out when DWS can assess liquidated damages, which are supposed to be levied because the Department does not have the use of the product it is paying for within the allotted time. In DWS's case, it is difficult to determine liquidated damages when, for example, a well goes down because DWS has other wells to cover the gap. Therefore, it is hard to prove damage. DWS uses a table based on the value of the project, to determine liquidated damages. The table is published and approved, and so DWS can follow it to assess liquidated damages.

Ms. Garson clarified that liquidated damages are technically not a penalty. Instead, liquidated damages are an estimate, before a contract is entered, of what damages DWS might suffer if the project is not completed on time.

Mr. Taniguchi expressed the hope that DWS was not seen as a "deep pocket" that will grant a contractor an extension for free, and meanwhile the contractor will finish someone else's project. He worried that a losing bidder could complain that they would have bid lower if they knew DWS would grant them extra days to do a project.

The Manager said that was why the engineers are training to review extension requests to make sure the requests are not because the contractor failed to do what he was supposed to do. He said that construction projects involving pumps, motors or electrical are bound to have problems.

Chairperson Mukai said that he wanted DWS to put bidders on notice that they must prove at the time of bidding that they have talked to the supplier to ascertain that a pump is available and that once the bid is awarded, that they have ordered the pump. He did not want to approve extensions if the contractor fails to check with the supplier if a pump is available.

The Manager said that when the contractor made the extension request, DWS had asked them to show when they ordered the pump. Sometimes it is not the contractor's fault. After a pump is built, it must undergo a performance test, and if the pump does not meet efficiency requirements, it must be scrapped and a new pump must be built. Delays like that are beyond a contractor's control, he said.

Chairperson Mukai said he just wanted to prove that they had done their due diligence.

The Manager assured the Board that the engineers do their utmost to make sure the process is done legitimately and that extensions are granted only for a legitimate reason.

ACTION: Motion carried unanimously by voice vote.

#### SOUTH KOHALA/HĀMĀKUA:

A. **JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAII, STATE OF HAWAII, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #4 (S. KOHALA, HĀMĀKUA):**

This project is the final group of repairs to tanks that were damaged in the October 15, 2006 Kiholo Bay Earthquake. The project involves the repair and seismic retrofit of four (4) concrete water tanks (one in the South Kohala district and three in the Hāmākua district).

Bids were received and opened for this project on July 22, 2010, at 2:00 p.m., and the following are the bid results:

<b>Bidder</b>	<b>Amount</b>
Isemoto Contracting Co., Ltd.	\$798,479.00

Project Scope: This project involves the repair and seismic retrofit of four (4) reinforced concrete water tanks (one in South Kohala district, three in Hāmākua district) that were damaged in the October 15, 2006 Kiholo Bay Earthquake.

Project Cost:

1)	Low Bidder (Isemoto Contracting Co., Ltd.)	\$ 798,479.00
2)	Construction Contingency (10%)	<u>79,847.90</u>
	Total Construction Cost:	<b><u>\$ 878,326.90</u></b>

Funding for this project will initially be from DWS CIP budget; however, DWS will be pursuing reimbursement from the Federal Emergency Management Agency (FEMA) for up to 75% of the actual construction costs. The Engineering estimate was \$600,000.00 (without contingency). Due to FEMA’s deadline for completion of all earthquake repairs, the contractor must finish all work no later than October 10, 2010.

The Manager recommended that the Board award the contract for JOB NO. 2007-919, CONSTRUCTION OF EARTHQUAKE DAMAGED TANK REPAIRS, COUNTY OF HAWAI‘I, STATE OF HAWAI‘I, FEMA-1664-DR-HI, FIPS NO. 001-UVKJ8-00, GROUP #4 (S. KOHALA / HĀMĀKUA) to the lowest responsible bidder, Isemoto Contracting Co., Ltd., for their bid amount of \$798,479.00, plus \$79,847.90 for construction contingency for a total contract amount of \$878,326.90, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

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

Mr. Kaneshiro asked if there was an Engineer’s Estimate for the project, and asked if so, whether the bid was reasonable and close to the estimate.

Mr. Inaba said the bid was high, but as with previous contracts for similar work, the Engineer’s Estimate was a bit low versus the bids DWS was receiving. The work required in this contract was more complicated than a typical construction project because it involves existing tanks that are in service. The job requires coordination and in some cases, shutting down the existing tanks while providing temporary tanks, and figuring out on-site piping, etc. The work is more complicated than what is shown on the plan, as far as what is being constructed and repaired, he said.

The Manager noted that the Engineer’s Estimate was \$600,000.00.

Ms. Garson said that under procurement law, if there is only one bid, the Department and the Chief Procurement Officer (i.e., the Manager) must determine that the bid is reasonable. In this case, DWS has deemed that this bid is reasonable.

Mr. Reynolds asked why there was only one bid.

Mr. Inaba said DWS thought there would be several more bids, and a number of contractors who were qualified to bid picked up plans. In the end, there was only one bid, and it may be due to the fact that the project is significantly more complicated than the typical construction project.

Mr. Reynolds asked if there were any questions presented to the other contractors who pulled the plans.

Mr. Inaba said that DWS held a pre-bid meeting, about which all plan holders are notified. Several contractors who qualified attended, he said.

Mr. Reynolds asked whether any of the contractors indicated why they did not bid.

Mr. Inaba said no, at the pre-bid meeting the contractors sat and listened to the requirements.

Mr. Reynolds said he was not in favor of approving the Department's recommendation to award the bid until the Board ascertains that this is really a legitimate bid.

Mr. Inaba said that a lot of contractors picked up plans and filed intents to bid. However, DWS can only go so far in terms of forcing contractors' hands to submit a bid.

Mr. Reynolds asked if there was any kind of rush in awarding the bid.

Mr. Inaba said yes, there was a FEMA deadline on whatever work DWS can complete, and DWS plans to request an extension. However, there is no guarantee and it is unlikely that DWS will get an extension.

The Manager said the work is to be completed by October 10, 2010.

Mr. Taniguchi noted that FEMA is going to pay 75 percent of the cost, so DWS's share will be around \$200,000.00.

Mr. Inaba said that actually it will probably cost DWS a bit more than that. FEMA has what is called a Project Worksheet, drawn up by a FEMA team that goes to the scene of a disaster. The team comes up with the Project Worksheet and a scope of work that they approve. This project includes that, and perhaps a bit more. FEMA's reimbursement is only based upon what their Project Worksheet includes.

Mr. Taniguchi asked if DWS is listing up to 75 percent.

The Manager said a 75 percent reimbursement would be the best case scenario.

Mr. Inaba said that 75 percent is the maximum that DWS could get, but DWS's scope of work here exceeds that. DWS has asked FEMA to include some of the Department's changes to the scope of work, but past experience shows that DWS often gets no response. Therefore, DWS cannot bank on getting a set amount back. He noted that FEMA makes its own estimate, based on the contractor's price of the scope of work that FEMA drew up. FEMA will reimburse DWS for 75 percent on the contractor's price of FEMA's scope of work, he said. Usually, DWS's costs for its scope of work are a lot higher than what FEMA estimates, because FEMA uses a national average. Everything costs a lot more here in Hawai'i, he added.

The Manager said another factor is that FEMA will not pay for any betterment. FEMA will not pay for doing something better than the way it was before the disaster. FEMA will pay for mitigation-type work if it is proven that what is done will prevent future damage.

Mr. Harai asked whether the FEMA deadline might have deterred would-be bidders.

Mr. Inaba said no, because DWS was not specifying that all of the work has to be completed by October 10, 2010, because it is unrealistic.

Mr. Perry asked what things were added to the scope of work, and what specific work would FEMA approve.

Mr. Inaba said it would be mitigation-type work, some of which may be reimbursed by FEMA. He noted that FEMA will pay for repairs to restore things to how they were before the disaster. However, if another disaster occurs and the same damages occur, FEMA will not pay for it again. If another earthquake occurred and the same damage occurs to the tank, FEMA will not offer relief for that. He explained that mitigation means to prevent damage from occurring in the future.

Mr. Perry asked what mitigation actually means.

Mr. Inaba gave the example of a quake-damaged tank. DWS is making it so that if another quake occurs, the likelihood of the tank being damaged again is diminished. DWS is working to prevent any damages in the event of a future earthquake.

Mr. Okamoto said that the old tanks that are being repaired were designed with a lower classification on the Seismic Zone requirement, i.e., Seismic Zone 3. However, now all of DWS's new designs are geared to a higher level of construction to withstand a higher magnitude of earthquake such as the one that hit in 2006. The work now is to make the tanks more quake-proof, with structural component that are beefed up versus the ones the tanks used to have. It makes no sense to fix the tanks to the lower classification.

Mr. Kaneshiro spoke in favor of approving the award, because it is better to use the FEMA money that DWS can get now, rather than wait and not get a reimbursement. He said he approved of building the tanks to withstand a higher magnitude of quake, because there will be future earthquakes. If not, any future damage to the tanks will be DWS's burden to pay for.

Mr. Lindsey said he approved of awarding the bid, and expressed confidence that DWS had exercised due diligence regarding the contract.

Mr. Reynolds asked why, if the quake took place in 2006, the repairs have taken this long to be done.

The Manager said the need for repairs was recognized immediately, but it was a matter of time to get the project out to bid. He noted that this is the *fourth* group of tanks that DWS has put out to bid.

Mr. Inaba said a total of 21 tanks needed to be repaired after the quake.

The Manager said that meant four different contracts.

Mr. Reynolds assumed that DWS undertook repairs of the most seriously damaged tanks first, and that repairs to the tanks in question here were of lesser urgency.

The Manager said these repairs were important and needed to be done.

Mr. Inaba confirmed this, noting that the tanks are leaking.

Mr. Okamoto said that DWS had to set up temporary steel tanks which these tanks are being fixed. The old tanks are drained and put out of service. DWS did not want to buy 21 temporary steel tanks, and instead bought one pair of tanks that are smaller, he said. These tanks go back to FEMA when the old tanks are fixed.

Mr. Lindsey asked what happens as far as the FEMA money in the event that the contractor does not meet the October 10 deadline.

Mr. Inaba said DWS is requesting an extension. The October 10 deadline is not really a "drop dead" date. The quicker DWS can get work going and the more that can be completed on the project, DWS can actually file a request for reimbursement, he said.

Mr. Meierdiercks asked about the size of tank involved here.

Mr. Inaba said that actually there were four tanks to be repaired, of varying sizes at various sites. He was aware that one tank was 100,000 gallons, another was 50,000 gallons, but he was not sure about the other two tanks' sizes. He noted that the sites involved are tight, posing difficulties in doing work there.

ACTION: Motion carried unanimously by voice vote.

**B. JOB NO. 2004-850, WAIMEA WATER TREATMENT PLANT SLUDGE DRYING BEDS:**

The contractor, Goodfellow Bros., Inc., requests a 43 working-day time extension. This is due to delays beyond the contractor's control related to installation of Hawaiian Telcom service.

Staff has reviewed the request and finds that the 43 working days are justified. The 43 working days converts to 70 calendar days (including weekends, holidays and furlough days).

This is the fourth extension request.

<b>Ext. #</b>	<b>From (Date)</b>	<b>To (Date)</b>	<b>Days (Calendar)</b>	<b>Reason</b>
1	5/19/2009	3/4/2010	289	Process Building permit
2	3/5/2010	6/18/2010	107	Process Building permit
3	6/19/2010	8/5/2010	48	Additional work including: silt fencing, parking, concrete jacketing, piping and electrical
4	8/6/2010	10/14/2010	70	<i>Delays for Hawaiian Telcom service</i>
Total Days (including this request)			<b>514</b>	

The Manager recommended that the Board approve a contract time extension to Goodfellow Bros., Inc., of seventy (70) calendar days from August 6, 2010 to October 14, 2010, for JOB NO. 2004-850, WAIMEA WATER TREATMENT PLANT SLUDGE DRYING BEDS.

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

Chairperson Mukai asked how a telephone service can delay a project.

Mr. Okamoto said that it is part of the contract that DWS has with the contractor. The physical components of the structure are pretty much done, and what remains is telephone service so that DWS can monitor the system remotely, i.e., via SCADA or alarms, etc. Without the phone service, the contractor would not fulfill his entire contract.

The Manager said that often what delays a project's completion is one small piece not working. The project in this case is functional, but DWS does not want to accept the project and use it because to do so means that DWS will assume liability. DWS does not want to accept the project until everything is done.

Mr. Lindsey asked who DWS is working with at Hawaiian Telcom.

Mr. Okamoto said his point of contact is Mr. Calvin Watanabe, who has been very good. Mr. Watanabe does not control the field work orders, however. Mr. Okamoto said DWS had requested service from Hawaiian Telcom a while back and had received an acknowledgment from a Ms. Reyna Chong.

Mr. Lindsey said that barring any material delays, he would facilitate the service getting done.

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 74 calendar-day time extension. This request consists of additional time required to install geotextile fabric. The fabric installer had demobilized, due to the need to test the material under similar conditions to the existing panels, to verify the required geotextile thickness. The existing condition of the panels was a concern for the specialist that DWS's consultant hired to inspect the installation of the hypalon liner. This geotextile fabric acts as a protective padding under the waterproof hypalon liner. The specialist found that although the 16 oz. material would be adequate, the hypalon will undergo heavy stress and in time experience some minor failures. In the specialist's opinion, this would still be acceptable as far as leakage through the liner is concerned. The consultant *also* performed the same test using a 32 oz. material and said that although there may be some minor stress on the hypalon, they do not anticipate that the material would fail due to these stresses. The consultant also concurred with the specialist that a second layer of 16 oz. material would perform similar to that of the 32 oz. material. Therefore, it was agreed that DWS would get a proposal from the installer that would be the most cost-effective, as well as the fastest to be done, including delivery of the material.

It was determined that the second layer of 16 oz. material would be the most cost-effective as well as the fastest to be done, since the material is already being manufactured and will be delivered to their baseyard in Seattle by the end of July. Delivery date to the job site is slated for around the third week of August.

The additional layer of the geotextile fabric, including the installation, will cost an additional \$137,305.73. The current available funds in the contingency are approximately \$10,000.00. DWS staff has reviewed the proposal and find it acceptable. Therefore, DWS is requesting that the Board approve an additional \$137,305.73 in contingency from the C.I.P. budget to allow the second layer of geotextile material to be installed, for the reasons stated above.

Staff has reviewed the request and finds that the 74 calendar days are justified.

This is the sixth 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.
5	6/4/2010	8/16/2010	73	Additional work for Change Order No. 9; and rainout days.
6	8/16/2010	10/29/2010	74	<i>Additional work for Change Proposal 10 for the second layer of 16 oz. geotextile material.</i>
Total Days (including this request)			<b>354</b>	

The Manager recommended that the Board approve a contract time extension to Goodfellow Bros., Inc. of seventy-four (74) calendar days from August 16, 2010 to October 29, 2010, and approve an additional \$137,305.73 in contingency for JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS.

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

The Manager said this item involves an extension, plus more money. He explained that conceptually, this type of reservoir involves basically a liner over dirt, and nobody can see under the liner or discern what is going on. When initial assessments were made, a number of assumptions were made as to why the reservoir was leaking. The supplier of the liner should have known ahead of time, but it transpired that the texture of the lining is such that a single layer of cushion will be penetrated and DWS will lose the warranty on the liner. The proposal now is to use two layers of cushion instead of one. The supplier who furnished the product should have known; the contractor did his part, getting estimates, a quote and a commitment. However, when the supplier came out to take a look, they said they would not warrant this unless DWS puts in two layers of cushion.

