

**MINUTES**

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

November 23, 2010

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

- MEMBERS PRESENT: Mr. Dwayne Mukai, Chairperson  
Mr. Robert Meierdiercks, Vice-Chairperson  
Mr. David Greenwell  
Mr. George Harai  
Mr. Kenneth Kaneshiro  
Mr. Bryan Lindsey  
Mr. Delan Perry  
Mr. Joe Reynolds  
Mr. Art Taniguchi  
Mr. Milton Pavao, Manager-Chief Engineer, 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: Mr. Craig Masuda, Deputy Corporation Counsel  
Ms. Molly Lugo, Deputy Corporation Counsel  
Mr. Mark Jernigan  
Mr. Fred Housel  
Mr. Teruo Matsumoto  
Mr. Larry McCabe  
Ms. Wanee McCabe  
Ms. Chelsea Jensen, West Hawai'i Today  
Ms. Pamela McLaughlin
- Department of Water Supply Staff  
Mr. Quirino Antonio, Jr., Deputy Manager-Chief Engineer  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Rick Sumada, Waterworks Controller  
Ms. Kanani Aton, Public Information and Education Specialist  
Ms. Julie Myhre, Energy Management Analyst  
Mr. Larry Beck, Engineering Division  
Mr. Clyde Young, Operations Division  
Ms. Crestita Hudman, Customer Service Division

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

STATEMENTS FROM THE PUBLIC:

Mr. Teruo Matsumoto testified regarding Kuni Road, representing himself and Mr. Jim Deguair (sp?)

*(The following testimony is verbatim.)*

**MR. MATSUMOTO:** Good morning. Good morning, Mr. Pavao. I am here to express my concern about the roadway, not the water. I don't have nothing to do with the water. I want that road to be taken care of, better than what it is today. And according to the information I got, this is what I got: contract from the contractor says, "replacing as it was, or better." I don't see how they can write the contract like that. Why it's not specific? How long before it gotta stick? I traveled the road for many, many years. I don't wanna be passing that junk road. All I ask you people is you quite don't understand what I'm saying. Go up there and look at it. How can a road be put in new pavement that's a surf board? Shoulders not straight. Pavement's not straight. I been a contractor for 43 years; I know what it is. I want you guys to take the time and look at it, and decide what can be done. And I wish you folks can go up there and do something about the contractor doing a better job. My concern is safety, and that kine is not safety. And now my friend Jimmy Deguair (sp?), all these years we lived here, there was not one runoff into his land. Now he got the runoff. And they said, oh, he got running off before. No way. I lived there over 50 years, and there was no runoff. Look into that place. Get after, or do something. Have the engineer come out and look at it. I have a driveway, which I made it special for the tenants and the trailers to go up. I have over 400 coconut trees to be moved. The other day, a trailer truck came up and he almost fell into the dry well area. Who's gonna be liable? Think about it. I'm tired playing games. I know what is construction because I was a heavy equipment operator for J.M. Tanaka for many years. They did Palani and Honokōkau Harbor, Kuakini, Dr. Teshima. I know what it is. But I can't see how they're doing this kinda job. Look at the pavement. It's a messy job; not good. If I was an inspector for the County, you know what I'll do? That's my own decision. No was, nobody gonna tell that I (inaudible) with da thing. If I was the inspector, I'd cut down the damn job. If I was, but I'm not. Okay? I can't do anything. It's up to the Board or whatever to take action on it. So I hope you folks understand my viewpoint, and get up there and look at it. I just ask you to come up there; sit on the road and look at it. I'm not blaming anybody. Oh, I don't know. I talked to Milton about the dry well. Fifty percent of the dry well is next to my property, fifty percent is where my truck has to pass through, over. Now, how I gonna go through? Couple people came up there because that road is under, supposedly County road. But many years has gone by, I asked for asphalt. What they say? The road is not County. I hired an attorney. He went get the history of the road, and it is County. And all I asked a couple days is, give me a couple loads; I'll take the road. He says, this road illegal. Cannot give you. Then in there, too, the last one, two weeks later, here comes a general contractor, tearing up the road. How did the County get the road? I dunno. You guys figure it out. I have a written document from the attorneys and all, way back 1800-something. So if I can't get it, I'll take some other means of getting it. But you people are general management. Go look at it. After the meeting, go up there, look at it. Will you be looking at the road, the edge of the pavement is like a snake. No shoulders. No runoff. I think that's one concern that's really critical: the runoff.

**MR. MEIERDIERCKS:** Time.

**MR. MATSUMOTO:** Because we had a heavy rain, gravel on the pavement, lasted there two, three days, and you gotta drive over there. I don't think that's right.

**CHAIRPERSON MUKAI:** Mr. Matsumoto, can you summarize, because your five minutes is up. Can you summarize really quick? Oh, thank you. What's he talking about, Tomi Tomi?

**MANAGER-CHIEF ENGINEER:** Kuni Road.

**CHAIRPERSON MUKAI:** Oh, Kuni Road.

**MR. MATSUMOTO:** That like I said; I don't have any gripe about the water system. I have a gripe about the road.

**CHAIRPERSON MUKAI:** Thank you, Mr. Matsumoto. Okay, next we have Mark Jernigan, talking about the Jernigan Road/Kuni Road, and he's representing himself.

**MR. JERNIGAN:** Good morning, Chairman, members. I don't know if this is the proper time to submit my statements because I want to ask the Board to act on a couple issues. I can wait until the Manager's Report, when you discuss Palani Road Transmission Line, if you like.

**CHAIRPERSON MUKAI:** Right now, in the public statement, you just provide statements to us. The discussion phase depends... If it's covered in the Manager's Report, it'll be covered at that time. So you might want to... I would say what you have to say now, and then we can discuss it. It actually is agendaized, under the Manager's Report. So say what you have to say.

**MR. JERNIGAN:** Well, my concerns are the same as Teruo Matsumoto. We share the same driveway, and that dry well is a big issue. Also Kuni Street wasn't constructed, in my opinion, according to the specs. I'll cover that in just a moment. I have this written statement I would like to read to you. We are arriving at the one-year anniversary of the start of construction on our property, the Jernigan property, which is mauka of Kuni Street. During most of that time, our road to Māmālahoa Highway has been totally blocked off or barricaded, and is still blocked as we speak today. Compensation for the construction disruption and the loss of our quiet enjoyment was valued by an appraiser hired by the Department of Water Supply. They valued this on a monthly basis. The Department of Water Supply determined the disruption to us would be for one month. Corporation Counsel also informed us – that would be Kathy Garson – while on a site visit, that this impact to us would be minimal. And thus the Department of Water Supply compensated us for one month's disruption. It has now been 12 months. That's a 1,200-percent increase. One year is hardly minimal. I ask the Board to consider extending the loss of use and enjoyment compensation to cover the entire time our Highway access has been barricaded. I would suggest that the Department of Water Supply use the formula that their appraiser used to determine the just amount. I also have issues with the quality of work that has been performed in regards to the replacement of our roadway. There are serious questions with the sub-base, base course and asphalt, meeting specifications. I have been told by the Department of Water Supply that the asphalt was not for road surface, but considered an asphalt base. And that would be why it's got open pores and is unraveling. According to specs sent to me by Mr. Beck, the sub-base is to be compacted to ½ inch tolerance, and the base course placed upon that is to be compacted to 6 inches, with ½ inch tolerance. Then the asphalt road surface is supposed to be placed on that, compacted to a full 2 inches, with a ¼ inch tolerance. I challenge anybody to show me different up there, but I do not see it. And I think your inspector for the Department of Water Supply did not see it, either. That's why the job came to a halt. The Department of Water Supply has proposed a fix: to compact the existing cold asphalt that has been laid and recoat it with road grade AC. My concern: if the structure below the surface does not meet specifications, the surface will not hold up over time and heavy traffic. If this band aid fix is allowed to stand, then I ask the Board to assume all maintenance of the roadway. That would include cracks, potholes, settling, and root damage. If you want me to assume the maintenance and repair which was agreed to, I would insist that the road be built to specifications outlined in the contract for construction. That would include the sub-base. If there's any questions as to what has been done, the industry has a universal solution commonly used: have an independent study done that would pull core samples randomly along the road, and analyze them. The cost is minimal. There is also a concern with water runoff, as Teruo mentioned. The lower portion of our road has been elevated, and the grade changed. The water runoff from our property used to cross our driveway, and in excessive rain, would travel down Kuni Street. It's now headed straight toward Housel's property. I have other issues that I won't bother you with today. I'm gonna try to work that out with Beck. But I ask you to act on the compensation question, and the quality of the workmanship that's done, and the drainage issues. I thank you for your time. Thank you.

**CHAIRPERSON MUKAI:** Next, we have Mr. Fred Housel, also on Tomi Tomi Road, representing himself. Fred?

**MR. HOUSEL:** Good morning, Chairman Mukai and Water Board Commissioners. As you probably know me by now, my name is Fred Housel, and I live at 74-5063 Tomi Tomi Drive, Kailua-Kona. I am here today to provide a status on the restoration and repair work that's been done on the Palani Transmission Line Project. The good news is that much of the restoration work has been completed. However, a number of repair items still remain. The remaining repair issues are:

1. Kuni Road was re-paved. However, as Mark and Teruo mentioned, the quality of the work is questionable. Since the re-paving was done, the edges of the roadway have washed out severely with the rains, leaving, in some places, 12-inches deep ruts on both sides of the roadway. And that's not acceptable.
2. A 4 x 3-foot hole in the center of Tomi Tomi Drive was dug after Tomi Tomi was re-paved. The purpose of this hole was to install an air relief valve for the pressure testing of the pipeline. Since pressure testing was completed, this hole, which is about 3-4 inches deep, remains, and is a traffic hazard.
3. Next is, rock walls along Tomi Tomi Drive, from the stop sign south, which were removed during the pipeline construction, have not been replaced.
4. The temporary water hoses which were installed during construction have not been removed.
5. One of our neighbors, and this is what Teruo has mentioned, Teruo Matsumoto, has not had the entrance to his nursery repaired, including the replacement of a guard rail, which was removed during construction. As Teruo mentioned, this is a safety hazard, as large trucks frequently use this entrance.
6. The southern end of Tomi Tomi, near the entrance to the Lili'uokalani land, has not been paved, continuing to be a source of dust to the adjacent neighbor.
7. The mauka end of the rock wall which runs along Kuni – that's our wall at the mauka end – which was damaged during construction, broken during construction, has not been repaired yet.
8. During heavy rains, very large amounts of runoff flows down Kuni – Kuni is fairly steep – flooding the driveway are at the bottom of Kuni and Tomi Tomi. Many neighbors, during construction, have expressed serious concerns about the lack of a dry well in this area to prevent this flooding. The flooding actually runs off into the adjacent property, so it's not gonna get better. There needs to be something done about that.