Mr. Inaba confirmed this, and said that DWS was told that the Department could go with a single layer but would end up with some failure, but that it would be "acceptable." From DWS's standpoint, some leakage or tearing would not be acceptable, he said. DWS has an opportunity, now that the reservoir is being drained, to make it such that DWS has the assurance that the liner will not fail.

Chairperson Mukai asked how somebody hired for installation was determining the use of the 32-oz. material.

Mr. Inaba said that the specialist that actually went out to the site to supervise the liner's installation did not go out there as part of the design. The specialist looked at the site and said that the panel (made of shotcrete) there was very different in profile from a concrete panel, as far as the panel's rough surface. The specialist had assumed that it would be made of concrete. The specialist expressed concern about the very angular, sharp aggregates used in the panel, and said that he feared that the material would not work. The material was taken back to the Mainland for testing, with panels made of wood and sharp cut steel to simulate the rough conditions at the site. It was found at that time that while a 16-oz. liner would not necessarily be torn, over time there would be some failure, but that the leakage would be "acceptable." With a second layer, the specialist felt that while there might be some stress, it would not be to the point of causing any failure in the future.

Mr. Harai asked how long the warranty was, and what was covered by the warranty.

Mr. Inaba said the warranty covered the performance of the product (i.e., tearing of the material). The warranty has what is called "acceptable leakage-over," and the warranty is for 30 years. He noted that in this case DWS is working with the supplier (i.e., the manufacturer) and the installer. DWS is not sure who will warrant the actual installation, but DWS has a warranty as far as the material. If DWS can prove that the material failed under normal conditions, the manufacturer would honor that warranty. However, in many instances, DWS finds that the manufacturer will tell DWS to go after the contractor who installed the material, claiming that the contractor did not install it properly. DWS is trying to avoid such a situation.

The Manager said because there is a doubt regarding the use of a single layer given the rough aggregate here, it would be foolish not to put in a second layer. DWS does not want to have to do the job all over again, he added. Going back to Harai's question, he noted that the warranty would not cover an earthquake. DWS in any event wants to make sure it gets the best possible product, with the knowledge the Department has now.

Mr. Inaba explained that the specialist was hired after the bid to come out and supervise the installation. Therefore, the specialist was not involved with the design. At the site, the specialist noted that it was not a typical concrete panel; a concrete panel would be much smoother. The amount that Mr. Inaba is asking for in terms of what is being quoted is a “not-to-exceed” amount because DWS is still in negotiation. DWS is scrutinizing the submittal in terms of labor costs.

Mr. Perry said, he visited the site two weeks ago, and was surprised to see how rough the concrete panel was. He thought that in light of what DWS knows now, it is good judgment to go with a second layer.

ACTION: Motion carried unanimously by voice vote.

MISCELLANEOUS:

**A. DEDICATION OF WATER SYSTEMS:**

The Department has received the following documents for action by the Water Board. The water systems have been constructed in accordance with the Department’s standards, and are in acceptable condition for dedication.

**1. BILL OF SALE**

Kohala Public Library  
Seller: State of Hawai‘i, Department of Accounting and General Services  
Tax Map Key: (3) 5-4-002:008  
E.W.O. 2009-065  
Facilities Charge: \$1,190.00                      Date Paid: 5/06/2010  
Final Inspection Date: 5/05/2010  
Water System Cost: \$85,500.00

**2. LICENSE EASEMENT NO. 741**

Subdivision Application No. 2005-171  
Villages of La‘i‘opua, Village 5  
No. of Lots: 118 and 6 Road Lots              Zoning: RS 7.5  
Licensor: State of Hawai‘i, Department of Hawaiian Home Lands  
Tax Map Key: (3) 7-4-021:006  
E.W.O. 2010-007  
Facilities Charge: *Not Applicable* (Participated in the “Kealakehe Multi-Family Water System Improvements”)  
Final Inspection Date: *TBA*  
Water System Cost: \$ *TBA*

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

Mr. Meierdiercks asked whether final inspection of the second dedication item above was completed.

Mr. Inaba confirmed that final inspection was done, and would get the date for the Board.

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

**B. LEGISLATIVE AUDITOR'S LIMITED SCOPE PERFORMANCE AUDIT OF THE DEPARTMENT OF WATER SUPPLY'S INTERNAL CONTROLS FOR CASH HANDLING AND FINANCIAL IT SYSTEMS:**

*(This item was covered earlier in the meeting.)*

**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 discussed the following:

- Discussion/action on vehicle take-home policy.
- The Legislative Auditor's Report

Mr. Taniguchi reported that the Committee meeting was held on July 13, 2010, attended by Mr. Lindsey, Chairperson Mukai, the Manager and Mr. Taniguchi.

On the vehicle take-home policy, the Committee received copies of the policies for the City and County of Honolulu's water department and Maui's policy (which follows the County of Maui's policy). Kauai's water department does not have a formal policy. The Manager shared a draft of his proposed policy, and the Committee will incorporate it with the working draft policy that Mr. Lindsey had done. The Committee will meet again with the Manager to finalize recommendations that will be put before the Board.

On the Legislative Auditor's report, Mr. Sumada joined the Committee meeting for discussion. The Committee went over the entire report. The good news is that many of the recommendations are already being implemented or are in the process of being implemented. The recommendations on cash handling are to be hammered out. Mr. Taniguchi noted that Ms. Schrandt had written that the Department was too busy, but that cannot be an excuse. The Committee plans to help mitigate and assist the Department, he said. Mr. Sumada is looking into several options as far as bill collections, because DWS gets thousands of payments coming through, and the Department is still handling payments manually. Mr. Sumada is going to get quotes, and the Committee will come up with more details on the cash control side, Mr. Taniguchi said.

The Manager said that after the meeting, he and Mr. Sumada met separately. Mr. Sumada has come up with four specific steps that he intends to take, and will be reporting back to the Board at the August meeting.

Mr. Taniguchi said the Committee would also be meeting ahead of the next Board meeting.

The Manager said that the Department can let the Committee know what the four distinct steps are at the Committee meeting.

**D. ENERGY MANAGEMENT ANALYST UPDATE:**

The following areas were covered:

- Lālāmilo Site Clean-up and DLNR Lease Application Status
- DWS's Green Initiatives

Regarding the site clean-up, Ms. Myhre said she spoke to Mr. Jose Dizon at HELCO, which has chosen a vendor to take down the windmills and clean up the site. The vendor has been notified verbally, but the contract is still in the works, she said. HELCO, which has taken over the clean-up from Hawai'i Electric Industries (HEI), expects the clean-up to start in mid-August. HELCO expects the cleanup to be done by mid-November. Following that, HELCO will do an independent Environmental

Assessment (EA) to ascertain that the letter of the original EA was met. A punch list will be drawn up, and the entire project is expected to be finished by the December 9, 2010, deadline.

On the DLNR lease, the application is ongoing. Ms. Myhre got comments from the National Renewable Energy Laboratory yesterday, which is preparing a technical report on the model they did for the new wind generators. Once that report arrives, Ms. Myhre can complete the application for the new lease on the property.

On the Green Initiatives report for this month, there is a new item in which Ms. Myhre tracks the Department's total energy use by month, compared to the same period last calendar year.

E. **PROJECT FUNDING AND REIMBURSEMENT AGREEMENT (BETWEEN COUNTY OF HAWAII AND DEPARTMENT OF WATER SUPPLY FOR REIMBURSEMENT OF GENERAL OBLIGATION BONDS TO BE ISSUED BY THE COUNTY FOR THE BENEFIT OF DWS):**

The DWS requested that the County issue General Obligation Bonds to fund various DWS projects, with DWS to reimburse the County for the same. The Project Funding and Reimbursement Agreement sets forth the terms and conditions of that reimbursement.

The Manager recommended that the Water Board approve Project Funding and Reimbursement Agreement, and authorize the Manager to execute the agreement and any other related documents as required, subject to the approval by Corporation Counsel.

**MOTION:** Mr. Meierdiercks moved to approve; seconded by Mr. Taniguchi.

Mr. Taniguchi asked Mr. Sumada if the Department factored the interest cost into the Budget.

Mr. Sumada confirmed this.

The Manager noted that DWS scaled down its requested amount, from the original \$30 million, to \$15 million.

**ACTION:** Motion carried unanimously by voice vote.

F. **MONTHLY PROGRESS REPORT:**

Submission of Progress Report of Projects by the Department. Department personnel will be available to respond to questions by the Board regarding the status/progress of any project.

Regarding a list of concerns the Board received from Mr. Fred Housel on behalf of the residents of Tomi Tomi Drive, Mr. Reynolds said he had gotten an email which Mr. Beck also got about things that the contractor had promised but failed to do. Mr. Reynolds said he would find out what the status was and report back.

The Manager said Mr. Beck as the project engineer is in constant contact with the contractor, CTS Earthmoving, Inc. CTS will tell Mr. Beck one thing and it does not happen.

Mr. Reynolds noted the letter Ms. Garson had included in the Board members' packets, which dealt with the contractor's obligations. In the last paragraph are the words, "Therefore, should the contractor not satisfactorily repair all the damage prior to the closing of the contract, DWS may undertake the repairs and deduct any sums remaining." Mr. Reynolds said the problem with this is that the anticipated closing of this contract is next year. However, CTS verbally promised the community that the contractor would finish all the repairs of damages to the residents' property within six months. Mr. Reynolds asked Ms. Garson if that verbal promise had any effect since it was not written into the contract.

Ms. Garson said no, DWS is stuck with the contract terms, and CTS has until the end of the contract to complete all of that work. By making those verbal promises, CTS has a moral obligation, but failure to honor the verbal promise does not constitute a breach of contract.

Mr. Reynolds said the verbal promise was made in front of several witnesses. Mr. Reynolds said he was not likely to trust this contractor ever again. He said he believed that a man's word should be adhered to. This is making it unnecessarily hard for the Manager, Mr. Beck and everybody else involved. Mr. Reynolds said he told Mr. Housel that maybe the Department should look into a policy to put something in writing to provide for situations like this, in the event that a contractor tears up people's property. He thought the Board and the Department were a bit negligent not to write into the contract something to the effect that in the event that the contractor damages people's property, that the contractor would have to fix things within a reasonable amount of time, regardless of when the contract's ending date is. There is a duty to protect people, because the average person does not understand legal contracts, let alone read contracts. The Department should take some action to prevent situations like the one on Tomi Tomi Drive in the future, he said.

The Manager said he agreed with Mr. Reynolds, and said that the contract does not address anything about what needs to be happening here in a reasonable amount of time before the contract ends. Technically, according to the contract, CTS does not have to do anything until the contract ends. Mr. Reynolds's suggestion is a good one, but it is not clear how it can be legally put into a contract.

Mr. Reynolds said the contract should say when repairs to people's property should be made.

The Manager said words like "reasonable time" are relative, depending on the person. It is almost impossible to be definite on what "reasonable time" means.

Mr. Reynolds said if CTS had come to him and wanted to tear his wall down to get their equipment through, they either put it in writing and give a specific date – or it does not happen. The contractor has no legal right to come in and tear up people's property.

Ms. Garson noted that she was in the process of revising DWS's General Terms and Conditions for construction projects. She said she would see if she could put in a time period for making repairs to people's property. She believed that six months would work as a time period for repairing damage to private property. Ms. Garson said that she had made a note to herself to look at putting that into the revised General Terms and Conditions.

On a separate topic, Mr. Reynolds said he had been invited to see the Palamanui development project this Thursday, specifically regarding an unspecified water issue. He asked if he was in for a surprise, and asked what the issue was.

Ms. Garson said the Palamanui project was not on the Agenda, and suggested that Mr. Reynolds speak with the Department independently after the meeting.

Mr. Taniguchi asked who printed the list of concerns from Mr. Housel.

Chairperson Mukai said he had received the list from Mr. Housel the day before, and asked Ms. Shirota to circulate the list to the Board.

Mr. Taniguchi asked whether the Board was in the middle of the situation between the Tomi Tomi residents and the contractor.

The Manager said what scares him is that Mr. Housel and residents have had independent meetings with the contractor without DWS's knowledge. The Department has attended many meetings

involving this project, but is in the dark about meetings that take place just between the contractor and the residents.

Chairperson Mukai asked Mr. Beck if he had seen the list of concerns.

Mr. Beck said yes, many of the responses in red were his own.

Ms. Garson asked that the list of concerns be logged in as public testimony from Mr. Housel for this Board meeting, since the entire Board has copies.

Chairperson Mukai asked if failure to keep verbal promises would be justification for the Board to bar the contractor from bidding on future contracts.

The Manager said no.

Ms. Garson said probably not, but she said she could look at the requirements for debarring a contractor from bidding on all future contracts. Debarring is a very harsh penalty, and Ms. Garson doubted that failure to adhere to verbal promises would be cause to debar the contractor.

Chairperson Mukai said the Board could make it known that it is looking into the possibility of debarring, so that the contractor takes notice and possibly heeds the warning.

Ms. Aton said she attended at least half of the meetings with the community. The verbal promise by CTS was made in the context of a community meeting before construction got underway. Ms. Aton said that along with the verbal promise, the contractor gave the caveat "barring any unforeseen circumstances or situations we don't know might happen in the future." What popped up was the Jernigan easement issue which held up access to where CTS wanted to work first. The easement issue was not foreseen at the time that the promise was made. CTS did say six months with a caveat, Ms. Aton said.

Mr. Reynolds said that what is making it look worse is that the unforeseeable thing is that CTS is off on another job now. Meanwhile, CTS is not trying to take care of the items he promised.

Chairperson Mukai asked if the Department can do a response to these concerns.

Mr. Beck said he was trying to get some kind of concrete information from CTS as to when they will be coming back on the job.

Ms. Garson asked if this could be put on next month's Agenda.

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

Under the General & Administrative entry, Mr. Taniguchi noted that this increased by \$1.9 million due to payment to the Employer-Union Health Benefits Trust Funds (EUTF). He asked whether this was budgeted for.

Mr. Sumada said he would check, but it was probably the medical premiums that the Department pays monthly; he confirmed it was an amount budgeted for based on prior years' experience. The State of Hawai'i informs DWS of the amount, he said.

Mr. Taniguchi asked what CIAC stands for.

Mr. Sumada said that it is Contributions in Aid of Construction, which could be property, capital assets or funds that DWS receives from developers or contractors. He gave the example of a reservoir that a developer built and turned over to DWS. The Department in turn puts that asset on its books and it is offset through this CIAC account.

Mr. Taniguchi asked about the \$5.1 million under Other Non-Operating Revenues.

Mr. Sumada said that during the year, those contributions are recorded to equity. In June, Mr. Sumada reclassifies it to revenue; it is an adjustment that the auditors recommended a while back. Therefore, in June, Mr. Sumada reclassifies it, and looking from June to June, the number is comparable. However, when one compares it with May, that number is not there because Mr. Sumada makes the adjustment in June.

Mr. Taniguchi asked why the \$5.1 million is not listed anywhere in the Statement of Revenues in the Budget report.

Mr. Sumada said that it would not be on the Budget Report; the \$5 million in CIAC is never going to show up on the Budget. It is not something that DWS budgets for, he said. He confirmed that it shows up on the year-end statement as revenue.

Mr. Taniguchi turned to the Miscellaneous Income entry of \$74,000, which accounted for 25 percent of the Budget, totaling \$225,000 for the year. He asked if that was all HELCO Rider M credits.

Mr. Sumada confirmed that most of it was, and confirmed that DWS counts that as income.

Mr. Taniguchi asked how DWS gets that money.

Mr. Sumada said that it is an offset to the Department's power bills; it reduces DWS's power costs.

Mr. Taniguchi asked if this was factored into the Power Cost Charge.

Mr. Sumada confirmed that it was. The offset amount appears every month for those accounts that have those Riders, he said.

Mr. Taniguchi asked where it shows up on the Budget.

Mr. Sumada said that it does not show up on the Budget; it is part of Power Purchases.

Mr. Taniguchi said that the Department did a good job this past year in monitoring power costs.

Mr. Sumada said the Department has just started breaking out the Rider M credits separately from the HELCO bills.

Mr. Taniguchi asked if it was true income to DWS, or if it was just part of the Power Charge amount.

Mr. Sumada said it was debatable. DWS wanted to break it out separately so it was clear.

The Manager said it is not really a credit; it is what the Department saves.

Mr. Taniguchi said that it shows that DWS's bill from HELCO went down by \$500,000.

Mr. Sumada said the Power Cost Charge is calculated based on what DWS's HELCO bill is, minus the Rider M credits.

The Manager said that theoretically, DWS collects through the Power Cost to the consumers what the Department pays to HELCO. Rather than viewing it as income, it is more like savings to the Department.

Mr. Taniguchi said that is passed on to the consumer.

The Manager said that that was a good number to know, because it measures DWS's progress on reducing its power costs from HELCO.

Mr. Taniguchi agreed that it was good to let the public know how the Department is working to cut down the cost of water to the consumer.

H. **PROPOSED NEW WATER RATE SCHEDULE:**

*(Covered earlier in the meeting.)*

I. **AGRICULTURAL WATER POLICIES:**

Chairperson Mukai entertained a Motion to defer this item to next month's Agenda, and that it be considered early in the Agenda.

**ACTION:** Mr. Perry so moved; seconded by Mr. Lindsey. Motion carried unanimously by voice vote.

J. **MANAGER'S REPORT:**

Chairperson Mukai asked that the Employee of the Quarter item and the Recognition of Service Retirement item be moved up. He asked that Item 13, CONTESTED CASE HEARING, (NOTICED FOR 11:30 A.M.), follow.

5. Employee of the Quarter -- The Manager introduced Ms. Panoff, who in turn did the introduction of the Employee of the Quarter, Ms. Higaki. She commended Ms. Higaki for stepping up to help with the payroll in the unforeseen month-long absence of another employee. Ms. Higaki, she said, went far beyond the call of duty. The Manager noted that public employees, and hard-working DWS employees in particular, do not get the recognition they deserve.

6. Recognition of Service Retirement – Joy N. Kawakami, Customer Service Representative II (Kona) – Ms. Hudman spoke on behalf of Ms. Kawakami, who is retiring on Friday after some 35 years of devoted service in Water Supply. Ms. Hudman noted that Ms. Kawakami has worked in virtually every division of the Department. Mr. Meierdiercks said that last Friday, he stopped by Kona baseyard to congratulate Ms. Kawakami on her retirement.

The Manager provided an update or status on the following:

1. Palani Road Transmission Waterline Project (covered earlier, during Monthly Progress Report)
2. Hawaiian Ocean View Estates Project (covered later in meeting)
3. Water Use and Development Plan Update (covered later in meeting)
4. Board member parking pass applications for County Buildings (covered later in meeting)

*(Chairperson Mukai called a seven-minute recess at 12:07 p.m. Meeting reconvened at 12:16 p.m.)*

**CONTESTED CASE HEARING (NOTICED FOR 11:30 A.M.):**

A. **WATER SERVICE ACCOUNT NUMBER 69036800-11 (TMK 4-4-003:029):**

The above Contested Case Hearing took place in accordance with Chapter 91 of the Hawai'i Revised Statutes and Rule 2-5 of the Rules and Regulations of the Department of Water Supply.

The issues involved in the above-referenced hearing will be Mr. Kenneth F. Miranda and Ms. Morag Miranda's appeal of the amounts shown due and owing on account #69036800-11 and consequently, the appeal of the shut-off notice dated February 8, 2010 for failure to pay said amount.

This hearing was set pursuant to Mr. and Ms. Miranda's request at the April 27, 2010 and June 15, 2010 Water Board meetings.

*(The following proceedings are recorded verbatim:)*

**CHAIRPERSON MUKAI:** Before going into the Contested Case Hearing, I'd first like to call upon Corporation Counsel to keep us on the straight and narrow as to the parameters of this. Kathy?

**MS. GARSON:** Okay, just for the Board and the parties here, this is a Contested Case Hearing. What it is is, it's going to be run kind of like a trial would be run. So what will happen is because this is Ms. Miranda's case, she's going to have the opportunity to present her case first and then, this is Molly Lugo. She's a Deputy Corporation Counsel who's representing the Department of Water Supply. She'll have an opportunity to cross-examine Ms. Miranda, and as soon as Ms. Miranda is done presenting her case, then Molly will present the Department of Water Supply's case. Ms. Miranda can cross-examine any witnesses the Department of Water Supply puts on. After they're completely done with their cases and all the evidence has been introduced, then the Board can deliberate. So you can also, at the end, if you have questions of any witnesses while they're up there, if you think was not asked, you can go ahead and ask those questions. And then, I'll help you through the deliberation process, and then you'll come to a conclusion today as to what your decision will be. So I'm here to answer any questions. We'll see if we can sort of facilitate the Contested Case Hearing.

**CHAIRPERSON MUKAI:** Ms. Lugo? No? Okay, we'll move on to our Contested Case Hearing. I wanted to dispense with, again, the background, the dos and don'ts that were covered by Kathy already. We'd like to just move on. Ms. Miranda, would you like to call any witnesses?

**MS. MIRANDA:** No, just myself.

**MS. GARSON:** Okay, so what Ms. Miranda will be doing is calling herself as...

**CHAIRPERSON MUKAI:** A witness.

**MS. GARSON:** Yeah, she will be her first witness. So what we'll have you do is take an oath before you start speaking. Okay?

**MS. SNYDER:** May I ask you to raise your right hand? Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?

**MS. MIRANDA:** I do.

**CHAIRPERSON MUKAI:** Thank you.

**MS. MIRANDA:** I'm a little nervous.

**MR. TANIGUCHI:** Don't be nervous.

**MS. MIRANDA:** I have, thanks to your office, I have copies of all the documents; I have communication documents that I've received or sent in regarding this issue with our water meter. So I'm assuming that I'm submitting this as evidence. These are the letters, faxes and notices that have been correspondence going back and forth for the last couple years regarding this issue. I also took pictures yesterday and they're up there. What's in question, as you know, is we have been billed for 547,000 gallons of water. Our past history has shown that over the last few years that we've had this meter that our largest bill was, prior to this, about 200-something, when we did have a water break. The location of the meter is the pasture adjacent to our old property; we lease it. This first picture that's up there is the water meter itself. The next picture that I took – it's crooked, but I wanted to show the relationship of the meter to the trough, the only trough that feeds. And if you can see between those two T-posts, the left T-post at the end of the grass is the edge of the water trough. Then the next picture shows that similar view. Now, granted these were just taken yesterday and the leak was almost three years ago, two and a half years ago, but nothing has changed. Actually, the next picture would be better, of just the trough. We hardly use this trough because the mauka boundary is on the Hāmākua Ditch, which is accessible by our cattle. We run about seven to 50 head of roping

steers. This is the trough now, looking down toward Māmalahoa Highway. The pasture on the left is the pasture we have our cattle in. The pasture on the right is actually DLNR land that we have easement to, because our property on the farther right is land-locked. The bottom fence line that's overgrown with grass is the access that your meter reader comes up to the meter, to read. Our driveway is right there. So I'm just showing, to give you an idea of where this property is...I don't know what I'm supposed to be doing.

**MS. GARSON:** You need to make sure that we have a clear record in this case. So what she's doing is, she has physical copies of the photos that are being projected because we don't have nine copies for each of the Board members. So what I'm going to do is, I'm going to...all of the physical copies are on the projector. What I'm going to do is I'm going to mark these photographs with a number, so when she's referring to a certain photo, she can say, she can, at least for the record, say "in reference to Photo No. 1 or 10", that it'll be clear what she's referring to. The photograph that she was just referring to, I'm going to mark as No. 1.

**MS. MIRANDA:** These were all the photos that we were just showing. This is that photo right there.

**MS. GARSON:** Okay, so I'm marking the photo that's up on the screen right now. That's going to be Exhibit...and I'm just going to call it "A-1." Okay?

**MS. MIRANDA:** Okay.

**MS. GARSON:** Okay, so as you show a photograph up there, we'll go ahead and mark it with another number, and you can explain what it is. Okay?

**MS. MIRANDA:** Okay, so this shows that if there was a water leak at our trough and it had rained. And it's the middle of summer; that's what the grass looks like in summer. Kalōpā is nice. Anyway, that shows the direction; it's a hill that...where the water would have gone. Now, 500,000 gallons in two months would've gone someplace down the hill. So that's why I'm showing you these pictures. So the next photo, please? So again, that's just giving you...that's my neighbor's property, Hawai'i Johns. They boundary us. So that would be A-2.

**MS. GARSON:** And just for the record, I'm going to ask the Department's attorney if she has any objections to us entering any of these photographs into evidence?

**MS. LUGO:** I have no objection. Just that, I believe the appellant said she took them yesterday, so just so the record's clear that they weren't taken at the time that the bill in question took place.

**MS. MIRANDA:** They were just taken yesterday. Yeah, A-2. There. The next photo? So (it's) A-3. Now you can see, at the end of the grass to the right is the gate that your meter reader would've come up. And I don't remember what they call this section. It's a road where the trucks would go up and down between the sugar cane fields when it was all still in sugar cane. But it's a DLNR road. Our entrance to my personal house is at the bottom right, if you can see a little black kind of a post? That's our black gate. We have neighbors below that. That's our entrance. We drive up and down it every day. Because we have cattle in there, we check the water. The reason I showed you the water trough at the level it is, that's about how we keep it. And we turn it on manually. It does not have a float valve. Because we have the Ditch access, to the Ditch water. We're ranchers; we know that waters leak, float valves break, and there's no reason for us to have it floating.

**MS. LUGO:** You can use the pointer.

**MS. MIRANDA:** How do I...?

**MR. BECK:** Press the Hold button...

**MS. MIRANDA:** Sorry. Okay, so. Oh, sorry, it doesn't show on the screen.

**MR. TANIGUCHI:** Don't worry about the screen.

**MS. MIRANDA:** Is there a question? Do you guys see where I'm talking about? So I'm just giving you a lay of the land. Okay, the next photo? So this is looking straight down the fence line of where the water would've gone if it had gone anywhere. Okay, that's A-4. This would be A-5. Sorry, I probably got carried away with my pictures. I wasn't sure what you needed to see to show you what I was trying to get across. Okay, so this is the trough that feeds from that water meter. This would be A-6?

**MS. GARSON:** Actually, it's A-5.

**MS. MIRANDA:** A-5. And actually, that's about how full it...or it's dry, because we don't need it full because I mean, we don't have that many cattle in there. And we also use the DLNR property, and we have 12 acres of our own, and they're roping cattle. And we rope all the time; my husband competes nationally and so the cattle aren't always in there, so we don't need to have water in there. Okay, next photo? I'm sorry, so that's this one? Same thing, same photo shot again. This is located up from my neighbor's. This would be A-7. This is looking up from my neighbor's, up that same fence line. Okay. This is my neighbor's home, so this will be A-8. Just showing you, if the water had leaked out, where it would've gone. This is directly below the trough and the meter, of where it would've gone. Okay, the next photo. And just another look at the same place, a little bit more... I believe, if that much water had come down the hill, they would've known. We're neighbors and they would've told us. Okay, the next photo? I took this picture of their water meter, which is in the corner of our property that we lease. This is A-10. Okay, next photo? Again, that's just spinning it. Okay, this is the 100,000 gallon tank in Waimea. This would be A-11. I put, this is my daughter. She's three years old. I put her in the picture to show a relationship. I'm sure you all know what 100,000 gallons looks like, what 500,000 gallons looks like. We're being billed for 547,000 gallons. So five of those tankfuls, plus, is what the Department of Water is saying we used in a two-month period. Okay, the next photo? So I'm just verifying what the tank is, what the size of the tank is. This is A-12. Okay, the next photo? And there's a picture of the same tank. I actually made...that's A-13. I actually made five copies of that tank, just for me as a visual, to show you that's how much water the Department of Water Supply is saying we used in that two-month time period. In a two-month time period. I don't know...

**MS. GARSON:** I've marked it A-13. So you're saying five copies of A-13.

**MS. MIRANDA:** Yes, five of A-13 is what the Department of Water is saying we used in one billing cycle; a two-month time period. So those are the physical evidence, I guess, that I have to present. In the letters that you have in front of you, the one letter to me that I thought was important is the letter...it's March 15, 2010, that I wrote to Mr. Pavao.

**MS. GARSON:** Okay, hold on. Okay, March 15.

**MS. MIRANDA:** So first of all, I don't believe we used that water. I don't believe the Department of water is going to lose any money because the water was never used. I believe an error was made down the line someplace. Something happened, and a mistake was made. I wrote this letter to Mr. Pavao in March of this year. Several things that I stated in it...one is, we didn't use the water. Two, as I was discussing it with a staff member that I had called to talk about a bill I received regarding this, they said in investigating it that they had calibrated the meter after our first visit in 2009, early 2009. And then they changed the meter shortly thereafter. And I was never notified of that; I was never notified that they calibrated it. I was never notified that they changed the meter after they said the meter was working properly. So I asked for...I wanted to know why it was changed; who ordered that? And I never received any of that information.

**MS. GARSON:** We're going to mark the March 15 letter as A-14. Do you have any objections to A-14?

**MS. LUGO:** No objection.

**MS. MIRANDA:** So I see that basically...okay, should I just go through? Can I go through your list? It's probably more organized than what mine is. Okay, so A-15 would be the notice from the Department of Water Supply dated 4-16-2010 of shut-off. A-16 would be the fax that I sent to Ms. Snyder on April 30. A-17 would be a letter that I wrote on January 14, 2008. A-18 would be a notice I received in February 2010; a shut-off notice. A-19 is another fax I sent to Mr. Pavao, that I sent on February 25, (2010). A-20 was a letter I received from the Department of Water Supply regarding our account, that they tested my meter and it was accurate and showed that it was working properly, so I needed to pay for the water – 547,000 gallons of water. In that letter, by the way, it did not say that they had changed my meter. Okay, that's all that I have.

**MS. GARSON:** Maybe before you ask questions of Ms. Miranda, you'll have an opportunity to cross-examine witnesses.

**CHAIRPERSON MUKAI:** Before you go into that, I'm just confused. Can we just do the numbers on the letters; we're just talking around it. What letter is that? The February 14 letter, I know that's A-14 to Milton. February 8, what number is that? That's to the Department from the Mirandas. What number is February 8?