I'd like to ask the Board or the Manager, could you please provide a schedule for the completion of the remaining repairs? I need to remind you that we were promised by the Department of Water Supply and CTS Earthmoving in October 2009 that this phase of the transmission line project would be completed in six months from the start, and all repairs would be made at that time. It's been over a year since the construction started, so it's way late. There is one more comment I would like to make. Over the past year, you have received a lot of unfavorable testimony by residents of Tomi Tomi Drive, regarding the work done on this project. Many times, the Manager has said he is helpless to resolve the problems with the contractor, due to the language in the contract. It is very apparent that the contract has major flaws. I strongly urge you, the Water Board, to correct these deficiencies in future contracts, by adding firm work schedules, performance clauses, and penalty clauses to get the contractor to do the work correctly and on time. Thank you very much for your consideration.

**CHAIRPERSON MUKAI:** Thank you. Okay, we have another testimony here. Thank you, Fred. We have Larry or Wane McCabe, Tomi Tomi Drive, representing themselves. I guess it's Larry and/or...?

**MS. MCCABE:** Yes...in case he needs me.

**MR. MCCABE:** Here's some photos you can pass around. Thanks for hearing us today. I really appreciate it. I didn't hear all of Fred's comments, so I may repeat something that he has said, but we met with the contractor, Christian Twigg-Smith, and the Water folks last October. And they assured us

that this project would be a snap, would be a temporary disruption, and they'd be outta our hair in about six months. I think that's more than a year ago – I'm not sure – but that's what they said at the time. We've had... Some of the photos that you see in our notebook are the rain events that we've experienced on several occasions, where, because CTS has used the adjacent property, traffic, trucks, and so forth are running through that gravel, that large pile of gravel. They opened up the rock wall, which provided an excellent conduit for stuff every time it ran into our yard. So I was... on one occasion, Fred came down with his tractor and scooped out piles of stuff. I've cleaned my driveway by hand a number of times. I just can't tell you how aggravating it is, and I'm not here asking for compensation for the labor and hassle and aggravation. However, CTS has promised repeatedly that, at the completion of the project, they'd come resurface our driveway, because it's been damaged. The other thing that's happened is that the rock... we have some rock work that holds up some lamps, some driveway lamps, and I think, because of the vibration, I mean, we had about three weeks right in front of our place... You know, although that rock work, there's no soil, they're chipping down 8 feet into rock. And things have fallen off our rock work. You could argue maybe the mortar wasn't so great. I dunno anything about mortar. But that's fallen apart. I feel like that oughta get replaced or repaired. We're just as a neighborhood just kinda... I dunno what to say to you guys. We've been here before. I understand that things take time. I understand that there are delays, and we have... Mr. Pavao has a contract he has to deal with, and he's got to adhere to that. But we don't have anybody else to appeal to as a neighborhood, and we just would really appreciate your intervention. We'd like to see our neighborhood restored, the intersection repaired. It looks to me like they put a cold-pour kind of asphalt in the intersection, so my suspicion is that's gonna wear out quicker. And all of Kuni is ready to be swept away by a good, hard rain. You know, I'm not that technical, but I guess the message is, you're our... you're the folks we can come to for help, and we just really hope that you can help us out.

**MS. MCCABE:** Can I just go over the pictures? So the front page...I'm sorry, I'll talk loud. The front page is the street. That's where, above there, when the rain happens, it comes across from the street to our property. And the second picture is, you know, down to our property.

**MR. MCCABE:** This wasn't really a bad one. This was the lesser of the events.

**MS. MCCABE:** Yeah, and it comes down and it collects to our yard. You know, it ruins our driveway, and also, there's a picture where you can see they repaved the street, and our driveway is all scratched. You know, and they... Yeah. Anyway, so we would like them, you know, to repave, surface our driveway. And they say they are going to do that. But they haven't done anything to it. And also, if I was mean and selfish, they should also power wash our house, *houses*.

**MR. MCCABE:** The houses.

**MS. MCCABE:** Yeah, from all that silt and stuff like that. But I think I'd be happy if they resurface our driveway.

**MR. MCCABE:** Thank you very much.

#### APPROVAL OF MINUTES:

Chairperson Mukai entertained a Motion to approve the Minutes of the Water Board meeting on October 26, 2010.

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

#### APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA:

None.

ACTION TO MOVE AGENDA ITEMS:

Mr. Taniguchi made a Motion to move Item 8(F)(1), MANAGER-CHIEF ENGINEER'S REPORT, Palani Road Transmission Waterline Project, to the top of the Agenda.

Chairperson Mukai said there was no need for the Board to vote on it; he received the Board's assent to move the item up.

**A. MANAGER-CHIEF ENGINEER'S REPORT:**

The Manager-Chief Engineer provided an update or status on the following:

1. Palani Road Transmission Waterline Project.

The Manager-Chief Engineer said Kuni Road was done without the Department's knowledge and without proper inspection. Unquestionably, the road needs to be redone. The contractor took it upon himself to do the road, and did not do it right, the Manager-Chief Engineer said. The road must be remedied. DWS has been in contact with the contractor, CTS Earthmoving, Inc., but so far the contractor has been non-responsive. As far as damage, there are definite provisions in the contract that stipulate that damage shall be repaired. The Manager-Chief Engineer assured the residents that whatever damage was caused by construction will be repaired, as a contractual provision. The contractor has no choice but to do that, and there are many remedies under the contract that DWS can do to assure that the repairs are done, he said. As far as timing, DWS cannot control the contractor's timing on his work. However, DWS can control the impact the contractor's timing is having on the residents. If the contractor causes damage to the residents, DWS has the right to intervene and will do so to ensure that repairs are done. Mr. Beck has been constantly contacting the contractor, who was asked to attend today's meeting. The contractor did not attend due to a conflict in schedule. The Manager-Chief Engineer said it is frustrating for the Department, and DWS is working on it.

Mr. Beck, the project engineer, noted that CTS had fixed Mr. Housel's rockwork, and said he was sure that CTS would extend the same courtesy to Mr. and Ms. McCabe. He asked if the silt fence was still up.

Mr. McCabe said the silt fence seemed to finally be working, but noted that a big rain hadn't tested it yet.

Mr. Beck said that as far as drainage, DWS understood the need to put in some kind of drainage at the bottom of Kuni Road. He said DWS will take care of that.

The Manager-Chief Engineer said that DWS will not release the contractor from his contract until reasonable repairs are made. If the contractor does something that causes damage, DWS can make CTS rectify it. However, DWS cannot dictate CTS's schedule. If CTS's lack of activity is causing a concern, DWS has the right to take care of the concern. He reassured the residents that their damages will be taken care of. He noted that one of the problems is that the contractor, at times, is on other jobs and may have too much work. As a result, CTS is shifting between projects. However, CTS has a contract with DWS, and the Department will not release him until the contractor addresses the damages to residents to their satisfaction, within reason.

Ms. McCabe asked if it was reasonable to ask CTS to power wash the houses in the neighborhood.

The Manager-Chief Engineer said he was unable to answer that question because he did not have specifics.

Ms. McCabe asked who can answer.

The Manager-Chief Engineer said that probably the inspector or the contractor could answer. That is one of the things that Mr. Beck can address with CTS, he said.

Mr. Housel noted that the contractor had told the residents that he had until next year to do the repairs. He asked if there is anything DWS can do to have the repairs done before then.

The Manager-Chief Engineer said that if the damage is causing hardship that can be proven, DWS can have the contractor take care of the repairs. If the repairs are just part of his normal work, the contractor is correct in saying he has until next year to do the repairs; CTS has until the contract's completion date of September 2011 to do that.

Mr. Jernigan asked if anything can be done to address Mr. Matsumoto's situation, regarding the property line that Mr. Jernigan shares with Mr. Matsumoto, Kuni Road and the dry well that extended over to change Mr. Matsumoto's access.

The Manager-Chief Engineer said that something could definitely be done.

Mr. Jernigan said that he has a working farm and needs to get trucks in and out, which is why Mr. Matsumoto's access is very important to Mr. Jernigan. Mr. Jernigan said he has equipment he cannot move due to the access issue, and Mr. Matsumoto cannot sell his nursery products because he cannot get in and out.

The Manager-Chief Engineer said that Mr. Beck is working with the contractor on this issue.

Mr. Jernigan said that the contractor told him that the issue is up to DWS, and so CTS leaves it.

The Manager-Chief Engineer said DWS has a problem because it does not know what agreement that Mr. Jernigan has with CTS, to allow CTS to do certain things.

Mr. Jernigan said CTS asked him to allow the contractor to close his driveway for 30 days.

The Manager-Chief Engineer said DWS does not know what specific agreements that Mr. Jernigan has with the contractor, and Mr. Beck needs to meet with CTS to get all of these things squared away. This will enable Mr. Jernigan to know what DWS knows, and what the contractor knows DWS knows. DWS needs to find out what agreements Mr. Jernigan has made with CTS, to ensure that whatever needs to be done, can be done. Regarding Mr. Matsumoto's access, the Manager-Chief Engineer said that if CTS blocked access to Mr. Matsumoto's nursery, it will definitely be corrected.