**MS. GARSON:** February 8 shut-off notice is A-18.

**CHAIRPERSON MUKAI:** And the next from Department of Water is February 25?

**MS. GARSON:** A-19.

**CHAIRPERSON MUKAI:** And then, March 2 is...?

**MS. GARSON:** A-20.

**CHAIRPERSON MUKAI:** And March 15 was A-15?

**MS. GARSON:** April 16 was the A-15. April 30 is A-16.

**CHAIRPERSON MUKAI:** Okay.

**MS. LUGO:** Okay, Ms. Miranda, I just have a couple questions. After you received the bill in question, do you recall meeting someone from the Department of Water Supply at the meter location and having them re-check the reading?

**MS. MIRANDA:** Yes.

**MS. LUGO:** Okay, and do you recall being informed that you could have the meter tested and that also that you should check and see if you have any leaks?

**MS. MIRANDA:** Yes.

**MS. LUGO:** And do you recall being informed that you could be present at the meter bench test in Hilo?

**MS. MIRANDA:** No.

**MS. LUGO:** Okay, so you weren't present for the bench test?

**MS. MIRANDA:** No.

**MS. LUGO:** But were you informed of the results of the bench test?

**MS. MIRANDA:** Not until I received that letter from Mr. Pavao this year.

**MS. LUGO:** Okay. Did you check for any leaks?

**MS. MIRANDA:** Yes.

**MS. LUGO:** Does your trough have, basically, a float valve?

**MS. MIRANDA:** No.

**MS. LUGO:** Okay, do you or your husband go to the site every single day?

**MS. MIRANDA:** No, about every other day.

**MS. LUGO:** Okay. Would you agree that water flowing out of the trough at about a rate of 6 gallons an hour would just seep into the ground?

**MS. MIRANDA:** No.

**MS. LUGO:** Have you made any payments on the delinquent bill to this date?

**MS. MIRANDA:** I pay...not on the 547(thousand gallons). I paid, I believe, \$75 of that, what was typical of what our regular monthly bills were prior to this large amount, and that was it. And I've continued to pay the reg(ular). And after that bill, the amounts went back to what they were before, and I just paid that amount. I have not paid any more than that, if that's what you're asking.

**MS. LUGO:** Okay, thank you. That's all the questions I have for Ms. Miranda.

**MR. HARAI:** Okay, I would like to ask you, referring to your letter of March 15.

**MS. MIRANDA:** Yes.

**MR. HARAI:** When you say that, in the third paragraph, you say that the Department of Water employee...do you recall who that employee was?

**MS. MIRANDA:** I don't.

**MR. HARAI:** Okay, that's number one, and when did he come, 2008 or...?

**MS. MIRANDA:** I believe it was in October. It was the original bill.

**MR. HARAI:** Of 2008?

**MS. MIRANDA:** Of 2008. I don't believe they came...I can't remember, but I know that I received notice of the amount in January of 2009. But I'm assuming that we would've met right after I got the bill, because I called immediately. I mean, I saw the bill and called Waimea and said... And you know, we have four or five different meters because we have pastures around, so we're fairly familiar with the Waimea office people. They know us, you know, we're town people. And so they sent somebody out right away after I called to come and look at the meter with me. I don't remember who it was, and I don't remember the date.

**MR. HARAI:** That was in 2009? February of 2009?

**MS. MIRANDA:** Yeah, I believe it was 2009, but I can't remember.

**MR. HARAI:** Because it says here your reading determined at that time it was discussed between you and...

**MS. MIRANDA:** Yes, we discussed it, we walked the line. We looked at the meter. We walked the line down to the trough. We looked at the area around, and she said that that's right. But we...

**MR. HARAI:** But that was one year later.

**MS. MIRANDA:** No, no, it was just a few months later, right after the leak, or right after I received the bill. Just a few months later. It seemed to be sufficient for her when she came up. And she actually told me that she was only assigned to our meter recently, like within the last couple of months. Somebody else was assigned to read our meter prior to that, and they were out on leave. And she came in to read our meter because she didn't even know where it was, and came in our meter. And she looked at it; we walked the line, looked at the trough, and that's why I said that.

**CHAIRPERSON MUKAI:** Any other questions? I have a question. I can see, through the photographs provided, I know there's a trough. Obviously, there's a faucet leading to the trough. Is the faucet suspended above the trough? Or by the two... Where is the water going into the trough?

**MS. MIRANDA:** No, no, it's... You might be able to see it on the one that I showed just of the trough itself. I think that's why I showed that. It's kind of above. Okay, so the faucet... This is...behind that grass; right there is where the faucet is. The bungee cord is what holds it up to keep it shut off. And then, when we're ready to fill it, we just drop it down and push it down and it opens up.

**CHAIRPERSON MUKAI:** What was that again? It's not for the faucet...?

**MS. MIRANDA:** It's the remnants of a float valve, but we don't use it that way because we don't want it to run continuously.

**CHAIRPERSON MUKAI:** My other question would be, so when the water dispenses from that unit, is there...I mean, I'm just trying to see that... Can you see that the faucet is on? Can you see water going into it? That's what I'm trying to see.

**MS. MIRANDA:** Yes, I guess I should have taken a photo of it.

**CHAIRPERSON MUKAI:** So you say you go there every other day, and you go to the trough and you're not seeing the water.

**MS. MIRANDA:** We go to the trough to fill it for the cattle.

**CHAIRPERSON MUKAI:** Correct. But during your visits, you did not see the faucet running.

**MS. MIRANDA:** No. And if, for some reason, the cattle knocked the bungee cord off or it starts running on its own or something happens, we'd see it because it's right...that's why I tried to show the relationship of the trough to where everything is, that it's...our neighbors are right there. Our driveway that we come in and out all day long is right there. So it's easily accessible. We check it because of the cattle. If, for some reason, like it has...like, I think there's a couple, in your documents, it shows our water usage history. There are a couple places where the bill is more than what the typical bills would be. Those would be the times that either there was a pipe break, or a pipe break that never overflowed, but a pipe break. We don't have...it never overflowed because we check it.

**MR. REYNOLDS:** A couple things that I'm concerned about. How long was it after this, whatever happened, happened before you knew about it?

**MS. MIRANDA:** I did not receive an abnormal reading notice. My husband asked me that, after the last meeting when I was putting things together. I don't ever remember getting that, and normally for our past...and we have had water breaks in water lines, but we get a notice within a day of the reading to say, "Go check", or we get a call that says, "You guys need to go check your pasture because we had an abnormal reading; your meter is high." And we'll go, and sure enough, there's a water break. I didn't get one. My notice, to answer your question, I'm sorry, is that at the next billing period...

**MR. REYNOLDS:** So that would be what, 20, 30 days, something like that? Do you recall at that time what the weather was like? Was it raining a lot? Was the earth in such a condition you wouldn't notice water? Or more like the picture there?

**MS. MIRANDA:** More like the pictures. Our area gets rain, but we're called "the Banana District." It's perfect weather. We get enough rain to be green, and enough sun to grow. And even...we could go back and check, we keep our rain gauge totals. And I could go back and find out what the weather was during that time.

**MR. REYNOLDS:** Well, I was just listening to the calculations, or the statement that 6 gallons an hour...? If that's correct...is that correct? Because that didn't seem very much to me.

**MANAGER:** It's 6 gallons *a minute*.

**MR. REYNOLDS:** Oh, 6 gallons a minute. I thought I heard "*an hour*."

**MR. OKAMOTO:** Yeah, she said "an hour."

**MS. LUGO:** I said "an hour." I misstated, sorry.

**MR. REYNOLDS:** Yeah, I thought, well, that's really a slow leak. So what I was trying to get at was how long it would take to use up 547,000 gallons at that rate, and it would be, I think, about four days.

**MR. TANIGUCHI:** For 60 days, it's like 9,700 gallons a day...would have to be. I mean, that's how much usage you'd have for 60 days. 56 days was the billing period. That's a lot of water.

**MANAGER:** It translates into 6.7 gallons a minute.

**MR. REYNOLDS:** Yeah, it would have to... It seems to me, my point is you have to notice it someplace. I mean, that much water would not seep into the ground without showing up someplace.

**MS. MIRANDA:** And that's why I showed those photos.

**MR. REYNOLDS:** And yet, nobody said anything to you about noticing any undue amount of water. Thank you.

**MR. GREENWELL:** I think I've seen a few water troughs that have leaks in my time, and I don't know what kind of ranchers the Mirandas are. But if they lost that much water, there would be a swamp.

**MS. GARSON:** Okay, at this time, what we're doing is we're... Ms. Miranda is still under oath, and basically we're allowing the Board members to ask any clarifying questions while she's still under oath. Then she'll have an opportunity, if she has any other witnesses, to call them. And if not, then her case is finished. And then, Ms. Lugo will present her case. And the Board can deliberate. So right now, what we're on is questions for Ms. Miranda.

**CHAIRPERSON MUKAI:** So all we do is ask Ms. Miranda.

**MS. GARSON:** If there are any questions that you have remaining that have not been answered, of Ms. Miranda.

**CHAIRPERSON MUKAI:** I have a question. How...it must have been a long day. I cannot remember what happened yesterday. What's the foliage like? What was the foliage like; is it like that always?

**MS. MIRANDA:** On the right side, where it's longer, because it's not necessarily our land. We use it; we fenced obviously the bottom and the top. We have permission to use it. Under the term of "fire control," which is the short side, my husband mows it when it gets like the other side, because the guinea grass isn't the best grass for them. So that's what it looks like most of the year. And we're in the middle of summer, and I took there yesterday.

**MR. HARAI:** Where's the pipe located, in reference to the trough, and how far...?

**MS. MIRANDA:** Okay, so if we can go back a little bit. Okay, so there's the meter; there's the meter; there's the pipe.

**MR. HARAI:** Oh, so the pipe is above ground.

**MS. MIRANDA:** Can you go back where the meter is? Yeah, right there. Okay, so this is Photo...what you're looking at...I guess, submit a new photo? I mean, you've seen it but, as an official...? So this is, I think, A-21 photo. So you see the meter there? I propped it up; the box is propped up so you could see it. The pipe goes straight down to the trough, which is closest to the left dark T-post. And that's it.

**MR. HARAI:** And the pipe is...?

**MS. MIRANDA:** It's above ground; it's all above ground. You can see it, we just laid it there. Also, because that's not our property.

**MR. PERRY:** What is the distance from the meter to the trough? More or less?

**MS. MIRANDA:** From that wall to that wall, and maybe a little bit further.

**MR. PERRY:** 100 feet? Or less?

**MS. MIRANDA:** How long are these tables? Six feet?

**MR. TANIGUCHI:** Maybe six feet?

**MR. PERRY:** Fifty feet?

**MR. REYNOLDS:** Fifty, sixty feet.

**CHAIRPERSON MUKAI:** Any more questions for Ms. Miranda?

**MS. MIRANDA:** Sorry, I don't do numbers.

**MR. PERRY:** Just to get an idea of that area...so the pipe is running through this higher grass area? And right below your trough, is there a gentle slope? It's hard to tell from the pictures. Is it flat or...a gentle slope?

**MS. MIRANDA:** If you can look at...I'm going to reference A-1. If you look at how the T-posts slant down, it is a gentle slope but it's not flat by any means. Even though you're looking up, it gives you a better idea.

**MR. PERRY:** What I'm getting at is, if water was leaking at 6 gallons per minute, it would either pond if it was flat, or it would go in some direction if it was any slope.

**MS. MIRANDA:** I don't know what the angle is.

**MR. PERRY:** It's a pretty good slope.

**MS. MIRANDA:** If my elbow is at flat, it's about like that; I mean, it's a gentle slope that you go up. But you know, it's definitely a slope.

**MS. GARSON:** I think it's maybe a 45-degree angle?

**CHAIRPERSON MUKAI:** No, no.

**MR. PERRY:** I would say 30.

**MS. MIRANDA:** From that tree, you can see right below the branches is the Ditch line. It actually goes to a very steep incline, so it's almost like that, where you'd have to have four-wheel drive to get up the rest of the road. You couldn't drive a car.

**MR. PERRY:** And from the meter to the trough is the same slope, going the same direction?

**MS. MIRANDA:** No, it's going across...

**MR. PERRY:** So it's more like, level.

**MS. MIRANDA:** It's only a couple feet higher across than the trough itself, but still a down... But from the meter to the trough is a very small difference in slope.

**CHAIRPERSON MUKAI:** Any more questions for Ms. Miranda?

**MR. MEIERDIERCKS:** Who signed for the meter in original issue?

**MS. MIRANDA:** I would assume it's my husband. He was previously married when he bought the property.

**MR. MEIERDIERCKS:** So technically, he's responsible?

**MS. MIRANDA:** Yes.

**CHAIRPERSON MUKAI:** Any more questions? Hearing none...

**MS. LUGO:** I'd like to distribute to the Board the Exhibits I've prepared. And I also provided these to the Appellant. So if there are no objections, I would like to submit them into evidence at this time.

**CHAIRPERSON MUKAI:** Any objections from the Board?

**MS. GARSON:** Actually, it's up to Ms. Miranda.

**MS. MIRANDA:** No, I don't have any objections.

**MS. LUGO:** Are you ready for me to proceed with the first witness? Okay, I'm going to call Cris Hudman.

**MS. SNYDER:** Please raise your right hand. Do you solemnly swear that the testimony that you about to give is the truth, the whole truth and nothing but the truth?

**MS. HUDMAN:** I do.

**MS. LUGO:** Can you please state your name for the record?

**MS. HUDMAN:** My name is Cris Hudman.

**MS. LUGO:** And where are you employed?

**MS. HUDMAN:** The Department of Water Supply.

**MS. LUGO:** And what is your position there?

**MS. HUDMAN:** I'm the Customer Service Supervisor.

**MS. LUGO:** And how long have you been in that position?

**MS. HUDMAN:** Approximately 12 years.

**MS. LUGO:** Can you briefly describe your duties?

**MS. HUDMAN:** I oversee the Customer Service Section, which is the front-line section of the Department. It consists of cashiering, where bill payments are made, and collections for delinquent accounts, meter reading. We create and maintain the customers' records and files, also provide information for the public and resolve customer complaints and issues.

**MS. LUGO:** As part of your job, are you required to be familiar with the Rules and Regulations of the Department?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And you mentioned that you will sometimes get involved when a customer has a dispute about a water bill?

**MS. HUDMAN:** Yes.

**MS. LUGO:** According to the Rules and Regulations of the Department, what are the options that the customers have if they believe they have been overcharged on their bill?

**MS. HUDMAN:** Normally, when we first learn that the customer has a question about their bill, our process is to have the meter re-checked for a correct reading. And then, the second option, or what we would do is, if, in fact, there is a doubt of the reading, and where the water went and it's unexplainable, we would suggest what we call a "meter test" to see or check the meter for its accuracy. We also provide, if they did have a leakage, we would also provide what we call a leakage adjustment.

**MS. LUGO:** I'm going to ask you to refer to Exhibit I, which is Section 3-10, the first page of the Section 3-10 of the Rules and Regulations. It's at the rule relating to leak adjustments, or an adjustment based on faulty meters.

**MS. HUDMAN:** Yes.

**MS. LUGO:** Would there be any other basis for an adjustment to a bill?

**MS. HUDMAN:** If you look at Number 2, towards the end, after the "six months," it says: "unless it can be proven that the error was due to some cause, the date which can be determined and established." That's one type of adjustment that is allowable, whereby our repair field crew would go and repair what we call an "outlet coupling leak." That leakage is normally in between the customer's valve and the customer's supply line. So if that loosens up, what we normally do is send the field crew to repair that. And that is recorded on a field work order. And when I get that field work order and I look at the

consumption versus what their average is, I make an adjustment. That's one type of adjustment that's allowable.

**MS. LUGO:** Was there any field work order for that kind of repair in this situation?

**MS. HUDMAN:** In this case, there was a field work order only to have the meter changed.

**MS. LUGO:** Okay, so there's no indication that the situation was as you described?

**MS. HUDMAN:** No.

**MS. LUGO:** And then, would another basis for an adjustment be if there was a criminal act by a third party?

**MS. HUDMAN:** Okay, the other adjustment besides the criminal act by a third party would be if the leakage was caused by earthquake, flooding, wind or act of nature.

**MS. LUGO:** All right, so based on this rule, other than a faulty meter, a water leak or a criminal act, there are no other bases upon which an adjustment to a bill can be made, according to the Rules.

**MS. HUDMAN:** Yes, that's correct.

**MS. LUGO:** In late 2007 or early 2008, did you become aware that the Mirandas had a dispute over certain charges on their water bill?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Do you recall how this was brought to your attention?

**MS. HUDMAN:** Normally, the customer service rep that helps the customer finds that...they try to resolve the issue with the customer. However, if they find that it's beyond their capacity of resolving it, they just bring it to my attention verbally, just to let me know what was going on. But Tanya Villanueva, who is at our Waimea office, she's a capable person who can resolve most issues... In this case, she did inform me, and she recorded in what we call the "Account Comment" section of our billing system.

**MS. LUGO:** Okay, I think you're referring to Exhibit 3. And you say that's the Account Comment section of your billing system.

**MS. HUDMAN:** Of our billing system, yes. And if you look at where we first found out that she did have a high consumption, which is dated October 26 (2007), Tanya mentioned that, one, they had the meter re-checked for correct reading, which in that case, it was a correct reading, and then, that she was going to issue out a High Reading Notice, which is our normal procedure to inform the customer that, you know, they have excess usage. In this case, they did all that, and then, on November 15 (2007), this was prior to the next billing, or their next billing, Mr. Miranda had called and spoken to Tanya. And because she was aware of this situation, I guess, they conversed and talked about it, discussing the terrain and where that meter is serving. And that she also mentioned that if there was an overflow, it would go into the neighbor's yard.

**MS. LUGO:** Okay. Well, looking at the Account Comments, as a result of the conversation that Tanya had with Mr. Miranda on the 15<sup>th</sup> (of November, 2007), was the meter reading re-checked a second time?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Okay, and then was a bench test ordered?

**MS. HUDMAN:** Yeah, at that time, when Mr. Miranda had mentioned that this was an unexplainable water usage, the next step is to suggest that the meter be tested; which in this case, she did discuss with Mr. Miranda.

**MS. LUGO:** Can you just briefly describe the procedure for testing a meter? Was it tested there at the site or...? What happens when a meter is...?

**MS. HUDMAN:** We give the customer the option of whether they want to be present for the meter testing or not. And if they don't, and they allow the Department to just do their part, we have the meter removed from the site, and we replace it with a brand-new meter, just so that the customer will have continuous service. Then the meter is brought in here to the Hilo office, where we have our meter room mechanic run the different tests. Technically, I don't know what those tests involve...and he normally provides us with the results. In this case, any meter that's running 100 percent or under, we consider that as a good meter. In fact, it's under-rating the consumption, although it's to the customer's benefit, rather than the Department's benefit.

**MS. LUGO:** Okay, so the notes indicate that the meter underwent a bench test, so it was removed and taken to Hilo. And due to the Account Comment notes here indicate...I think it just said it indicated that it was running properly.

**MS. HUDMAN:** Yes.

**MS. LUGO:** Based on the notes here. But when the meter was removed for testing, a new meter was installed at that time, so that there would be continuous water.

**MS. HUDMAN:** Yes.

**MS. LUGO:** I'm just continuing to go through this chronologically. What happened after the Mirandas were informed that the meter tested properly?

**MS. HUDMAN:** Okay, so on December 13, Tanya called Mr. Miranda and informed him of the meter test result. And again, he mentioned that there is only one trough on the property.

**MS. LUGO:** Okay, what did he say regarding whether there were any leaks discovered?

**MS. HUDMAN:** He had no leaks. And he was offered...actually, if this consumption was as a result of a leak, then he did have an option to apply for a leakage adjustment.

**MS. LUGO:** So Tanya informed him?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Okay, so if a customer does have a leak, is it their full responsibility to detect that leak and get it fixed?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And can you just refer to Exhibit 2, Rule 3-7. What does that say regarding the customer's responsibility?

**MS. HUDMAN:** Okay, the Responsibility for Water Receiving Equipment: "The owner and consumer shall at his own risk and expense furnish, install, and keep in good and safe condition all equipment that may be required for receiving, controlling, applying and utilizing water, and the Department shall not be responsible for any loss or damage caused by the improper installation of such equipment, or negligence."

**MS. LUGO:** If there is a leak, what do the Rules say regarding how long the customer has to make the necessary repairs and apply for an adjustment?

**MS. HUDMAN:** In the Rules, it doesn't specifically say when they should repair. However, which I didn't finish...

**MS. LUGO:** If you look at the Rule in Section 3-10, Subsection 3, the last paragraph, would that set a timeline for when the customer has to fix the leak and apply for an adjustment?

**MS. HUDMAN:** Oh yeah, sorry. "In the case where the consumer has been given a notice of high consumption, or has received their billing indicating high consumption, the consumer shall be given thirty (30) days within which to make the necessary repairs and shall be given sixty (60) days within which to apply for an adjustment of water bills."

**MS. LUGO:** But in this case, the meter tested accurate and the Mirandas said there were no leaks.

**MS. HUDMAN:** Yes.

**MS. LUGO:** And so what were they informed regarding the options available to them? Were there any adjustments available at that point?

**MS. HUDMAN:** No adjustments were available...but we provide another option.

**MS. LUGO:** What is that?

**MS. HUDMAN:** Which is what we call...because the amount becomes due, we offered the customer what we call a "payment arrangement," where they can make monthly installments towards the balance.

**MS. LUGO:** Was any payment arrangement ever arrived at?

**MS. HUDMAN:** No.

**MS. LUGO:** Has the delinquent balance been paid down?

**MS. HUDMAN:** No.

**MS. LUGO:** And due to this non-payment, were the Mirandas informed that their water service would be shut off?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And was the discontinuation of water service consistent with the Rules and Regulations at this point, due to their non-payment?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And do you believe that the Rules and Regulations of the Department in governing bill adjustments and discontinuance of water service have been applied to the Mirandas in the same way that they would be applied to anyone else?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Thank you. Those are all the questions I have of Ms. Hudman.

**MS. GARSON:** Now Ms. Miranda has the opportunity to cross-examine Ms. Hudman. Do you have any questions?

**MS. MIRANDA:** What she said was true.

**CHAIRPERSON MUKAI:** Counsel, can we ask questions now of the witness?

**MS. LUGO:** Sure.

**CHAIRPERSON MUKAI:** I have a question. Why was the meter changed?

**MS. HUDMAN:** In order for us to test the meter, we need to take it out of the field and bring it in to the meter room for testing. That's the only facilities we have to test the meter.

**CHAIRPERSON MUKAI:** And where is the original meter?

**MS. HUDMAN:** The original meter? I'm not exactly sure because I was trying to get hold of the meter mechanic. I believe that when I did my original research, it went out to service another... See, what they do is, they do the testing, then they fix it and it's good to go because it's running now at 100 percent capacity.

**CHAIRPERSON MUKAI:** Whenever there's a meter test...say, I have a problem with my meter, you test the meter, you bring the meter up, put a new meter in, you do the meter test and now I have a new meter at my property.

**MS. HUDMAN:** Yes.

**CHAIRPERSON MUKAI:** That's normal procedure.

**MS. HUDMAN:** Yes.

**MR. TANIGUCHI:** I have a question, maybe not to you. Can we ask questions of somebody else?

**MS. GARSON:** No, it's Ms. Lugo's case to put on. She's still in the middle of her case.

**MR. TANIGUCHI:** Oh, I'm sorry.

**MS. LUGO:** I know you want to ask questions, too, but I'm going to call one more witness up.

**MR. TANIGUCHI:** Oh, you are?

**MS. LUGO:** I have one more witness, Mr. Daryl Ikeda.

**MS. SNYDER:** Please raise your right hand. Do you solemnly swear that the testimony that are about to give will be the truth, the whole truth and nothing but the truth?

**MR. IKEDA:** I do.

**MS. LUGO:** Can you please state your name for the record?

**MR. IKEDA:** Daryl Ikeda.

**MS. LUGO:** And where are you employed?

**MR. IKEDA:** Department of Water Supply, at the Hilo Baseyard.

**MS. LUGO:** What is your position title?

**MR. IKEDA:** Chief of Operations.

**MS. LUGO:** And how long have you been in that position?

**MR. IKEDA:** Maybe five years or so.

**MS. LUGO:** Do you have an engineering background?

**MR. IKEDA:** Yes.

**MS. LUGO:** I want to refer you to Exhibit 5. Can you identify what that is?

**MR. IKEDA:** This is the log that the Meter Room uses when they do their testing.

**MS. LUGO:** You don't actually conduct meter tests, personally?

**MR. IKEDA:** No.

**MS. LUGO:** But you would be the supervisor over the person who does these tests, and you're familiar...?

**MR. IKEDA:** I'm not the immediate supervisor, but overall supervisor.

**MS. LUGO:** And you're familiar with this log here?

**MR. IKEDA:** Yeah, kind of. Sort of.

**MS. LUGO:** If not this particular page, but for today, you're familiar that there is a log that reports the meter...?

**MR. IKEDA:** Yeah. Right. Yes.

**MS. LUGO:** Okay. There is an arrow pointing to Number 7. And so that's...I guess, a meter number and although the meter number doesn't have a customer name attached to it, if you refer to Exhibit 10, which is the meter reading history for the customer, Kenneth Miranda, you see that same meter number identified on Number 7 on the Meter Test History. You see that identified on that Exhibit 10, which is the meter history for the Mirandas?

**MR. IKEDA:** Yes.

**MS. LUGO:** All right. Can you basically explain for the Board what this indicates about the results of the meter test that was conducted?

**MR. IKEDA:** Exhibit 5, you mean? Yeah, this report says that the meter was brought into Hilo. We have a test bench in our meter room where we put the meter on the bench and we run water through it to test it. We run it at several different velocities, I guess, gallons per minute. There's three: one gallon per minute, two gallons per minute and 15 gallons per minute. And it's a controlled test, so we can see if the meter's reading accurately because we know how much water is going through, and the time, so we can figure out what it should be. And based on that test, we consider 95 percent, between 95 and 100, to be accurate. And this test shows that for each gallon per minute that was running through the meter, it's satisfactory. It's 95, 100 and 98.6. We consider it working correctly.

**MS. LUGO:** That percentage represents the amount of water that's actually flowing through, the percentage of water flowing through what the meter is registering.

**MR. IKEDA:** Yeah.

**MS. LUGO:** Okay, so based on the meter test that was conducted, this meter was functioning properly?

**MR. IKEDA:** Correct.

**MS. LUGO:** In your experience, is it, would you say, rare for a meter to register much over 100 percent of the water that's flowing through?

**MR. IKEDA:** Generally, the meters, as they get older, they run slower. We hardly see them run faster.

**MS. LUGO:** Okay. Can you refer to Exhibit 7? Is this the particular meter that was in place at the Mirandas?

**MR. IKEDA:** Yeah, according to the chart, it says that it's a Hersey meter, No. 430. That's one of the...

**MS. LUGO:** One of the 400 series?

**MR. IKEDA:** Yeah.

**MS. LUGO:** And this is the specification for that meter?

**MR. IKEDA:** Correct.

**MS. LUGO:** And if you look at the second page, what is, I guess, the maximum output capacity of this particular meter, in gallons per minute?

**MR. IKEDA:** 25.

**MS. LUGO:** So if we establish some rough math, it's 547 gallons in question. That works out to roughly 6.7 gallons per minute. That would be consistent with the output capacity of this particular meter.

**MR. IKEDA:** Yes, it's well within the range.

**MS. LUGO:** Thank you. That's all the questions I have.

**MR. REYNOLDS:** I have a question.

**MS. GARSON:** Ms. Miranda has an opportunity to...

**MR. REYNOLDS:** Sorry.

**MS. MIRANDA:** No, it's okay.

**MS. GARSON:** Do you have any questions of Mr. Ikeda?

**MS. MIRANDA:** No.

**CHAIRPERSON MUKAI:** Okay, Mr. Reynolds?

**MR. REYNOLDS:** Yeah, on Exhibit 5, under the "Before Repairs" column, it shows... What are those top numbers, the lower ones, 95, 100, 98.6 is percentage, right? What are the upper numbers?

**MR. IKEDA:** Just the reading that they get, to figure out the percentage.

**MR. REYNOLDS:** A reading. So, with one gallon per minute, the reading was 8921. What does that mean? What does that signify: 8921?

**MR. IKEDA:** That's the reading of the meter.

**MR. REYNOLDS:** But what does it mean? Does it mean...is it talking about gallons or...? I mean, the meter reads at one gallon per minute, 8921?

**MR. IKEDA:** The starting reading is 8826, if you look at the column before.

**MR. REYNOLDS:** Okay, so the next one, at two gallons per minute, it goes to 9021, just up very little.

**MR. TANIGUCHI:** Yeah, so, 100 gallons.

**MR. REYNOLDS:** And now at 15 gallons per minute, it looks to me like... I can't read that number. Is that 6007?

**MR. IKEDA:** I think it should be 10, I would think.

**MR. REYNOLDS:** Oh, 10,000.

**MR. IKEDA:** Yeah, it should be...

**MR. REYNOLDS:** Yeah, I thought..., and that's what I couldn't understand, because it appears to me that it looks like 6007.

**MR. IKEDA:** No, it should be 10.

**MR. REYNOLDS:** My eyes aren't as good as they used to be. And that would stand... That would make sense, then, if it's going to be 15 times more than whatever that flow is with one gallon per minute.

**MR. TANIGUCHI:** To the left, in that Reading column, what do those numbers signify? 8826 on top and 1392 on the bottom?

**MR. IKEDA:** I'm not real sure. I would be guessing right now.

**MR. TANIGUCHI:** Yeah, I was just curious because the top and bottom numbers...

**MR. IKEDA:** Yeah, based on that, that's how they figure it out to get the percentage. That's probably the "before" reading and the "after" reading.

**MR. TANIGUCHI:** So the number is not gallons, then, 8826?

**MR. IKEDA:** It's probably the reading on the meter, I would say...I would guess. I don't want to... I'm guessing, because I really didn't have a chance to talk to the meter mechanic before he left.

**MR. TANIGUCHI:** So it's not like it's a "before" and "after"? It is?

**MANAGER:** But it's not gallons.

**MR. TANIGUCHI:** It's not gallons? It's just a number on the meter...?

**MS. GARSON:** We need to have another...

**MR. IKEDA:** Yeah, because I really didn't have a chance to talk to them so I'm not real sure.

**MR. TANIGUCHI:** Because I'm trying to look at all the numbers and all of them...the bottom number...well, some of them don't have a bottom number, yeah? But then, most of them, the bottom number is lower. But if you look at the first one on the page, the bottom number is higher than the top one. So I'm just kinda curious as to what those numbers represented.