Mr. Matsumoto noted that he had met the Manager-Chief Engineer at a restaurant, where they discussed the dry well issue. Mr. Matsumoto raised the question of a HELCO guy wire that has been clipped by Mr. Matsumoto's trucks going in and out. The dry well was done the wrong way, and the trucks clipped the wire, he said. Mr. Matsumoto asked who would be held responsible for knocking down a HELCO pole. He urged the Board to take it into consideration, and do it right.

The Manager-Chief Engineer said he agreed 100 percent with Mr. Matsumoto.

Mr. Matsumoto said that the Manager-Chief Engineer told him that somebody would contact him, but nobody ever did, and more than a month has gone by. He said that he was not blaming the Manager-Chief Engineer, and said that he believes that Mr. Pavao will have passed the word to somebody.

The Manager-Chief Engineer assured the residents that DWS is trying to get the contractor to resolve these issues. He reiterated that the road will be taken care of, and that any damage that the residents have incurred because of the contractor will be taken care of.

Chairperson Mukai said that he and the Board want the problems to be resolved.

Mr. Kaneshiro said he sympathized with the residents, and he felt particularly concerned about the drainage issue. He wanted the contractor to make sure that drainage is considered in the design when CTS resurfaces the road, so that residents' properties are not affected by runoff.

The Manager-Chief Engineer noted that before the project started, the road was not paved as it is now, so that drainage used to go directly into the ground. With a hard surface as it is now, there is runoff. The runoff is a problem that must be taken care of, he said. It is in DWS's best interests to get this resolved, so that DWS can go back to doing what it does best: serving customers with good, dependable water.

Ms. Jensen, a reporter for West Hawai'i Today, asked how much the project cost, and who was going to have to pay for the road to be repaired.

Mr. Masuda said that if Ms. Jensen wished to do an interview, she should do it after the public meeting.

Mr. Reynolds asked whether CTS was bonded.

The Manager-Chief Engineer confirmed that CTS is bonded. It is a vital contractual provision that the contractor be bonded.

Mr. Reynolds said that as the representative for the district which includes Tomi Tomi Drive, he has heard several testimonies from the residents of this area. It seems to him that nothing is getting done, and the contractor is not cooperating. Mr. Reynolds asked if there are any legal means to force CTS to start doing what the residents ask right now.

Mr. Masuda, speaking as the Board's attorney, said that the Board does not have any legal standing to jump into the Department's contract at this point.

Mr. Reynolds said the residents probably have a good cause for legal action against the Board, because CTS made promises to the residents, in front of witnesses, regarding certain tasks the contractor would do for them by a certain time. CTS has not performed, and Mr. Reynolds said if he were the residents, he would have sued already. He asked if the Board can incur liability because they were aware of the promises. Mr. Reynolds said he saw no evidence that the Board has taken any real action to get the contractor to follow through on the promises.

Mr. Masuda said he did not see the Board having liability with the contractors. The matter is between the Department and the contractor.

Mr. Reynolds asked whether in that case, the Board has no obligation to take any action.

Mr. Masuda said that the Board does have the authority to make recommendations to the Department, to tell DWS that the Board wants things done, and to make the best efforts to get things done. However, the Board does not have any standing to jump into the contract itself. What the Board does is hold the Manager-Chief Engineer's feet to the fire, who in turn holds CTS's feet to the fire.

Mr. Matsumoto said he met with the Mayor and one of the Mayor's executive assistants, who promised to come to Kuni Street to view the project. Mr. Matsumoto was supposed to contact all of the neighbors, who would meet the Mayor to express their concerns. However, four weeks have passed, and nobody at the Mayor's Office has gotten back to Mr. Matsumoto. He said he was going to make sure that the Mayor and his staff come to see the project.

Mr. Taniguchi, noting that everyone here shares the same frustration, asked whether DWS and the contractor have sat down and ironed everything out. He noted that DWS does not know what the residents' agreements with CTS are. He asked why that had not been brought up before.

Mr. Taniguchi said everything needs to be fleshed out and put on the table.

The Manager-Chief Engineer said there are certain things that DWS is not privy to, i.e., the agreements between CTS and the residents. He cited the example of how contractors always find someone in the area who will let him stockpile materials and equipment. DWS does not get involved in things like that, he said.

Mr. Taniguchi acknowledged this, but asked why all of these matters cannot be brought to the table, so that everybody knows what all of the conditions and complaints are. This will avert the Board finding things out by accident, he said.

The Manager-Chief Engineer said that DWS has had numerous on-site meetings with CTS and the residents, where certain promises were made, but subsequently never fulfilled. It is frustrating for DWS because the Department keeps after CTS, but things do not get done. DWS has every authority to tell CTS to fix damage to residents, and DWS plans to do it.

Mr. Taniguchi asked if this applied to hazardous things like the issue affecting Mr. Matsumoto.

The Manager-Chief Engineer confirmed this. It also applied to issues which impede Mr. Matsumoto's livelihood.

Mr. Taniguchi asked whether it would be top priority if Mr. Matsumoto knocks down a power pole.

The Manager-Chief Engineer said that definitely would be top priority.

Mr. Taniguchi asked if this problem had been addressed before.

The Manager-Chief Engineer said no, because this was the first time he had heard about the guy wire. He noted that Kuni Road had only been resurfaced recently.

Mr. Beck said it happened about a month and a half ago.

The Manager-Chief Engineer, noting that it was recent, said that the road was paved without the inspector's knowledge, without DWS's knowledge, and the job was not done properly.

Mr. Taniguchi asked if DWS had recourse.

The Manager-Chief Engineer said DWS definitely has recourse.

Mr. McCabe asked if Mr. Beck had seen the intersection.

Mr. Beck said he had not seen that portion that Mr. McCabe was referring to. He said he thought that if CTS used cold mix, they would dig it out and resurface it.

The Manager-Chief Engineer noted that cold mix is a temporary thing, while hot mix is a permanent fix.

Mr. McCabe said CTS probably used cold mix.

The Manager-Chief Engineer said that cold mix does not bind as well as hot mix, and will unravel over time.

Mr. Inaba said that the road was not accepted by either DWS or the Department of Public Works. DWS did not accept the easement portion of the road, and Public Works did not accept the public road portion. In order for CTS to get paid, both DWS and Public Works must accept their respective portions of the road, he said. CTS will have to go back and redo the road, he added.

Mr. Greenwell, referring to the issue of the power pole and the guy wire, asked whether HELCO or Public Works have standards as to how far the power pole should be away from usable road. He was

sure that HELCO does not want anybody getting near their poles, and suggested that the pole or the guy wire need to be moved.

The Manager-Chief Engineer said he was sure that the design engineers took the power pole into consideration in their design. The question is whether the contractor did the work according to the design. At this point, he suggested that DWS needs to go out to check whether the job was done according to the design.

Mr. Meierdiercks said the matter was quite serious. He noted that CTS was asked to come to today's meeting, but they did not show up. He said he was in favor of giving CTS a very unfavorable recommendation to do any further projects for DWS or the County.

MOTION: Mr. Meierdiercks moved that the Board take all of the above issues down as public record, and have the Department check on each one of the issues that has come up in public testimony, report to the Board next month on the status of each issue, and to give the list of issues to the contractor. He further moved that the contractor be notified that the Board is in favor of giving a very unfavorable recommendation that the contractor ever work for DWS. Mr. Taniguchi seconded.

Mr. Reynolds noted that CTS has been paid \$9,809,000.00 out of a total contract amount of \$11,325,000.00. He said the Board should put CTS on notice that the contractor will get no more money until the contractor takes care of the issues. He said CTS is in default of the contract, and should not be paid anything else, until there is a resolution of the issues. The best thing that the Board can do is to cut off the money.

Chairperson Mukai reminded the Board that the topic for discussion is the current Motion on the floor. He called for the question.

ACTION: Motion carried unanimously by voice vote.

MOTION: Mr. Reynolds moved that the Department not pay the contractor any additional funds until the issues are resolved; seconded by Mr. Perry.

Chairperson Mukai expressed misgivings.

Mr. Masuda said that the Motion goes beyond the authority of the Board. He said the Board can make a recommendation, but it cannot mandate that the Department will not pay.

The Manager-Chief Engineer said that DWS will pay what it is legally obligated to pay. For example, sub-contractors must be paid for their work. However, DWS will not pay for the portions of work that are in question, namely, Kuni Road. DWS will neither pay the contractor nor grant the contractor relief from that item, he said. DWS cannot withhold payment to the contractor for sub-contractors' work, as long as it is done properly and in accordance with the plans.

Chairperson Mukai agreed that if the contractor's work is accepted by the Department, DWS must pay the contractor.

The Manager-Chief Engineer reiterated that DWS will not pay for the portion related to Kuni Road until it is accepted, and will not pay CTS for anything that is in question. He mentioned that Kuni Road was done without inspection and done improperly; DWS will not pay for that. He noted that all of the issues mentioned by Mr. Matsumoto and promises made to the residents are all related to Kuni Road, and so DWS will not pay for items related to Kuni Road.

Mr. Reynolds asked if the Department would put CTS on notice to that effect.

The Manager-Chief Engineer said DWS has talked to CTS many times already, and can do it again.

Mr. Reynolds said the notice should be put in writing, so that there is some documentation.

The Manager-Chief Engineer agreed.

Chairperson Mukai called for the question, but there were some nays audible. He asked the Secretary to take a roll call vote.

The Manager-Chief Engineer asked what the Motion was.

Chairperson Mukai said the Motion was to withhold all payments.

The Manager-Chief Engineer said the Department could not do that.

Chairperson Mukai said there was a Motion on the floor, which had to be acted on.

ACTION: The Secretary took a roll call vote: Mr. Reynolds, Aye; Mr. Perry; Aye; Mr. Taniguchi, Nay; Mr. Meierdiercks, Nay; Mr. Mukai, Nay; Mr. Greenwell, Nay; Mr. Lindsey, Nay; Mr. Kaneshiro, Nay; Mr. Harai, Nay. Motion failed, with 2 Ayes and 7 Nays.

The Manager-Chief Engineer said that the Department will keep after the contractor, and agreed that DWS needs to sit down with CTS.

Ms. McCabe urged the Department to make sure that the work that the contractor does is performed properly so that it does not need to be redone.