**MR. IKEDA:** Yeah, actually...

**MR. TANIGUCHI:** I was thinking maybe “before” and “after”, at first, but then, you cannot go back, yeah?

**MR. IKEDA:** Yeah, it doesn’t make sense.

**CHAIRPERSON MUKAI:** Well, answer to the best of your ability, then.

**MR. TANIGUCHI:** Well, he don’t know so...

**MR. IKEDA:** Yeah, I would be really guessing.

**MR. REYNOLDS:** Mr. Chairman, I have a concern here. It seems to me like we need the witness to give us the actual information on these numbers. He says he’s guessing.

**MR. IKEDA:** No, this is accurate.

**CHAIRPERSON MUKAI:** You only can question the witness based on the testimony provided. If you want to provide other witnesses that have accurate information...

**MS. GARSON:** This is still Ms. Lugo’s case to present. If she needs to call another witness, she can call on another witness, and if she doesn’t, then that’s the end of the case. And Ms. Miranda can provide her rebuttal.

**CHAIRPERSON MUKAI:** So are there any more questions from the Board directed to Mr. Ikeda?

**MR. MEIERDIERCKS:** I don’t know much about the engineering, but what is...? Is there a pressure that you test here? Is there a pressure that you know what is at the meter at their residence? Is it fairly similar?

**MR. IKEDA:** I really don’t think it matters too much on the pressure. It’s just the amount of water that’s passing through the meter – the amount of flow.

**MR. MEIERDIERCKS:** The pressure difference is not going to make that much difference, then?

**MR. IKEDA:** It shouldn’t.

**MR. LINDSEY:** Mr. Ikeda, on the normal pipe size, that pipe is able to handle 25 gallons a minute?

**MR. IKEDA:** Oh, yeah.

**CHAIRPERSON MUKAI:** Any more questions for Mr. Ikeda? No? Thank you very much.

**MS. LUGO:** Can I have one minute? I’m just going to call one more witness, since the Board had questions about what these numbers mean. So I’m going to call Mr. Pavao.

**MS. SNYDER:** Please raise your right hand. Do you solemnly swear that the testimony you’re about to give will be the truth, the whole truth and nothing but the truth?

**MANAGER:** Yes.

**MS. LUGO:** Please state, for the record, your name and job title.

**MANAGER:** Milton Pavao, Manager.

**MS. LUGO:** Okay, I just wanted to give you an opportunity to kind of clarify what those numbers on this meter test history – that the Board was inquiring about – could you give a rough explanation of what those represent?

**MANAGER:** Yeah, as far as what the numbers represent, it's definitely not gallons. These test procedures are in accordance with American Water Works Association; it's an established test procedure at established pressures, established rates. The units that you see on the reading is a unit... What happens is, there's a huge tank, the water goes through that tank and through the meter. And these are units in the tank, not necessarily any specific unit. But it's a unit used to measure, or to determine, what the actual gallonage is, as compared to what the meter reads. You take that and do the division. That's how you get the percentage. So it's a defined test as determined by American Water Works Association. The test procedures, the test mechanism, the tanks are calibrated frequently so that we conform to the American Water Works Association. So this is a bona fide test procedure with actual percentage rates. And as mentioned, American Water Works Association gives a leeway to determine if the meter is acceptable or not, and these all fall within the acceptable leeway. But it's an interesting thing to see. As Board members, you should go take a look at it. I mean, no, seriously. It's a scientific way of determining accuracy, and it's established by American Water Works Association.

**MS. LUGO:** And basically, water has to be flowing through the meter for the reading to be changing?

**MANAGER:** Correct. The way the meter is constructed, it has a flapper cavity, and as the water hits it, the water nutates, and that spins the shaft and it spins the dials.

**MS. LUGO:** Based on the testimony earlier and in looking at the history of the Mirandas' account, the 547 (*sic*) gallons was quite an increase from their normal usage, but if that was due to a meter error, it would have to be running...I can't do the math really fast but, I mean, like over a thousand percent fast or something like that. Have you ever heard of anything like that?

**MANAGER:** No, as meters age, meters don't register more; they always register less. That's why it's in our best interests to replace meters every so often. An old meter reads slow.

**MS. LUGO:** Thank you.

**CHAIRPERSON MUKAI:** Ms. Miranda?

**MS. MIRANDA:** No further questions.

**MR. TANIGUCHI:** So can you answer the question about the columns before then? So when the meter reader goes out and reads the meter, they're not reading how many gallons; they're reading a number on the meter?

**MANAGER:** You mean on the test bench, or out in the field?

**MR. TANIGUCHI:** No, no, out in the field.

**MANAGER:** In the field, it is measured in gallons. The meter itself...the dial on the meter, the units are gallons, so you're reading actual gallons. But what you're reading is a total reading, as compared to the reading on the previous reading. So you do the subtraction.

**MR. TANIGUCHI:** I thought that's what we were looking at over here. So like, this sheet here is just for testing, so these are all the meters that came in for tests?

**MANAGER:** This is only for testing. This has nothing to do with readings out in the field.

**MR. TANIGUCHI:** So when you go out in the field, you gotta look at, like in the Mirandas' case, probably 547,000 higher than the previous reading, right?

**MANAGER:** Right. Yep, because you always take...see, when the meter readers go out, they always have the figure of the reading that they had previously. So when they do the next reading, it's a subtraction so they can determine. And the meter readers are trained, that when that difference is large, they go back and read it because they know something is wrong. And that's how we, as a courtesy, will let the people know that we suspect you have a leak; this is abnormal. Please check. The meter readers know that instantly when they read the meter, because they always have the reading that was previous.

**MR. REYNOLDS:** A couple things. In the "Size and Make," I notice it says "5/8 H", as in "hotel."

**MANAGER:** Hersey.

**MR. REYNOLDS:** And then above, I see "5/8 B." What do these letters mean?

**MANAGER:** It's different types of meters. Like for example, the T-3 is a Trident meter. The H is a Hersey meter. The B is probably a Badger meter. It's just a distinction of what kind of meters we're dealing with. However, every meter on the 5/8-inch size is subject to the same requirements as AWWA requirements.

**MR. REYNOLDS:** So it would have the same flow and...?

**MANAGER:** The same requirements, as far as accuracy is concerned.

**MR. REYNOLDS:** Okay, and there, that differential again, under the reading, that doesn't have anything...does that bottom number, 8826 on top and 1392 on the bottom...? What is that telling us?

**MANAGER:** I don't know. But that's the measurement of the tank. See, because water goes through the tank before it goes through the meter...

**MR. REYNOLDS:** In the test place.

**MANAGER:** In the test bench, yes.

**MR. REYNOLDS:** Because I notice, like above, there are a couple above, there's an 8218 and the bottom number is 651, which is quite a bit of difference between that, and it doesn't... Of course, I guess probably to none of us...it makes no sense.

**MANAGER:** Yeah, you cannot determine these units. Like I said, it's a tank. It's a tank full of water that they get this specific reading, to determine the difference it goes through. So there's no units to this; I'm sure there's a unit but it's not gallons or anything that we're familiar with.

**CHAIRPERSON MUKAI:** Any more questions for Mr. Pavao? Actually, Milton, I have a question. Is it possible for someone with some knowledge of water meters to go in there and tamper with the meter?

**MANAGER:** Yeah, it is. Yeah. You can take a magnet and screw up a meter bad, because it's magnetic. I mean, you can think of a lot of ways to tamper with a meter. And that's why we put that...well...that nickel and lead sealed thing so that people can't tamper with the meter. So if we go there and see that thing broken, then we know somebody tampered with it.

**CHAIRPERSON MUKAI:** So you're saying that someone with some knowledge could put a magnet and actually tamper with the meter, and there would be no surface evidence of tampering?

**MANAGER:** Theoretically, you could take your meter and put it backwards for several days and reduce your consumption. I'm serious; you can do that.

**CHAIRPERSON MUKAI:** Are there any more questions for Mr. Pavao?

**MR. MEIERDIERCKS:** This one is, as a comparison, okay, we're looking at Number 7 as their meter. As you look at Meter Number 9, down there with the gallon per minute test, two gallons per minute test? That meter would technically fail?

**MANAGER:** Yeah, it's "zero, zero."

**MR. MEIERDIERCKS:** We're at Number 7, and at Number 9 Meter, just making a comparison. Would this meter pass the test? And I'm looking at one that would fail the test.

**MANAGER:** Yeah, zero probably indicates there's no reading. Probably the internal mechanisms are frozen, so that meter is worthless. We would probably throw that meter away.

**MR. MEIERDIERCKS:** Okay, that's what I'm trying to get at so, this meter passed, and that would show that meter failing.

**CHAIRPERSON MUKAI:** Any further questions for Mr. Pavao? No? I have a question for Counsel. Can we recall a witness?

**MS. GARSON:** No. It's actually Ms. Miranda's burden to prove her case; it's Ms. Lugo's burden to disprove Ms. Miranda's case. And you have to base your decision on what evidence was presented.

**CHAIRPERSON MUKAI:** Okay, thank you.

**MS. LUGO:** I have no further witnesses. Thank you.

**MS. GARSON:** So now, if Ms. Miranda wants to provide rebuttal, she can call herself up again, as a witness, to rebut anything that was said previously. Or she can call another witness to rebut what Ms. Lugo's witnesses said. Then that's it. You can testify again.

**MS. MIRANDA:** After they had discussion, do I have a chance to say something at the end, or is this my last opportunity to speak?

**MS. GARSON:** You're going to testify. This would be your last opportunity to testify. It's possible that they provide you time to do a closing statement, when you can summarize everything.

**MS. MIRANDA:** I just have a comment to make. I don't know, I guess it's testimony. I don't know.

**MS. GARSON:** Why don't you go ahead and call yourself as a witness again, and then testify?

**MS. MIRANDA:** Okay, I call myself as a witness again?

**MS. GARSON:** Just a reminder that you're still under oath.

**MS. MIRANDA:** Okay. I've had great service, and I appreciate, I feel very bad for the County that we've had to go through all this expense, although I feel it's very important because we didn't use the water. But I would ask the Board to keep in mind that maybe technically, there have been no errors, because it seems that the Department has worked very hard to show they have followed procedure. I would ask the Board to keep in mind please...that along the line, there may have been a human error, that whether an incorrect amount was entered in, whether that amount that was entered in was a compilation of my neighbor's or my district, I don't know. That possibly, beyond the technical, that the meter has been checked, the line has been checked, due process has happened, there are the Rules and Regulations that are in place. That someplace along the line, there has to be something that may have happened. Now I would hate to think that anybody would have messed with our meter and run a magnet over the top so that we would be charged an exorbitant amount. I think we're pretty good with

our neighbors, so I don't think that anybody dislikes us, at least to that degree. But just to keep in mind that maybe along the line, somebody made a mistake, and something happened. Unfortunately, I can't pinpoint what that mistake was, or where it came from. And I appreciate all the hard work of the Department to try and...so that they have done their job well. And I hope I presented at least a doubt in your mind that we actually used this water, and that the County did not lose money on this case, because there was no water lost. Something happened, and I hope that we can figure it out. So that's all I have to say.

**CHAIRPERSON MUKAI:** Ms. Lugo, any questions?

**MS. LUGO:** No questions.

**CHAIRPERSON MUKAI:** Mr. Harai?

**MR. HARAI:** You know, the first letter that you wrote on January 14, 2008? When was the first response from the Department of Water to the letter? Was it the March 15, 2010 letter?

**MS. MIRANDA:** You mean, after that letter? So I sent a letter in January of 2008.

**MR. HARAI:** When was the Department's response?

**MS. MIRANDA:** I don't think it was until February or March of this year. I called several times to try and check on it, because I started to receive the shut-off notices, and my husband kept asking. "What's going on? What's going on?" So I believe the March 2010 was the first official letter that I received.

**CHAIRPERSON MUKAI:** Any questions for Ms. Miranda? I have a question. To the best of your knowledge, do you recall any use of power equipment on your property?

**MS. MIRANDA:** What do you mean?

**CHAIRPERSON MUKAI:** Someone running a generator, ATVs?

**MS. MIRANDA:** Yeah, we have an ATV, and we have a Mule. My husband runs a fencing company. We have five tractors, four trucks.

**CHAIRPERSON MUKAI:** How close, as far as you can recall, did any of these...?

**MS. MIRANDA:** The ATV would be very close because we run our ATV from our house to check the line, and to move the cattle in and out. The Mule – it's a Kawasaki Mule – you know, with like the three-seater, whatever. So the Mule and the ATV regularly... That's what we use to go down the road. Occasionally, our neighbor uses the road to go from his house up to Old Kalōpā Road, which is the road that's on top of us, above us. The generators and that would be at our house, which is four acres away.

**CHAIRPERSON MUKAI:** So it's not adjacent to the property?

**MS. MIRANDA:** No.

**MR. TANIGUCHI:** I have a question. So you discovered that 547,000 gallons when you got your bill, right? And so you got billed for that, right? My question is, the next month, or the next billing, your bill was zero?

**MS. MIRANDA:** Yeah.

**MR. TANIGUCHI:** How come?

**MS. MIRANDA:** Because we didn't use the water.

**MR. TANIGUCHI:** At all?

**MS. MIRANDA:** No, that's what I mean. We don't use the water on a regular basis because we have access to the Ditch. Our cattle... The Ditch is in such disarray that the cattle go in and out of the Ditch to drink. So when it's flowing, we don't need the trough.

**MR. TANIGUCHI:** Oh, so this is just for cattle. It's not for your home or anything? You have a different meter for your home?

**MS. MIRANDA:** Yeah, it's just for the cattle. Like at the time, I can't remember, but in the history report from your Department, it said my husband said that we had a horse in there. That was all. And then we bring roping cattle in to rope and take them out. Or else we put them around our home, which we have 12 acres, and then, we put them back out there when the grass gets low. We kinda move things around, so that was one of the things that made it, for us, such a surprise because there are many billings that we don't use... We just pay the regular service fee to have a meter. We don't really use the water. And then, looking at the history that was provided by the Department, you can see that there are some...I think there were 12 periods where it was higher than our typical. And that would've been a broken water line, not more usage of cattle, because the usage has stayed the same. So that would've been evidence of a broken line. I think it cost us \$200 or something.

**MR. LINDSEY:** Do you know how deep that water line is buried?

**MS. MIRANDA:** It's not. It's on the surface, and I guess I should've taken a picture of it.

**CHAIRPERSON MUKAI:** Any more questions of Ms. Miranda? None? Thank you very much.

**MS. MIRANDA:** Thank you.

**CHAIRPERSON MUKAI:** From what I gather, we're going to open deliberations?

**MS. GARSON:** And you don't want closing statements?

**CHAIRPERSON MUKAI:** Oh, I'm sorry.

**MS. GARSON:** No, no, that's fine.

**CHAIRPERSON MUKAI:** I never played "Judge Judy" before so, sorry. Ms. Miranda, any closing statements?

**MS. MIRANDA:** Just what I stated earlier that I'm hoping that I put some thought of doubt, that a mistake, if it's not technically the meter, that a mistake has been made someplace. The meter... That a mistake has been made someplace. And under oath, we did not use 500,000 gallons of water in that time period.

**MS. LUGO:** I think that the evidence that was presented shows that upon discovering that there was an unusually high water usage, the meter reading was checked, and actually re-checked twice, by the meter readers in the Waimea office. The meter was then tested in accordance with established procedures, and we have a record that the meter was running accurately. The Mirandas reported that there were no leaks, so they didn't apply for a leak adjustment. There were no reports of a third-party criminal act. And absent any of those factors, there's simply no provision for an adjustment to the bill in the Rules and Regulations. It's important that the Rules be applied equally to everybody, and unfortunately in this situation, there's just no provision for any adjustment to the bill. And since the Mirandas haven't paid in accordance with the Rules, the water at this point should be discontinued. So

I think that Ms. Miranda hasn't met the burden of showing that they would be entitled to an adjustment to their bill, or to have their water service continued if they don't pay the delinquency.

**CHAIRPERSON MUKAI:** Thank you. Okay, now we go into open deliberations. I'll just read something from the HRS (manual?) that applies. It says here "to prove something by preponderance of the evidence means to prove that something is more likely so than not so. It means to prove by evidence which in your opinion convinces you that something is more probably true than untrue." So that's what we're working with. So we have open discussion now. Mr. Lindsey?

**MR. LINDSEY:** I appreciated the testimonies, and there are several things that I'd like to touch on. First of all, just the fact that Mr. Pavao said that a magnet could manipulate that meter, shows that it's not infallible. The other thing is that whatever... Could we go back to the picture where we see the distance from the meter to the trough? If you guys hear that loud ticking, that's my heart, because I have an artificial heart valve so... So that distance right there... Okay, I'm supposed to believe that almost 20,000 gallons of water on a surface pipe is leaking out, okay? And the Mirandas check it every other day, at least. No, I would have to believe that they don't check it at all. Well now, 20,000 gallons... I have a 15,000-gallon tank at my house. I would think I would notice my water tank leaking out in that short area, in the five acres that I have out there – I would notice it leaking out. And then, I would... I was looking at the clock, and we were talking about 6 gallons per minute, so that means every 10 seconds, a gallon is gone. I know that my water flow at my other house, provided by the County...there's no way I'm getting one gallon out of that pipe in 10 seconds. You're asking me to believe that more water is coming out of that pipe in 10 seconds. So that's... And lastly, I'm being asked to believe that, you know, that Ms. Miranda is disingenuous. And I really have a hard time believing that. So that's all I have to say about this.

**MR. GREENWELL:** As I was saying earlier, and I'm repeating myself, I think I've seen a few water troughs leak in my time. And if there was that much water leaking from that water trough, and the Mirandas didn't see it for two months, there's something definitely wrong someplace. Because that is a lot of water. If you run a garden hose, you might get, depending on the pressure, you might get 8 to 10, 10 to 12, gallons a minute. And if they're getting 6 gallons a minute constantly running for 60 days, something is wrong someplace. Something. But the Water Department has their way of checking the meter. They did their job. I really don't know what to believe. I really don't know. Thank you.

**CHAIRPERSON MUKAI:** Any more discussion?

**MR. TANIGUCHI:** I find it kind of hard to believe, you know, based on their usage and their history, you know, that all of a sudden you're gonna jump to 547,000 gallons. It's just kinda, to me, inconceivable. I'm not saying the Water Department's wrong, because obviously they tested it. I'm not saying Ms. Miranda's lying. But somewhere along the line, something's just not right. I mean, when you look at it, from the surface objective, common sense has to prevail. Something like this, I mean, when you look at 9,000 gallons a day coming out of there, you're gonna know. I just think that it's unimaginable that...it's just unimaginable it would go undetected.

**CHAIRPERSON MUKAI:** Any other comment? Actually, the Chair is caught in a quandary because, I agree, I find it kind of unfathomable that 500,000 gallons of water (*inaudible*). The possibility that it may have been tampered with...I understand the County's position, but the question we may have is *remedy*, because based on what the Rules allow us to do, we can only, if we feel that it's...well, basically here, with regards to Adjustments to Bills, it says: "excessive bills caused by leakages will be limited to one-half (1/2) of the consumer's excessive water bill, over and beyond the previous 6-month average." And beyond that, the Rules and Regs are very specific, saying that it must be due to earthquakes, flooding, high wind, or acts of nature. I'm caught in a quandary. Ms. Miranda has set up a great case. On remedies, our hands are tied, based on what I read here on what we can do.

Because it specifically says that “adjustments will be limited to one-half (1/2) of the excessive water bill in the event of leakages,” and it also states that the leakages must be repaired by the consumers.

**MR. TANIGUCHI:** What if there’s no leakage?

**MS. GARSON:** Criminal act is also...

**CHAIRPERSON MUKAI:** Is there a criminal act here?

**MS. GARSON:** You can give adjustments over and above the one-half, if the cause of excessive use was due to a criminal act. In those cases, it has to be documented by a police report. However, I’m sure if you didn’t realize the criminal act, you might not file a police report.

**CHAIRPERSON MUKAI:** For those of you on the Board, we did have a contested hearing case before, I believe. The individual was from Puna side, if I remember correctly. And similarly, it was large, not this large, excessive use of water. And we were in the same quandary, what we are permitted to do.

**MS. GARSON:** So at this point, if anybody on the Board wants to make a Motion? You can debate or vote on a Motion.

**MR. TANIGUCHI:** We can move to do anything, right?

**MR. MEIERDIERCKS:** Yeah.

**MR. HARAI:** After a discussion.

**MS. GARSON:** Pardon?

**MR. TANIGUCHI:** We can make a Motion on whatever we want to make a Motion on, right?

**MS. GARSON:** Yes, but it has to be based on what is your decision on the case. You’re going to move to uphold the appeal? Grant Ms. Miranda’s appeal?

**MR. REYNOLDS:** Well, what is the appeal?

**MS. GARSON:** She, basically...the reason that we’re having the Contested Case is because of the shut-off notice. And at this point, what you have to find is that she doesn’t owe us a certain sum of money.

**MR. REYNOLDS:** That’s what I mean; is the appeal to not pay anything or to pay something?

**MS. GARSON:** She’s just disputing the...what is the amount?

**MS. MIRANDA:** I’m just disputing the amount above our average water usage.

**MR. REYNOLDS:** Okay, so in a sense, you’re saying you only want to pay the amount of your average usage.

**MS. MIRANDA:** Yes.

**MR. REYNOLDS:** Okay, thank you.

**MR. HARAI:** Kathy, you know, Dwayne mentioned that from what he read, our hands are tied. But actually, it’s not. The Board can decide.

**MS. GARSON:** Right. Your decision cannot be random. It has to be based on the Rules, and it has to be based on the testimony received. You cannot just make a decision based on emotion because you

feel sorry. You know, it has to be based on the Rules, not be arbitrary, not be capricious. Based on some logic and the law.

**CHAIRPERSON MUKAI:** So you're Corp Counsel...so...

**MS. GARSON:** So if you believe both sides, then the third option is that there must've been some intervening act, right?

**MR. TANIGUCHI:** So can I...is it possible to make a Motion, like, for a settlement amount?

**MS. GARSON:** That's arbitrary, unless you want to give the parties 10 minutes to go outside and see if they can discuss a settlement.

**MR. TANIGUCHI:** Yeah, like an average of their last year's bills, or whatever.

**CHAIRPERSON MUKAI:** I have a question, Counsel. Did she answer your question, first?

**MR. TANIGUCHI:** I don't know; she didn't.

**MS. GARSON:** To propose some sort of a settlement from the Board, I would say, that would be arbitrary. You need to make a decision. If you wanted to ask if the parties wanted to go outside for 10 minutes and see if they can resolve that matter, and then you are allowed to do that.

**MR. TANIGUCHI:** So to answer Mr. Reynolds's question, then, what was her appeal?

**MS. GARSON:** So it would be that her bill would be reduced to the amount of her average billing, I would say, preferably a 6-month average. A 6-month average for that one billing cycle, and that she would have to pay that amount and anything over that amount. So you're only looking at...

**CHAIRPERSON MUKAI:** But wouldn't that be basically going beyond what we're permitted to do? So we can do a decision like that? Because aren't we venturing into waters that are untravelled, because it's specific as to what we can't do, what the Department can't do.

**MS. GARSON:** And I'm saying that under the third option, for reducing more than half the bill, is a criminal act. So by doing that, you believe both sides; you have to say there is no other explanation.

**MR. MEIERDIERCKS:** Right.

**MS. GARSON:** There is no other explanation for this, if you believe both sides. Something must have happened. Some intervening third party must have committed...

**CHAIRPERSON MUKAI:** But we need a police report and all of that stuff, right?

**MR. REYNOLDS:** That's what I believe. Something must...you know, this doesn't make sense. There had to be some intervening thing, rather, because if the meter was tested and the test was accurate, none of us were there to see the test. I mean, so that's all up in the air, too. We don't know for sure how well the testing was done.

**MS. GARSON:** And is it excusable that she did not file a police report?

**MR. REYNOLDS:** Well, she wouldn't have any reason to, if she didn't suspect any criminal activity.

**MR. LINDSEY:** Kathy, can we allow the two parties to go out for 10 minutes now and discuss this? And then they come back with their proposal, that we can decide at that time what we want to do?

**MS. GARSON:** Well, if they come back with a settlement, they'll just say we came up with a settlement, and you guys don't have to deliberate anymore.

**CHAIRPERSON MUKAI:** But then again, no, however, we got to be sure that's what they want to do.

**MS. GARSON:** Right, right. But it's consensual. Any settlement would be consensual on their part.

**MANAGER:** But Kathy, you cannot settle the Rules. The Rules are rules; you cannot make a settlement on the Rules. And the Rules currently...the Rules are specific as to what you can and can't do. And since the Board believes the Department, and it believes the Plaintiff, you're kind of caught in a quandary. You don't know what to do, and I don't blame you. If I was you, I wouldn't know what to do, too. One suggestion. My suggestion is that...

**MS. GARSON:** You're making it as an ex-officio member of the Board.

**MANAGER:** Yeah, and I have that right, right?

**MS. GARSON:** Yes.

**MANAGER:** Right. My suggestion is, if you believe us, you believe her, then, there has to be some external thing that happened that we don't even know about, right? So the compromise is you gotta compromise within the Rules. The Rules allow for payment plans. Just make a real low dollar a month payment, and get it over with. And you're still within the Rules; because you can't forgive the bill. That's against the Rules. You can't give her relief, because that's against the Rules. So what do you have left? A compromise of what's in the Rules.

**CHAIRPERSON MUKAI:** Just for clarification, for the newer Board members, in the past contested hearing case, because Rules are rules, it was determined that water seepage...we both fixed it with the 50 percent because basically a Rule is a rule. We can't...it's just like law. So when you go beyond that, it's...

**MR. REYNOLDS:** Well, I have a question. Where does it say these Rules apply to this Board? You know, we're like the Appellate Court here. We don't have Rules. We make the Rules.

**MS. GARSON:** The Board is a part of the Department of Water Supply, and those are the Department of Water Supply rules.

**MR. REYNOLDS:** But it doesn't say that in the Rules here. The part I'm reading doesn't have any reference to what the Board may or may not do in a Contested Case Hearing. Where is that?

**MS. GARSON:** Chapter 91, Contested Case Hearings. And there are two parts in your Rules that say you are to conduct it in accordance with Chapter 91 of the Hawai'i Revised Statutes, which is a Contested Case procedure.

**MANAGER:** You can change the Rules, but as of right now, a Rule is a rule. You can change it later on, but it still applies now, in this case.

**MR. REYNOLDS:** This is HRS Rule?

**MS. GARSON:** Yes.

**MR. REYNOLDS:** Does it say, again, does it refer to what this Board can do in these Contested Case Hearings?

**MS. GARSON:** You need to make a decision...

**MR. REYNOLDS:** We don't have anything I can see here doesn't relate to that at all.

**MS. GARSON:** You need to make...a decision based upon the Rules applicable, which are the Department of Water Supply Rules, and the facts as they stand. And your decision has to be in accordance with the law, not be clearly erroneous in view of the reliable, proven and substantial evidence, and you can't be arbitrary or capricious, or abuse your discretion.

**MR. REYNOLDS:** And that's vague, too. What is arbitrary or capricious?

**CHAIRPERSON MUKAI:** I move that based on the...

**MR. REYNOLDS:** You can't move. You can ask to entertain a Motion.

**CHAIRPERSON MUKAI:** The Chair would entertain a Motion to deny the appeal, and that a very amicable payment plan be worked out between the Department of Water Supply and the Mirandas – a very amicable payment plan.

**MS. MIRANDA:** We didn't use the water, so what do I do about that?

**MS. GARSON:** That's what you just presented. You presented your case, and now they're trying to decide what to do with your testimony.

**MS. MIRANDA:** Okay.

**CHAIRPERSON MUKAI:** I repeat what I just said. The Chair would entertain a Motion that we deny the appeal, and that the Department of Water Supply and the Miranda family work out a very amicable payment plan.

**MR. REYNOLDS:** I would make a Motion that we concur with the appeal, and make an amicable settlement as to the amount of payment.

**MR. TANIGUCHI:** I second it. Now we discuss.

**MR. REYNOLDS:** Okay, let me say why I did that. I think to deny it doesn't make sense to me, because it's saying we're denying it. Then on top of it, if we concur with the appeal, then the question is, what is the payment to be? I don't know what it should be, but there should be some payment, because there is normally some payment.

**CHAIRPERSON MUKAI:** I'd like to speak against the Motion for the fact because that if you agree with the appeal, you're going against the Rules and Regs of the Department of Water Supply.

**MR. KANESHIRO:** I would like some information for clarification from Corp Counsel on what was meant by "concur with the appeal," as compared with, you know, you don't concur with the appeal.

**MS. GARSON:** You're agreeing that basically that Ms. Miranda wins, yeah.

**MR. KANESHIRO:** To concur, right?

**MS. GARSON:** Yes.

**CHAIRPERSON MUKAI:** Just a point of information...

**MR. TANIGUCHI:** Yes, I have a question for Kathy.

**CHAIRPERSON MUKAI:** Point of information, right?

**MR. TANIGUCHI:** Yes, so Kathy, basically, Ms. Miranda came to the Board because she couldn't get relief per the Rules at the Water Department, okay? So she came to us. So why go through the process, right? In having her present her case if we can't go along with... I'm just...whatever it is...

If we approve the appeal, and say I didn't spend an amount but I agree to pay what I normally pay, why is the Board not able to vote on that, if you had the Hearing? Otherwise, it's silly for us...

**MS. GARSON:** Right, your application of the Rule can be different.

**MR. TANIGUCHI:** But that should've been presented to her ahead of time, yeah? Because then you went through this whole process and then, you know, at the end, now you're saying you can't, because of this, this and this. To me, it's kinda stacked against you if you don't know. A lay person wouldn't know. I mean, if you were in her shoes and I came by myself in front of the Board, I wouldn't have known that, and I wouldn't be happy about it...at the end, I'd say "Wait a minute now, I didn't know this kinda stuff, I came and spent all this time in front of the Board, and they cannot even make a decision to agree with me?" Right? I mean, isn't there a...?

**MS. GARSON:** I know. I think your interpretation of the Rules can be different, and that's the whole point of the appeal. Your interpretation of the Rules as they apply to this situation is different from the way the Administration applied the Rules to this situation. And that is what the Board is deciding.