Chairperson Mukai reiterated that unless the work is accepted by DWS and the Department of Public Works, the contractor will not get paid for it.

Mr. Housel repeated his request for a schedule of repairs from the contractor.

Mr. Reynolds said that was in the previous Motion.

Mr. Meierdiercks confirmed this, saying that the Motion called for DWS to make a report next month to the Board, which would have times, dates and actions on every issue. This will let the Board know the status of what is going on, and have it on public record.

Mr. Jernigan noted that DWS has a record of extending contracts. He requested that the contract with CTS not be extended, and that the contractor be put on notice that it will not be extended.

Chairperson Mukai said it would depend on the circumstances.

Mr. Meierdiercks said the contract's end date on record is September 5, 2011. That time is a good way off, so if the contractor cannot get everything done by that date, something will be wrong. He noted that the scheduling was contractual; the end date was approved with the original contract. The Board cannot at this point make any amendments to the contract, which is already signed and started, and whose amounts are already in the record. Mr. Meierdiercks said that the Board must deal with the contract as written, as dated, and as specified as to payment. He believed that on future contracts, the Board is going to have to take a stricter line on timing, payments, and performance of activities. If contracts are structured like this, the Board will have the right to go in and remedy issues on its own or on the Department's own. This could possibly include going with another contractor to get the job done right in a timely fashion, he added.

The Manager-Chief Engineer noted that the Department considers the Palani Road Transmission Waterline Project as one whole project, with a completion deadline of September 2011. He reiterated that there is nothing in the contract that stipulates benchmark dates for completing individual tasks, and the only deadline that the contractor has to complete the work is September 2011. That being said, if

the contractor's activities have a damaging effect on the residents, DWS will intervene to make sure the damage is rectified.

Mr. Housel said that the Manager-Chief Engineer was present at the public meeting in October 2009 when the contractor, Christian Twigg-Smith, and the project manager, promised that the work on Tomi Tomi Drive would be done in six months after it started. Regardless of what the contract says, the residents were promised that the work would be done six months after it started, he said. That promise by the contractor was broken, he said.

The Manager-Chief Engineer said the Department cannot enforce a promise made to the residents by the contractor. The contractor did not make the promise to DWS, and the only promise the contractor made to DWS is that CTS will finish the work by September 2011.

Mr. Housel said that in that case, the residents made a mistake in accepting the contractor's promise, and perhaps the residents should have taken some other action to possibly prevent this problem.

Chairperson Mukai said it was time to move on in the Agenda, and said he would take a couple more questions.

Mr. McCabe suggested that the Board should include timing, etc., as part of its future contracts.

Chairperson Mukai said he totally agreed that the Board needs to look at how it does contracts in the future.

#### HĀMĀKUA:

#### **B. JOB NO. 2006-906, CONSTRUCTION OF THE KAPULENA WELL DEVELOPMENT – PHASE 1:**

The contractor, Water Resources, Inc., has requested a 50-calendar day time extension. This request consists of additional time required to drill, ream and case the well an additional 100 feet, do additional paving, and allow for rain delays.

The contract originally called for the well to be drilled to a depth of 1,090 feet. Based on the first pump test, the yield was insufficient for DWS's needs. According to DWS's consultant, an additional 100 feet of drilling, reaming and casing were required to achieve an adequate yield.

In addition, due to the necessity of hauling in water to the Kapulena tank, DWS had requested that the contractor use the Hāmākua Ditch water during drilling as a cost-saving measure.

The additional drilling, reaming, casing, and utilizing the Hāmākua Ditch will exceed the existing contingency funds by \$62,852.00. Therefore, DWS is requesting the Board approve additional funds not to exceed \$70,000.00 in contingency from the C.I.P budget.

Staff has reviewed the request and finds the 50 calendar days are justified.

This is the first time extension request.

Ext #	From (Date)	To (Date)	Days (Calendar)	Reason
1	12/06/2010	1/25/2011	50	Rainout days, additional paving, and drilling; reaming and casing an additional 100 feet.
Total Days (including this request)			50	

The Manager-Chief Engineer recommended that the Board approve a contract time extension to Water Resources, Inc., of fifty (50) calendar days from December 6, 2010, to January 25, 2011, and approve an additional \$70,000.00 in contingency for JOB NO. 2006-905, CONSTRUCTION OF THE KAPULENA WELL DEVELOPMENT – PHASE 1.

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

Mr. Inaba explained that the additional time for the additional paving was actually a redesign to the access road. DWS ended up redoing a lot of the paving of the access road, vis a vis what the Department initially assumed was needed to get a rig up to the site. After the road was graded, the needed changes were brought to the Department's attention, and DWS worked with the consultant to relocate some of the paving. As a result, some paving was added and some paving was taken away, Mr. Inaba said. In essence, DWS redesigned the access road. The bulk of the time extension was because DWS had to come back, and that affected the contractor's schedule. In addition, when the pilot hole was drilled and the pump was dropped in, the draw-down showed that DWS needed to drill an additional 100 feet in order to get the desired yield from the well.

The Manager-Chief Engineer said that sometimes in drilling, the driller hits a portion of the aquifer that is tight, and so it does not yield water. The driller then must drill deeper. This situation is not uncommon, he said. When DWS drilled the extra 100 feet, in the present case, the yield was good and therefore, the well was what DWS expected.

Mr. Meierdiercks asked where most of the contingency money of \$62,852.00 was spent. He noted that DWS was requesting an additional \$70,000.00. He asked if most of the money was being spent on the roadway, or on the extra 100 feet of drilling.

Mr. Inaba said that there was an initial change order of \$47,000.00, so most of the money was spent on the road. In putting in the change order, DWS deducted some paving work also, but the net amount was \$47,000.00. The following change order was for the additional drilling and testing. DWS had to run another pump test to make sure the yield would be okay, he said. That was approximately \$38,000.00. What basically happened is that DWS used up all of the contingency funds, so what the Board sees in this Recommendation is the \$62,852.00. The proposed change order is over and beyond the existing contingency, he said. That includes the additional reaming and casing of the extra 100 feet. DWS has to do these items, which are *per contract* line items.

Mr. Reynolds said he did not understand why the Recommendation is to add to the contingency by \$62,852.00, and in the next sentence, to approve additional funds not to exceed \$70,000.00. The request should be for \$63,000.00, he said. This is already a contingency extension, so Mr. Reynolds wondered why put a contingency on a contingency. If the contractor does not know what he needs, the contractor needs to go back to the drawing board and ask for what he does need, Mr. Reynolds said.

Mr. Inaba said that basically, what DWS knows is that the proposal to increase the contract amount for the additional reaming and casing of the well will exceed the contract by \$62,852.00. That amount is over and beyond what DWS currently has in the contingency. The reason that DWS is requesting \$70,000.00 is to provide a small cushion, to take care of any minor unforeseen things. Requesting it now would alleviate the potential need to come back to the Board for additional money, which could delay the project.

Mr. Reynolds, noting the current austere times, believed that a contractor would delightedly view a contingency fund as money to be spent. There was a 10 percent contingency in the original contract, and this request means upping the contingency by \$62,000-plus, and adding even more contingency on top of that, he said. The contractor should have to come back to the Board with the right amount, Mr. Reynolds said.

Mr. Inaba said that the \$62,852.00 is the right amount for the work that the contractor has to do. DWS is asking for the little cushion to cover any small, unforeseen items, or else risk having to stop the contractor. This could mean a month or so delay, for which the contractor may claim for, he added.

Chairperson Mukai noted that DWS applies a 10 percent contingency to all of its contracts. By increasing the contingency in this case, the Department *knows* it is spending the \$62,852.00, so that cannot be considered a contingency now. It is more like the **amended contract amount**. By adding a 10 percent contingency to the \$62,852.00, the amount comes to \$70,000.00. Therefore, this is adding a 10 percent contingency to the amended additional contract amount, which is increased by \$62,852.00, he said.

Mr. Meierdiercks said the technical date on this contract is December 6, 2010, so that if the Board does not approve this Recommendation, the contractor will not finish the work on time, plus the Department will not have enough money to pay the contractor for it.

Mr. Greenwell expressed confusion at the way the request was worded.

Mr. Mukai agreed that it is confusing to himself, a layperson. He would word the request to say that the contract amount increased by \$62,852.00, and that the Department is requesting to increase the amount by \$62,852.00 with a 10 percent contingency, bringing it up to \$70,000.00.

The Manager-Chief Engineer explained that the Department is basically requesting two things:

- that the Board approve the time extension by 50 days because it is justified;
- and that the Board take \$70,000.00 and put it into the contract to pay \$62,852.00 for what DWS has already spent, plus a little extra in case something happens so that the Department does not have to stop the contractor and come back to the Board for more money.

Mr. Inaba requested a correction to the Recommendation, which contained a typo on the end date. This would correct the end date to January 25, **2011** (instead of January 25, 2010).

Chairperson Mukai said that called for an Amendment to the Main Motion.

AMENDMENT TO MAIN MOTION: Mr. Meierdiercks moved to amend the Motion to have a completion date of January 25, 2011; seconded by Mr. Perry.

Chairperson Mukai asked if there was any discussion on the Amendment to the Main Motion, which corrects the Motion to read: "December 6, 2010 to January 25, 2011."

ACTION: Amendment to Main Motion carried unanimously, by voice vote.

Chairperson Mukai then called for the question on the Amended Motion.

ACTION: Amended Motion carried by a voice vote of eight (8) Ayes and one (1) Nay (Mr. Reynolds).

#### SOUTH KOHALA:

#### A. INTER-GOVERNMENTAL AGREEMENT BETWEEN THE STATE OF HAWAII – DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE COUNTY OF HAWAII – DEPARTMENT OF WATER SUPPLY: REGARDING DEDICATION OF WAIMEA EXPLORATORY WELL:

The Water Board approved an inter-governmental agreement between the Department of Land and Natural Resources (DLNR) and the Department of Water Supply at the September 28, 2010, Water Board meeting. However, the State is requesting changes to subject agreement.

Mr. Masuda asked that this Item be deferred to the December 21, 2010 Water Board meeting, because negotiations on the agreement are still ongoing.