**MR. TANIGUCHI:** So we can decide, right?

**MS. GARSON:** You can decide differently from what the Department did. Yeah. That's the whole process. Right.

**MANAGER:** It has to comply with the Rules.

**MS. GARSON:** And this also says, "Special Adjustment over and above the one-half (1/2) of the excessive water use over and above the previous 6-month average use may be granted when the cause of the leakage is due to criminal acts by third parties..."

**MR. TANIGUCHI:** See, but we got the mystery third party; that's why.

**CHAIRPERSON MUKAI:** I'd like to speak against the Motion. No, I'm for Ms. Miranda, and based on the evidence, it's a really tough one. However, we have Rules that we need to follow. That's the reason why I'd like to speak against the Motion, because we cannot approve the Motion based on what we have to work with. So my suggestion was that we reject the appeal, and then the Department of Water Supply makes a payment plan, like maybe \$10 a year for whatever. But we have to work... Well, unfortunately, not unfortunately, we are a country of law, a country of law. We can't be going around changing laws midstream. That's the way how democracy...

**MR. REYNOLDS:** Mr. Chair? The way I look at it, it's analogous to the Supreme Court rules on constitutional questions, and they interpret what it means, and if we're like an Appellate Court here sitting here, whatever those Rules for this Water Department, the Administration is one thing, and I see us as being another thing. And you know, that would be like saying to the Supreme Court, you can't reinterpret one of the Amendments to the Constitution because that's what it says. And why be here if we can't, you know, come up with a solution that we think was equitable, regardless of what some written rule is, that affects the Department of Water Service? So that's just the way I look at it, I think.

**CHAIRPERSON MUKAI:** Point of information?

**MS. GARSON:** Yes?

**CHAIRPERSON MUKAI:** So can we act as an Appellate Court?

**MS. GARSON:** That's basically what you are.

**CHAIRPERSON MUKAI:** Can we go ahead and change the Rules?

**MR. TANIGUCHI:** So we can vote on this...we have a Motion, right?

**MR. REYNOLDS:** We have a Motion.

**MS. GARSON:** You're still applying the same Rules; you're not changing the law. It's still the same Rules.

**MR. TANIGUCHI:** But aren't we voting on the appeal?

**MS. GARSON:** Yes.

**MR. TANIGUCHI:** Right. I mean...so we have the right to do that, within the law?

**MS. GARSON:** Vote on the appeal? Yes.

**MR. TANIGUCHI:** To rule on it. Yes or no, right?

**MS. GARSON:** Yes.

**MR. TANIGUCHI:** Which is what Mr. Reynolds's Motion was.

**MANAGER:** Mr. Chair, I think the Board needs to see that whatever you do, it has to be consistent with the Rules. You can change the Rules, but as of right now, these are the Rules as it is. You can change it next meeting if you wanted to give proper notice. But the Rule is the rule today.

**MR. REYNOLDS:** But if we decide something different, that does change the rules.

**MANAGER:** No. You cannot defy the Rules. You as a Board member have no right to defy the Rules unless you go into the proper procedure to change the Rules. That's why, I think, Mr. Mukai is on the exact track. If you believe us, you believe her, and there was something external that happened that we can't explain. You cannot forgive her because the Rules don't allow that, under the circumstances that occurred. The only solution or alternative is if you believe what happened, and I do, I trust her. I'm sure she's telling the truth, but I trust our people. I know we did the right things, too. That's why I like Mr. Mukai's suggestion that hey, we don't know what to believe. We believe you, we believe *you*. Something happened. We don't know what it was. Make some kind of compromise that is consistent with the Rules, so you *can* do it. And that's a payment plan, a very agreeable payment plan. Because then, you'll stay within the Rules.

**CHAIRPERSON MUKAI:** I think we need a break here.

**MR. KANESHIRO:** Call for the question?

**CHAIRPERSON MUKAI:** Okay, I'm overruled.

**MR. REYNOLDS:** Point of information here. That *was* my Motion, that concurs with her appeal and works out some sort of payment plan. So that was what my Motion was. It was just, what *is* that payment?

**MS. GARSON:** But actually, isn't it the opposite? You deny her appeal and work out a payment plan? Or were you upholding her appeal? If you uphold her appeal, she doesn't owe.

**CHAIRPERSON MUKAI:** George has a question. Sorry, it's a point of information.

**MR. REYNOLDS:** But if we deny the appeal, that means she gets nothing.

**MANAGER:** Then we make a payment plan.

**MR. HARAI:** Kathy, you know, if we have to change the rules, we have to change the Rules, right? Can we defer this case?

**MS. GARSON:** Well, you could, but you can't defer it and then change the Rules. The Rules are as they exist now.

**MR. HARAI:** Okay.

**MR. TANIGUCHI:** Okay, so one point of information to Kathy. You know, you're talking about Rules. What if, as an example, her bill was one million dollars. Go with that philosophy, the burden falls to her heirs to pay that one million dollars off even if you went a dollar a year? What you're doing, in essence, okay, I'm just playing devil's advocate, you're doing in essence is saying you owe the money anyway, no matter who was wrong. We're saying we don't know who's wrong. You're still going to burden the person with the dollar amount, so if it's a million dollars, you're gonna stick to the million dollars? That's not right.

**MANAGER:** That's what Rules are.

**MR. TANIGUCHI:** So that's where I think we have to use common sense. Okay, because you're not doing...you know, she's coming in with something that is clearly unexplainable on both sides. Both sides did their...I think, a good case, yeah? But to say that okay, you can't explain it so you still gotta pay us the money, but we'll defer it over 100 years... They're still gonna have to pay it after the 100 years, so you're not really accomplishing anything than saying, "You're still wrong; you gonna owe us the money." There should be another...a vehicle by which we can rule on something like this, because it doesn't make sense.

**CHAIRPERSON MUKAI:** I have a comment. I agree with you guys 100 percent. But unfortunately, what we have today is what we have today. We can't go ahead and change it. In future... But unfortunately, we have to work with what we got on the table.

**MR. REYNOLDS:** I still don't see where...

**MANAGER:** One alternative is to say, okay, we don't believe the bench tests, the meter was wrong, the meter didn't read correct. Therefore, yeah, you are right. That's one way of doing it, and still be within the Rules. But in that respect, you gotta say our test bench meter reader was all wrong, the meter procedures were wrong, and therefore...

**MR. REYNOLDS:** We can't say that.

**MR. TANIGUCHI:** We can't, because it tested okay.

**MANAGER:** But you don't believe that. You could say the meter's...

**MR. TANIGUCHI:** No, we believe that.

**MANAGER:** See, that's the quandary. You believe two sides, so now you gotta find a compromise.

**MR. REYNOLDS:** Kathy, again, these Rules are for the Department of Water Service, right? And we are not a part of...we are appointed by the Mayor. We're a separate body.

**MS. GARSON:** No, per the charter, the Board is a part of the Department of Water Supply.

**MR. REYNOLDS:** We're actually a part. So the Rules...

**MS. GARSON:** They are *your* Rules.

**MR. REYNOLDS:** So it says in the Rules that all the Rules apply to the Board? Or does it?

**MS. GARSON:** They do, and the Charter says that the Board is a part of the Department of Water Supply. These are your Rules; you must apply these Rules. Okay?

**MR. REYNOLDS:** Okay.

**MS. GARSON:** Can I ask for a five-minute recess?

**CHAIRPERSON MUKAI:** Very well taken.

**MANAGER:** The Rules say these Rules are for the Department of Water Supply. You are the governors of the Water Supply. Therefore, they apply to you.

**CHAIRPERSON MUKAI:** Okay, let's take a five-minute recess.

*(Recess from 2:15 p.m. to 2:30 p.m.)*

**MS. GARSON:** I'm going to have Doreen read back the Motion. Okay?

**MS. DOREEN SHIROTA (Secretary):** Mr. Reynolds moved that we concur with the appeal, and make amicable settlement as to the amount of payment, seconded by Mr. Taniguchi.

**MS. GARSON:** Could I ask you to withdraw that Motion, because it's inconsistent? Upholding her appeal will mean she doesn't owe the money.

**MR. REYNOLDS:** No, it wouldn't mean that, because she didn't ask for any specific amount.

**MR. TANIGUCHI:** She says she's willing to pay how much the average of what she's been paying.

**MS. GARSON:** Right, right, right. Oh, that's what it was. So the Motion is really that you uphold her appeal, and she pays her average monthly billing for the last 6 months for that one billing period. Is that correct?

**MR. REYNOLDS:** I didn't specify any amount. We need to amend the Motion. That's not what the Motion says. But somebody can amend the Motion if they wish.

**MS. GARSON:** Okay, I think it's a little unclear as to what your Motion was.

**MR. TANIGUCHI:** Okay, can I amend the Motion?

**MR. REYNOLDS:** Yeah.

**CHAIRPERSON MUKAI:** You can amend the Motion.

**MR. TANIGUCHI:** Okay, what I'd like to do is amend the Motion to read that we'd like to uphold the appeal, taking an amount of an average of the last 6 months, or 6 months' billing, charging her for that amount because it's not determined that either side erred, but we feel it's due to a criminal act that's unproven.

**CHAIRPERSON MUKAI:** Is there a second?

**MR. LINDSEY:** I second.

**CHAIRPERSON MUKAI:** Seconded by Mr. Lindsey. Okay.

**MR. TANIGUCHI:** Can I explain it? So basically, what we're saying is that both sides...we believe both sides did their due diligence and presented their cases well, and that it had to be an outside

criminal act in interfering with the meter that's unproven, so in that particular instance, we uphold the appeal and charge the client an average of what her normal 6 months' usage bill is.

**CHAIRPERSON MUKAI:** Okay, any further discussion on the Amendment to the Motion?

**MR. PERRY:** It's more a question.

**MS. GARSON:** Did you have a second to that Amendment?

**CHAIRPERSON MUKAI:** Yeah. Mr. Lindsey.

**MS. GARSON:** Okay, sorry.

**MR. PERRY:** My question is, would this be consistent with the Rules of the Department?

**MS. GARSON:** Yes.

**MR. PERRY:** That Motion?

**MANAGER:** Mr. Chairman, I would like to speak in favor of the Motion, because it accomplishes everything we're supposed to be doing. It's legal, it's according to the Rules and I think it's a fair settlement.

**CHAIRPERSON MUKAI:** Any further discussion? Hearing none, we're voting on the Amendment to the Main Motion. Can you repeat the Amendment to the Motion, please?

**MS. SHIROTA:** The Motion is amended to read that the Board upholds the appeal, taking an amount, average of 6 months' billing, charging that amount because it's not determined that either side was in error but feel that it is due to a criminal act that is unproven.

*ACTION: Amendment to the Main Motion carried unanimously by voice vote.*

**CHAIRPERSON MUKAI:** Now we're back to the Main Motion as amended. Any further discussion? Point of information, so we're okay with this Motion? Okay?

**MR. MEIERDIERCKS:** Call for the question.

**CHAIRPERSON MUKAI:** All those in favor of the Motion as Amended, please signify by saying Aye.

*ACTION: Motion as Amended carried unanimously, by voice vote.*

**CHAIRPERSON MUKAI:** Thank you very much.

**MS. MIRANDA:** What does that mean?

**MR. TANIGUCHI:** You owe us a million dollars.

**CHAIRPERSON MUKAI:** Don't do that to her. What it is, your water's not going to be turned off.

**MS. MIRANDA:** Okay.

**CHAIRPERSON MUKAI:** You're gonna work with the Department of Water Supply to figure out what the average 6 months is and that's what it's gonna be. The decision was made based on the fact that we believe it was by criminal intent, although that hasn't been proven, but we're basing our decision that there must be some criminal element, because both cases were strong. So we've concluded that there must have been some criminal action.

**MS. MIRANDA:** Thank you. I'm sorry you had to go to this expense.

**MR. TANIGUCHI:** We're sorry *you* had to go through all this.

**CHAIRPERSON MUKAI:** This is the longest Department of Water Supply meeting on record.

**MS. MIRANDA:** And I appreciate...the Department has been very courteous to me in all these dealings. It was not my intent that they're not doing their job. So I appreciate it.

**CHAIRPERSON MUKAI:** Thank you very much.

**MS. MIRANDA:** Thank you, for everyone who helped me. I appreciate your help.

**A. WATER SERVICE ACCOUNT NUMBER 69036800-11 (TMK 4-4-003:029):**

The above Contested Case Hearing took place in accordance with Chapter 91 of the Hawai'i Revised Statutes and Rule 2-5 of the Rules and Regulations of the Department of Water Supply.

The issues involved in the above-referenced hearing will be Mr. Kenneth F. Miranda and Ms. Morag Miranda's appeal of the amounts shown due and owing on account #69036800-11 and consequently, the appeal of the shut-off notice dated February 8, 2010 for failure to pay said amount.

This hearing was set pursuant to Mr. and Ms. Miranda's request at the April 27, 2010 and June 15, 2010 Water Board meetings.

*(End of verbatim testimony.)*

**K. MANAGER'S REPORT:**

The Manager provided an update or status on the following:

1. Palani Road Transmission Waterline Project (*covered earlier*)
2. Hawaiian Ocean View Estates Project – DWS has obtained the NPDES (National Pollutant Discharge Elimination System) permit, and is getting the grading permit with approval from the State Historical Preservation Society and the Department of Public Works. Representative Bob Herkes has visited the Manager twice recently, and offered to help disseminate information from the Department to the Ocean View community. According to the contractor, actual construction begins on August 9, 2010, involving pipeline and the well site.
3. Water Use and Development Plan Update – DWS, through its consultant, is going to County Council on August 17, 2010 to seek a revision to the ordinance that mandates updates to this plan every five years. DWS wants the updates to be event-driven, rather than year-driven. Revisions to the plan depend on available funds, which are supposed to come from DLNR. However, DLNR has never had enough funds, and for the past nine years, DWS has spent its own funds for revisions. Being mandated to do revisions on a set timetable without sufficient reason is a waste of time and money, so DWS is seeking a change to the ordinance.
4. Board member parking pass applications for County Buildings – Ms. Snyder is taking Board members' applications for the passes, now that the County is charging for parking at the office buildings at 25Aupuni Street and 101 Pauahi Street.
5. Employee of the Quarter -- (*covered earlier*)
6. Recognition of Service Retirement – (*covered earlier*)

The Manager noted that the Hawai'i Water Works Association is holding its annual conference October 13-15, 2010 in Poipu, Kauai. The Department's Budget this year allows for three Board members to attend, and it is up to the Chairperson to decide which members may attend.

**L. CHAIRPERSON'S REPORT:**

Chairperson Mukai thanked the Manager and Mr. Reynolds for bringing pastries, which helped tide over everyone during this marathon Board meeting.

ANNOUNCEMENTS:

1. **Next Meeting:**

The next meeting of the Water Board will be held on August 24, 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 September 28, 2010, at 10:00 a.m. at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

STATEMENTS FROM THE PUBLIC:

None.

EXECUTIVE SESSION:

A. **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 Board convened an Executive Session, closed to the public, regarding the foregoing matter, per Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(4), for the purpose of consulting with the Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

**ACTION:** Mr. Meierdiercks moved to go into Executive Session, seconded by Mr. Perry and carried unanimously by voice vote.

*(Board went into Executive Session at 2:40 p.m., and concluded at 2:45 p.m.)*

**ACTION:** Mr. Meierdiercks moved to approve the recommendation by Corporation Counsel, seconded by Mr. Reynolds and carried unanimously by voice vote.

ADJOURNMENT

Chairperson Mukai adjourned the meeting at 2:45 p.m.

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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.*