NORTH KONA:

**A. PROFESSIONAL SERVICES AGREEMENT – KONA OCEAN VIEW IMPROVEMENTS:**

On November 27, 2007, the Water Board approved the subject project and Professional Services Contract, as the Department will be administering this project. This project was initiated by the County Council's Improvement District process, and consists of the installation of a new water system meeting the Department's Water System Standards, to serve about 81 lots within the subdivision. DWS is applying for funding through USDA's Rural Utilities Water and Waste Disposal Loan and Grant Funding Program.

In order for DWS's application to be considered under the USDA Rural Utilities Service Loan and Grant Funding Program, DWS must procure the services of a recognized bond counsel.

The Department is to get reimbursed for the legal fees through the Improvement District process.

- Bond Counsel estimate: \$35,000.00

The Manager-Chief Engineer recommended that the Board approve a professional services contract subject to results of the procurement process, which is budgeted within the cost of the Improvement District. It is further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval of Corporation Counsel.

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

The Manager-Chief Engineer said that he had gone before the County Council in Kona last Tuesday to propose the improvement district, and on Wednesday night, there was a community meeting in Kona to inform the community about the improvement district. He said that this Item is to provide for bond counsel to do the bond work necessary for the improvement district process. When the improvement district goes ahead, the amount that the Department will spend on bond counsel will be reimbursed from the improvement district bond float.

Mr. Meierdiercks noted that this involves the subdivision up mauka Kona, on the upper road just before Makalei Golf Course on the makai side.

The Manager-Chief Engineer said that some people call it the Pu'ukala Subdivision, but the proper title is Kona Oceanview Properties.

Mr. Kaneshiro asked if this was the first time that DWS had gotten into the improvement district process.

The Manager-Chief Engineer said no, DWS has done many improvement districts. This is the first time that DWS has contracted with the bond counsel. Up to now, the County has done it, but this time the County asked DWS to get bond counsel. The money will be reimbursed to DWS once the bonds are floated and the money is collected.

Mr. Kaneshiro said it is really good when the people who are benefiting participate in putting together the improvement district plan.

The Manager-Chief Engineer said the community members at the meeting in Kona were overwhelmingly in favor of the improvement district going forward.

Chairperson Mukai asked if there was any possibility that the bond would not be floated.

The Manager-Chief Engineer said it is really the Council's decision.

Chairperson Mukai asked, if the Council decides not to float the bond, would DWS be out the \$35,000.00.

The Manager-Chief Engineer said no, in that case, the project would die. However, the Council has already passed a Resolution to have this improvement district done.

ACTION: Motion carried unanimously by voice vote.

MISCELLANEOUS:

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

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

- Discussion/action on vehicle take-home policy.
- Discussion of DWS's cash handling procedures and proposed changes.

Mr. Taniguchi said he had no report this month because the Committee was unable to meet. He said there will be a report at the December Water Board meeting.

**C. ENERGY MANAGEMENT ANALYST UPDATE:**

Ms. Myhre covered the following areas:

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

On the clean-up, Ms. Myhre said the final site inspection took place a couple of weeks ago, with HELCO and DLNR on hand. DLNR is fully satisfied that the site is totally cleaned up. HELCO prepared a Phase 2 Environmental Assessment, which was passed along to DLNR. HELCO is drafting a letter to the Manager-Chief Engineer that HELCO is out of there and done with the site. On December 10, DWS locks will be installed on all equipment, gates, etc. The end of the lease is December 13, 2010, she said.

Ms. Myhre said that DWS has applied for the DLNR lease, which was slated to be on the DLNR Land Board's Agenda on December 10, but with a new gubernatorial administration coming in, etc., it is unclear right now when it will be on the Land Board Agenda. The lease application will probably be on the Land Board's January Agenda. This will not put DWS's lease at risk, since no one else is challenging it or applying for it, Ms. Myhre said.

Mr. Taniguchi asked whether a dollar amount for the lease had been discussed.

Ms. Myhre said that DWS has asked for free rent for three years, or until DWS can actually get a wind farm constructed before the three years is up. DWS is not looking at paying any rent, she said. The lease application has been submitted to various agencies for comment.

Regarding the Green Initiatives Report, Ms. Myhre pointed out the Energy to Pump Water graph on Page One, which shows how many kilowatts of electricity are needed to pump a gallon of water. A graph on Page Two shows Energy Use by District, and another graph shows Fuel Purchasing by District.

The Energy Advisory Commission, which meets tomorrow, will focus on Water Conservation, and include a report by DWS. The Commission will be submitting a recommendation to the Mayor in the next few months, Ms. Myhre said.

The Green Team meets in December, so there was nothing to report at this time.

Chairperson Mukai asked if pumping is higher in 2010, whether that was due to the drought situation.

Ms. Myhre said that pumping was about the same. She noted that Kona energy use is decreasing, since a high in March; it was not clear why it decreased. It could be due to rain or to tourism. In Hilo and Kohala, the energy use was about the same as in 2009. Puna energy use was slightly higher compared to 2009. Hāmākua was higher, which is due to the Haina well situation. She noted that the Y-axis on each graph varies, so the numbers are different scales for each graph. In Ka‘u, DWS is using a lot more energy, but looking at the actual numbers, it is not really that much.

The Manager-Chief Engineer said Ka‘u is pretty self-explanatory because everybody knows how dry it has been out there.

Ms. Myhre said it was because the wells there are being run a lot more.

Mr. Perry asked what is driving these changes in energy to pump water.

Ms. Myhre said it was mainly due to leak detection. When a leak is detected and repaired, the energy use will drop, because it will take fewer kilowatts to pump more water.

The Manager-Chief Engineer said the slight deviations also depend on when the readings are taken.

Chairperson Mukai said that perception is everything, and suggested that Ms. Myhre draw up a comparison of DWS’s energy use prior to the introduction of the leak detection program and the hydro-plants in Kona, with energy use now. It would be good to show DWS having taken the initiative to do the hydro-plants and the leak detection program, and show how energy use is since they were introduced, he said. He said he was thinking of looking back three years.

The Manager-Chief Engineer reported that he had met with Ms. Myhre on her latest project, which is to investigate the feasibility of putting photovoltaic panels on all of DWS’s baseyards and the main administration building at Waiākea Villas. This project will probably take a year or so, he added.

D. **MONTHLY PROGRESS REPORT:**

No discussion.

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

Mr. Taniguchi asked Mr. Sumada how the Department treats the interest that comes in.

Mr. Sumada said it goes into General Account.

Mr. Perry asked what the 2010 G.O. Bond is.

Mr. Taniguchi said it was a General Obligation Bond.

Mr. Perry asked if this was the bond issue that is currently under discussion by the County Council.

The Manager-Chief Engineer said no, the current bond issue under discussion is the one for 2011. The 2010 General Obligation Bond has nothing to do with the one that the Council is reviewing for 2011. He noted that DWS has the right to float its own bonds as *revenue bonds*, based on DWS’s ability to generate revenues. However, DWS has always piggy-backed with the County on general obligation

bond issues instead. By doing so, DWS gets a better deal, cheaper interest rates, and financially it is better for DWS.

Mr. Taniguchi asked if any of DWS's projected 2011 bond issues are part of the discussion at the County Council now.

The Manager-Chief Engineer said that DWS was looking to piggy-back with the County for a \$15 million general obligation bond.

Mr. Sumada said that it may come up as part of the Council's discussion, but it is not necessary at this point.

Mr. Taniguchi thanked Mr. Sumada for including the Accounts Receivable Aging Summary in his Financial Report. He asked whether the \$4.6 million was the total receivable amount.

Mr. Sumada confirmed that the \$4.6 million was the total.

Mr. Taniguchi asked if it was correct that roughly 28 percent of that amount was delinquent over 91 days.

Mr. Sumada confirmed this.

Mr. Taniguchi asked at what point DWS writes the delinquencies off.

Mr. Sumada said that at some point in the delinquency, the account is sent to a collection agency, which keeps the account for seven years. The delinquency stays on DWS's books in the meantime. If after seven years the collection agency is unable to collect anything, DWS writes the delinquency off.

Mr. Taniguchi said he thought the fact that 28 percent of total receivables are delinquent, is alarming.

Mr. Sumada said that it is not as bad as it seems. He noted that the Aging Summary represents a lot of raw numbers, without adjustments.

The Manager-Chief Engineer said that leak adjustments are a major part of those numbers.

**F. MANAGER-CHIEF ENGINEER'S EVALUATION:**

Chairperson Mukai noted that today is the deadline for submitting the evaluation forms to the Secretary. He asked the members to give the Secretary their forms, so that the Chairperson can compile the results for the December meeting.

The Manager-Chief Engineer explained that the change in his title (from Manager to Manager-Chief Engineer) came as a County Charter amendment which passed on Election Day, and which became effective immediately. The reason for the change in title was to make it consistent with the counterparts on Kauai and Oahu.

**G. MANAGER-CHIEF ENGINEER'S REPORT:**

The Manager-Chief Engineer provided an update or status on the following:

2. Palani Road Transmission Waterline Project – *Covered earlier in the meeting.*
3. Hawaiian Ocean View Estates Project – The project is in the permitting phase. Public Works has already approved the project, and the project is now awaiting permits such as grading permits from the Department of Health. The waterline from the tank to the fill station has been installed. As soon as the contractor has the permits to do the fill station and the well site, he will resume work. The contractor is aware of DWS's desire to complete this project as soon as possible.

4. Haina Well update – The Haina Well should be back on-line this Friday, according to Mr. Young. Fortunately, DWS was able to use the well that the state drilled above the Hospital in Honoka‘a, and the Department was able to meet the demands of the area.
5. County of Hawai‘i’s Water Spigots Project – The project is in the process of being awarded by the County. This is one of the projects that DWS has done for the County. The Board has no jurisdiction over this project because the monies are handled by the County. DWS opened the bids and the recommendation goes to the County to make the award. DWS will monitor the project, as well as provide the inspection and logistics on behalf of the County.

Regarding the Hawaiian Ocean View Estates Project, Mr. Harai asked what the outcome of Representative Bob Herkes’s Resolution was.

The Manager-Chief Engineer said DWS has heard nothing about the outcome, and noted that DWS submitted a lengthy report regarding the project.

6. Public Information and Education Update – Ms. Aton noted that 30-40 people attended the recent Pu‘ukala community meeting in Kona, and it was good to have water at the forefront of so many people’s minds. The Water Education Teachers Training session slated for November 6 was postponed due to insufficient numbers of registrants. She noted that 13 people signed up, but 15-20 people are needed. The training will take place on January 29, 2011 instead. Hualālai Academy requested a presentation and meetings with their teachers. The dates for the 2011 Hawai‘i Water Works Association (HWWA) conference is set for October 12-14, 2011. The Keauhou Beach Resort is again looking competitive as a venue. Ms. Aton is now working on the DWS calendar and is planning the Kona Water Roundtable session for January. Ms. Aton will be on vacation next month, and so will not give a report at the December Board meeting. She suggested that at the January meeting she might offer the presentation on public information she gave at the HWWA meeting earlier this year.

#### H. **CHAIRPERSON’S REPORT:**

Chairperson Mukai said he was surprised to see the Manager’s new title on the ballot among other Charter amendments.

He reminded members to get their evaluation forms to the Secretary as soon as possible so that he could compile them and report on the results at the December meeting.

#### **ANNOUNCEMENTS:**

##### 1. **Next Meeting:**

The next meeting of the Water Board will be held on December 21, 2010, at 10:00 a.m. at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI. This will be preceded by a Public Hearing on the Power Cost Charge, at 9:45 a.m. at the same venue.

Chairperson Mukai mentioned that the Tentative Meeting Schedule for 2011 was included in the Board members’ packets. He asked that the Board review the schedule, and noted that every third meeting will be in Kona.

The Secretary asked whether the Board could confirm the venue of the January 25, 2011, meeting.

Chairperson Mukai confirmed the following:

##### 2. **Following Meeting:**

The following meeting of the Water Board will be held on January 25, 2011, 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.

*(The Chairperson called a five-minute break at 11:45 a.m. Meeting resumed at 11:54 a.m.)*

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

**A. WATER SERVICE ACCOUNT NO. 85795490-10 (TMK 7-5-022:020):**

*(This item was deferred from the October 26, 2010, Water Board meeting.)*

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 were Ms. Pamela McLaughlin's appeal of the amounts shown due and owing on account #85795490-10 and consequently, the appeal of the shut-off notice dated September 13, 2010, for failure to pay said amount.

This hearing was set pursuant to Ms. McLaughlin's verbal request of September 16, 2010.

*(The following proceedings are recorded verbatim.)*

**MR. MASUDA:** Calling the Case in the Matter of Pamela McLaughlin. This is Account No. 85795490-10 (Tax Map Key 7-5-022:020). The matter before the Board is going to be presented. Parties, can you state your appearances? Your name?

**MS. MCLAUGHLIN:** Pamela McLaughlin.

**MS. LUGO:** Deputy Corporation Counsel Molly Lugo, for the Department of Water Supply.

**MR. MASUDA:** I would advise the panel, this is a Contested Case Hearing made and handled under Chapter 91. The level of burden of proof is preponderance, so there must be a showing of preponderance of the evidence. And the Appellant, Ms. McLaughlin, has the burden to show that.

**CHAIRPERSON MUKAI:** For us laypersons, preponderance? I kinda have a problem with big words, okay?

**MR. MASUDA:** Preponderance of evidence...

**CHAIRPERSON MUKAI:** Thank you very much.

**MR. MASUDA:** Preponderance of evidence is the standard level of evidence, or proof, required for any civil matter. As a Chapter 91 hearing, this is a civil matter. You just need to think of it as *more likely than not*. Okay?

**CHAIRPERSON MUKAI:** Okay.

**MR. MASUDA:** So some people say it's 51 percent, if you wanna look at it that way, versus *proof beyond a reasonable doubt*, which is a criminal standard. That is not the standard to be applied here today. What's gonna happen is, as I informed the parties, is that, as the moving party, Ms. McLaughlin will have the first opportunity to present evidence, as well as an opening statement. I believe she is waiving her right to an opening statement. Is that correct?

**MS. MCLAUGHLIN:** Sure.

**MR. MEIERDIERCKS:** I have a question. Can we have background on this, instead of just getting evidence? Can we have a background of what it was, how much it was? I mean...

**MS. MCLAUGHLIN:** I brought that with me.

**MR. MASUDA:** That's gonna be part of her testimony. Ms. Lugo, do you want to have an opening statement?

**MS. LUGO:** Maybe for the Board's information, it's up to Ms. McLaughlin, but maybe she wants to give just a brief statement of why we're here, and then I can explain. I think that might put it into context for the Board a little better, okay?

**MR. MASUDA:** Okay. We're just going through the procedures at this point. What's gonna happen is that Ms. McLaughlin will have the opportunity to present her evidence and witnesses, followed by Ms. Lugo. At the end of that, there will be time for rebuttal witnesses, if necessary. And I've informed both of them, with the Board's permission, of course, I can't see having a closing statement beyond five minutes for each side. The closing statement is also known as your summation or summary, where they can re-summarize their case. So right now, I guess it's gonna turn out to be kind of an opening statement anyway, since it's a summary.

**MS. MCLAUGHLIN:** Okay. Hi, I'm Pam McLaughlin. My husband's Lorimer McLaughlin, and my problem is pretty miniscule compared with what you guys have been doing here, so I feel kind of foolish. But it's important to me, so that's why I'm here today. I bought this house, my husband and I bought this house, 10 years ago on Kalawa Street, and my intent is to show that over a period of 10 years that we've lived there, there have been some strange readings on my meter, which is 35 years old. And the first time it happened was in '01. We kind of ignored it a little bit, thinking that was perhaps the way it was supposed to be, and as it continued to happen, my normal \$35.00 bill was \$785.00, and I said, whoa, there's something wrong here. And so I contested the bill. And then I went back and got opinions from different certified plumbers and so forth, and I wanted to show the Board that this is one of the original houses in Kona -- in 1964, I think it is. And the same meter's been there the whole time, through all kinds of construction and stuff. And so anyway, my point is that, yes, at times, meters *do* break.

**MR. MASUDA:** Okay, let me cut you off at this point. The issue is the appeal of the shutoff notice dated September 13, 2010.

**MR. REYNOLDS:** What's the said amount?

**MS. MCLAUGHLIN:** \$757.00, I think, because I've been paying the normal amount, and they said to put the other aside until I came here.

**MR. MASUDA:** Okay. Do you have anything to add to your opening statement?

**MS. MCLAUGHLIN:** No.

**MR. MASUDA:** (*Refers to the microphone nearest him*) I think it picks up.

**CHAIRPERSON MUKAI:** Yeah, it's facing your way.

**MR. MASUDA:** I think it picks up.

**CHAIRPERSON MUKAI:** You just need to project...

**MS. LUGO:** I guess I'll just point out that the Department's position is that the bill and the subsequent shutoff notice are consistent with the Rules, and there's no indication of a leak or any criminal act, and so there really is unfortunately, no provision for an adjustment in this case.

**CHAIRPERSON MUKAI:** Okay.

**MR. MASUDA:** Understanding that opening statements are just that, opening statements. Evidence that you folks are gonna be considering will now start.

*(Ms. McLaughlin distributes her evidence and exhibits to the Board.)*

**MR. MASUDA:** And you have no objections to the admission (of evidence)?

**MS. LUGO:** No objection.

**MR. MASUDA:** They're all the same, right?

**MS. MCLAUGHLIN:** Yes.

**MR. MASUDA:** And you have no objections to the exhibits?

**MS. LUGO:** No objections.

**MS. MCLAUGHLIN:** I only did 10 and one (of them) for me. There's only nine, so maybe you guys will have to share a little bit. I'm sorry. I should've done more, but I didn't think there were so many guys on this Board. It was quite a surprise. May I start, then?

**CHAIRPERSON MUKAI:** Yes, please. Are you all set? Go ahead, please.

**MS. MCLAUGHLIN:** Okay. My name is Pamela McLaughlin. My husband and I purchased this house 10 years ago. The house was built in 1964. This meter -- I just put the last three numbers, 906 -- has been on there since it was built in 1964. It's 35 years old. In this presentation, I have four sections. The first section correlates to the correspondence between myself and the Water Department, the testing of the meter, and also the certified plumber's inspection, and also the one that I called. I tried both sides, Hilo and Kona, to make sure I had both sides covered. And also, Section 2 is the abnormal readings from March of '01 to January 2010. Section 3 is the Water Department Rules, which is the same as what she (Ms. Lugo) had. Section 4 is the movement of No. 906 meter to the roadside. They moved it, and I put the map, in Section 4, of my property, showing where the Water Department had moved it. And also, in there is my owner-builder permits, because we're doing our own construction. And this part is, my opinion, is 80 percent accuracy under lab conditions shouldn't be acceptable for a 35-year-old meter. Heavy construction on Kuakini and Henry Street might have aided in the damaging of this meter. Access to all of the water connections on this house. Because it's built on the side of the hill, as I just brought pictures here real quick. We just walk underneath our house; we see everything. If there's a leak, we'd know it. So we knew it wasn't a leak. And we do have a building permit, and we replaced every old fixture in the house. I mean, everything's brand new. We did contact both a certified plumber in Kona and Hilo for advice and inspection. I had a plumber come in and inspect our house to make sure there wasn't any problems. And my point was that the Water Department just presumed the damage was on our side of the meter, and I contend, I think it's your meter because this has happened three times. And this is a letter that I sent to Mr. Milton (Pavao) and I was kind of giving him a rundown. We've lived here nine years; we pay our bills on time. Our normal bill is \$70.00 for every two months. And this is really weird because I forgot about this. I was in Nevada, and I got a bill for almost the same, \$700.00 or \$800.00. Normally, it's \$35.00, and I went, ah! And I rented it out as a vacation rental. And so I called the Water Department people and said, my goodness, what happened? You know. So I called the management company, and said what are those people doing? Who's using thousands of gallons of water? And so the guy said, I was just watering the flowers. I kicked him out

the next day. You gotta be nuts. I just got an \$800.00 bill from the Water Department; you cannot use that much water. So at that time, because I was not here, I was not staying here. Just only part-time. I got the deal from the Water Department. I said, well, you know, we'll just call it a leakage, no problem. I said, well, I'm not sure; it could be because I'm not there. So I did. He was a crazy, an idiot tenant from California, you know. He was not the brightest. So anyway, to make a long story short, I didn't think about it much after that. But then, it happened again, in 2010 – this \$800.00 bill, and it seems like it's every four, five years it comes up \$800.00, and there are no leakage. Now, I could've lied and said, oh yeah, we got a leak. And I know, it says here, every three years, in Section 3, it says here that every three years, if you have leakage, that they'll give you an adjustment. But I didn't think it was right to lie. I said, but there was no leak. I mean, we walk underneath our house. It can't possibly be a leak. So I said to Mr. Milton (Pavao), I said, well, I went and I called this guy, Willis Plumbing in Hilo, and I told him about my situation. And he said, well, what happened? Have you been checking your meter afterwards? And I said, yes, I have. And he said...I told him how it just went back down to \$35.00 a month after the \$800.00, \$700.00 bill. So then he said, well, Cris, the manager, I talked to the manager there at the Water Department, and he says, well, there was a slight error in the reading, but it's in your favor. So I told Mr. Willis that he says, look, it tells me this. He said the manager at Willis Plumbing indicated to me the meter was probably malfunctioning. No matter which way it goes, he said, it's malfunctioning, even if it's doing you a favor. So he said, in my opinion, that meter is bad. So I said, well, you can't drive from Hilo to come look at my house. So he gave me, what was his name, Kent Plumbing in Kailua-Kona. And I called him and said, can you come, because I need somebody other than my husband and myself to look through our whole house. And he said, everything's brand new, and he wrote me... and he said, put it on an invoice; I'll pay for you because I can't charge you – I don't feel good, right about it. And he went out and looked at the meter. And he indicated that we're surrounded by condos, and we're one of the original houses in Kona. And he said, well, he said, I don't see any leaks; I know there's no leaks. And I said, well, that's what I thought, too. So, and then, they tested that, and I said, that's it. Get rid of that meter; it's been on there for 10 years. It's 35 years old. There's something wrong with this meter. It can't keep happening three times in 10 years (that) I get \$800.00 bills. The only thing other I could think of was maybe it's "catch up." You know, maybe the thing moves so slow that maybe I caught up with it. So anyway, Section 2, I put the copy of the normal, abnormal readings. The first month, I bought the house in July 2000...and then, I got an abnormal reading on March 1<sup>st</sup> of '01. And then, I got another one. And these are bills, copies, in there in Section 2. And I pointed out where they were so strange. September '03...we jumped in again, \$938.00. I about choked. Usually, we get \$35.00 bills. I mean, something's wrong. And we'd run around and look, and no, everything's brand new. There's nothing wrong. And then, sure enough, January of this year, it happened to me again: \$757.00. As you can see, when you look (at) '08, '09, it's all \$35.00 bills. So. I'm hurrying. So then, the Kent Plumbing guy told me to start writing down my own meter. He said, you go in there and write down...and I put that in there, on Section 2, which was August 6 at 11:45, and then, August 8, and then I got tired of doing it after a while, because it's no fun reading that meter. I tell you, that's not fun at all. Okay. Section 3. I know it's 30 days, and I always pay; I never missed a billing. I've never been late, but I didn't want to pay the \$700.00 because I just thought, it's gotta stop. Somewhere along the line, it's gotta stop. This has gotta stop happening every few years, these \$700.00 bills. And so I kinda said at the end, because I was desperate, I said, okay, let's call it a leak. Oh, too late, you already told the truth. Well, okay, then, we won't call it a leak, because it really never was a leak. And so it says here, "the 2% fast under conditions," but my question on the Rules was on Page 18, is it 2% either way? Fast or slow? But anyway, that was on the adjustment bill. And in Number 3 on Page 18, it says, "the water delivered beyond the Department's meter." Well, I am responsible for everything past there. Believe me, we've gone through that place with a fine-tooth comb. I brought in a plumber; I called everybody. And they all said the same thing: lady, it's the meter. It's the meter. Okay. Section 4. This is a survey map of our house to kind of give you an idea of how it sits. It sits on the side of a hill. It's, you know, well, you guys are from here, well, most of you are. It's right behind the Mexican Restaurant, on Kalawa Street, on Kuakini and Kalawa. And at one time, this water meter was right there, where the rock wall was, and it had been

kinda damaged and stuff, so the Water Department decided at that time that they were gonna move it out to the Kalawa Street. And it was the same meter. A new meter was not put on. And at the time, I kinda questioned, hey, maybe start with a new meter here, you guys. It's 35 years old, but they put the same meter, and put it out there on Kalawa Street. And behind that is just the building permit, to show that we always get our building inspections. And behind the building inspection, it shows where we're adding the new bathrooms and new showers. Everything is brand new in that house. From the day we actually, the second year, we put everything brand new in there. So I knew, as you can see by the picture, that's my husband, tore up the whole underneath of that place and we checked every... And you know, my husband pointed out some of the old pipe, plumbing. You know, we got rid of a lot of that, the whaddyacallit, the metal? Iron, whatever?

**MR. REYNOLDS:** Galvanized.

**MS. MCLAUGHLIN:** Yeah, the old stuff. I'm just saying that I've had two different certified plumbers tell me it's the meter. And that's the best I could do. I'm sorry I took up everybody's time this much, but I tried. I didn't quite understand the process, so I sued the Water Department. But the judge said I couldn't sue you, so I said, oh, okay. I guess I should've read all the print down at the bottom, but I didn't. So then, that's when this nice young lady said, then, you gotta go in front of the Board. And I really didn't wanna do this. It's not just the money; it's the point. It was a 35-year-old meter, and when two plumbers tell me it's the meter, lady, I said, okay. So that's the end of my speech.

**MR. MASUDA:** Now is the time for cross-examination.

**CHAIRPERSON MUKAI:** Mr. Reynolds?

**MR. REYNOLDS:** Okay. What...?

**MR. MASUDA:** No, this is a Contested Case, so you folks have an opportunity to ask questions *after*.

**MR. REYNOLDS:** Okay.

**MS. LUGO:** How long have you lived in that house?

**MS. MCLAUGHLIN:** Ten years.

**MS. LUGO:** When was it constructed?

**MS. MCLAUGHLIN:** 1964.

**MS. LUGO:** But this meter was installed in 2000, when you moved in.

**MS. MCLAUGHLIN:** No, it was the old, original meter, because what happened was, it was a HUD repo, and there was some crazy people living in it. And we didn't want to go near it for a while, so there were real problems. In fact, we chased them all out and cleaned it up.

**MS. LUGO:** But other than the three incidents that you mentioned, the meter seemed to be working fine?

**MS. MCLAUGHLIN:** Right, and doing great. And the new one the guys put in, it's perfect. I've been over there checking it, and it's working just great.

**MS. LUGO:** And in 2003, when you had tenants there, it's possible that it was just abnormally high water usage?

**MS. MCLAUGHLIN:** You know, since I wasn't there, it's hard for me to step up to the plate and say, oh yeah, you know, they did it. So I said, when they offered me the discount, I said, I don't have

\$800.00, so I said, sure. And what happened in '01, I was just under the impression that maybe that, you know, we had just bought the house and... You know, it had a lot of old stuff and stuff, and we were going in there tearing stuff out that maybe, you know, that's a normal water bill... And then, the '03 bill, I knew, because already I had set the precedent where everything was running \$35.00, \$40.00, you know, per month. And then, sometimes it was a little high, but not much. Because it's a house, and my house was the first house ever to be a vacation rental in Kona... Because, before, it was just condos. And so I had kinda very strict limits on how many people could be in the house, because I was afraid somebody would jungle it up...

**MS. LUGO:** So in 2003, you weren't there, so you don't know how much water they might have used up?

**MS. MCLAUGHLIN:** No, because I was just told by the Water Department...

**MS. LUGO:** ...That might have led to the high bill?

**MS. MCLAUGHLIN:** Right.

**MS. LUGO:** Okay, that's all. That was my question. Okay, that's all. No other questions.

**MR. MASUDA:** Now it's time for the case in chief by the Department.

**MS. LUGO:** Okay, I'd like to call my first witness. Thank you, can you please state your name and your occupation, for the record?

**MS. HUDMAN:** Cris Hudman, Department of Water Supply, Customer Service Supervisor.

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

**MS. HUDMAN:** Since 1996.

**MS. LUGO:** Can you briefly describe what your duties are, in that position?

**MS. HUDMAN:** I oversee the customer service section of the Department, which includes meter reading, billing, and maintaining the customer service records.

**MS. LUGO:** As part of your job, do you get involved when a customer has a dispute over a water bill?

**MS. HUDMAN:** Yes.

**MS. LUGO:** According to the Rules and Regulations of the Water Department, what options does the customer have if they believe they have been overcharged?

**MS. HUDMAN:** One of the options that they have is, first of all, we take a re-check reading, just to make sure that our reading is correct. Secondly, if the customer still disputes the amount, what I normally suggest is what we call a "meter bench test." We remove the meter, which the customer thinks has failed and didn't agree with the reading. We replace it with a brand new meter, and we have the customer attend the meter testing or, if they trust us, then we just do the meter testing and give them the results.

**MS. LUGO:** Okay, so under the Rules and Regulations of the Department, are there certain circumstances where an adjustment will be granted, aside from when the meter is faulty?

**MS. HUDMAN:** Yes. Number one, if the customer had a leakage, we allow leakage adjustment once every three-year period, which is only 50 percent of the overage. The other one is if there is a criminal act done to the property, whereby the customer will provide us a police report. And we also have what we call an "in-house" adjustment, where our... what we call a "meter coupling," which is close to the

customer service valve. That thing loosens up and water is registered on the meter. However, it would have to be repaired by a DWS personnel.

**MS. LUGO:** Other than those situations, do the Rules provide for any other basis upon which an adjustment can be made?

**MS. HUDMAN:** No.

**MS. LUGO:** In early 2010, did you become aware that Ms. McLaughlin, the opposing party, had a dispute over charges on her water bill?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And was a bench test ordered of the meter?

**MS. HUDMAN:** Yes. We took a reading on January 12, (2010), which gave her 174,000 gallons, and which she translated into 700-something dollars. I don't have the exact amount...

**MS. MCLAUGHLIN:** Yes, \$757.00.

**MS. HUDMAN:** When in speaking to her, she agreed to a bench test. So we had the meter changed on January 21, 2010.

**MS. LUGO:** And that's normal procedure. When a bench test is ordered, you would take the meter to Hilo, where it's tested, and a new meter is installed at the site?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Now, in 2003, when Ms. McLaughlin had an unusually high water usage, was the meter tested at that point?

**MS. HUDMAN:** No, because she had submitted an adjustment application, a leakage adjustment application.

**MS. LUGO:** So she submitted a document confirming that there had been a leak that she had paid to have repaired?

**MS. HUDMAN:** Yes.

**MS. LUGO:** But there was no question whether or not the meter was working properly?

**MS. HUDMAN:** No.

**MS. LUGO:** Okay. And then, if a customer does have a leak, per the Rules and Regulations, is it their sole responsibility to detect it and get it fixed?

**MS. HUDMAN:** Yes.

**MS. LUGO:** So to this date, has Ms. McLaughlin made any payment toward the delinquent \$757.00?

**MS. HUDMAN:** No, but she just is keeping her current bill.

**MS. LUGO:** But it was due to this non-payment that she was notified that the water service was being discontinued?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And this discontinuation of water service is consistent with the Rules and Regulations of the Department?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Based on her non-payment of the delinquency?

**MS. HUDMAN:** Yes.

**MS. LUGO:** And do you believe that this situation that the Department of Water Supply's Rules and Regulations governing bill adjustment and discontinuation of water service were applied to Ms. McLaughlin in the same way that you would apply them to anybody else?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Can I have one minute, Mr. Chair?

**CHAIRPERSON MUKAI:** Sure.

*(Ms. Lugo confers off-mike with Ms. Hudman.)*

**MS. LUGO:** Do you have...are you familiar with records that would indicate when this particular meter was installed?

**MS. HUDMAN:** Yes. The meter was first installed by Century 21 on July 6, 2000. And Ms. McLaughlin assumed the service on July 10, 2000.

**MS. LUGO:** So is it accurate to say that this meter is approximately 10 years old?

**MS. HUDMAN:** Yes.

**MS. LUGO:** Okay, thank you. I have no further questions.

**CHAIRPERSON MUKAI:** So Craig, what is the process now?

**MR. MASUDA:** No further witnesses? Now...

**MS. LUGO:** I have one further witness. I didn't know if Ms. McLaughlin had any cross-examination.

**MR. MASUDA:** Do you have any cross-examination?

**MS. MCLAUGHLIN:** I didn't know that one was put in, in 2000.

**MR. MASUDA:** Do you want to ask any questions of this witness?

**MS. MCLAUGHLIN:** No, no. I know Cris.

**MR. MASUDA:** Okay, that's a waiver of cross-examination.

**MS. LUGO:** Okay, thank you very much. I'd like to call Mr. Pavao as my next witness. Could you please state your name and occupation, for the record?

**MANAGER-CHIEF ENGINEER:** Milton Pavao, civil engineer.

**MS. LUGO:** Can you briefly explain how the water meter works? How does it register usage?

**MANAGER-CHIEF ENGINEER:** It depends on what type of water meter. The normal residential water meter is a 5/8 meter. We call it a “nutating.” I really don’t ...well, anyway, water flows through it and it nutates and it creates a spin on the shaft that changes the gears. And that causes the reading.

**MS. LUGO:** So, for a layperson, is it fair to say that water needs to flow through the meter for the meter to register usage?

**MANAGER-CHIEF ENGINEER:** That’s correct. Or air.

**MS. LUGO:** Or air?

**MANAGER-CHIEF ENGINEER:** It registers air, too. But basically, water.

**MS. LUGO:** Okay.

**MANAGER-CHIEF ENGINEER:** Because we sell water; we don’t sell air.

**MS. LUGO:** Okay. I’d like to refer the Board to Exhibit 3, which is the Meter Test History, and Item 2, where there’s a little arrow. That’s Ms. McLaughlin’s meter that was tested after abnormal usage that she’s disputing. I’d just like to ask Mr. Pavao to explain the test results, and what those percentages mean.

**MANAGER-CHIEF ENGINEER:** Okay, the test results indicate, before repairs, the initial 74 percent, 84 percent and 100.6 percent, and that’s the different flow rates. Basically, at the first flow rate, it registered 74 percent. In other words, if 100 gallons went through it, it only registered 74 gallons. The next one, it’s indicating 84, which is 84 percent. And by the same logic, 100 gallons go through and only 84 (gallons) are registered. And then, the third, at a higher flow rate, it registered 100 percent, which was accurate. So basically, for the two flow rates, it was registering less than what was actually flowing through it. And according to AWWA, the lower limits exceeded the AWWA limits.

**MS. LUGO:** When you say AWWA, you’re talking about national standards for...?

**MANAGER-CHIEF ENGINEER:** Correct.

**MS. LUGO:** So the meters are tested in accordance with established standards that are accepted in the field?

**MANAGER-CHIEF ENGINEER:** That’s correct. But basically, what’s indicated here is that the meter registered less than what actually flowed through it.

**MS. LUGO:** Okay, so if anything, the meter is running a little slow, but at a higher rate, it’s working 100 percent accurately?

**MANAGER-CHIEF ENGINEER:** Correct.

**MS. LUGO:** Okay. Generally speaking, about how frequently is a residential meter changed?

**MANAGER-CHIEF ENGINEER:** A meter will go accurate for about 25 years.

**MS. LUGO:** Okay, so this meter was installed in 2000, so it’s approximately 10 years old. That’s not unusual, to have a meter 10 years old?

**MANAGER-CHIEF ENGINEER:** No.

**MS. LUGO:** Okay, no further questions.

**MS. MCLAUGHLIN:** I do. I have a question. When I spoke to a gentleman in Hilo about the meter, and I explained to him what was told to me, that actually the meter was running slow, not what it should. And you know, he said that indicated to him that the meter was malfunctioning, if not occasionally. This is why it seems like it's every three years, that we're getting a big jump, or every four years. And he indicated to me that no matter which way it registered, if it was running slow, it's still malfunctioning. So you're telling me that, if it was running slow on the first and the second test, right, 74 and 84? Wouldn't that indicate to you that there's something wrong with the meter?

**MANAGER-CHIEF ENGINEER:** It would indicate there was something wrong with the meter. But the other thing you need to realize, too, is that when we test the meters, we test at different flow rates, so it normally tested at a very slow rate, a very low rate, a lower rate. And then an average rate. But at the two lower rates, very low rates, there was 74 percent and 84 percent. But when you tested the normal capacity of the meter, it was 100.6 percent.

**MS. MCLAUGHLIN:** But you did say there's a possibility that the meter might've malfunctioned because it was going too slow.

**MANAGER-CHIEF ENGINEER:** I can only tell you what I see on the results. If it malfunctioned, it read less than what went through the meter.

**MS. MCLAUGHLIN:** Okay, so if it malfunctioned, reading less through the meter, is it in your wildest dreams, might it be possible that it could malfunction, going too high or just change...? I'm just curious as to why this is happening every four years, three years.

**MANAGER-CHIEF ENGINEER:** Anything's possible, but we've never come across a situation where an older meter registers more than what goes through it.

**MS. MCLAUGHLIN:** Right, because if I had lost that much water... That's what I'm thinking, is I'd be sitting in a swimming pool. That's what I'm thinking, because the direction of the house is... So what I was trying to figure out was... I've got in my mind, where did that water go? If it truly went through that meter, where did it go?

**MANAGER-CHIEF ENGINEER:** I have no idea.

**MS. MCLAUGHLIN:** Okay. Thank you so much.

**MS. LUGO:** I just have one follow-up question, I guess. We're not talking wildest case scenarios, but when you look at the test results, and based on your knowledge and experience and the testing standards, the fact that it tested slow would not indicate to you that it's reasonable to assume it's also malfunctioning, running high?

**MANAGER-CHIEF ENGINEER:** No

**MS. LUGO:** Okay, that's all.

**MANAGER-CHIEF ENGINEER:** No, in fact, contrarily.

**MS. LUGO:** Okay, thank you.

**MR. MASUDA:** Any further witnesses?

**MS. LUGO:** No.

**MR. MASUDA:** Okay, Mr. Reynolds.

**CHAIRPERSON MUKAI:** Mr. Reynolds?

**MR. REYNOLDS:** Okay. Question about the dates. This billing, the most recent, 11/10/09 through 1/12/10? Were you in residence then, or were you absent?

**MS. MCLAUGHLIN:** I was in residence. I didn't live there the first two years.

**MR. REYNOLDS:** So that earlier time, I'm looking at the letter that was directed to you from Mr. Pavao... You weren't there in '03?

**MS. MCLAUGHLIN:** No, I was not living there. Six months out of the year, I lived there.

**MR. REYNOLDS:** And you said you had a plumber come out. I've experienced this myself, so I speak from experience. What did... you said the plumber said there were no leaks. Where did he check?

**MS. MCLAUGHLIN:** Throughout the whole house, because as I showed you on the picture, you basically can walk totally underneath the house. You can see that the toilets... everything...

**MR. REYNOLDS:** Yeah, but what about from where the meter is, and the service coming into the house, which would normally be underground...

**MS. MCLAUGHLIN:** True, but it's all lava. So what happened is, they had a tough time when they moved the meter, in the diagram, here. On the Section Map. When they moved the meter from the side and then they put it out to the road. They had to kinda like jackhammer, you know, because it's all lava. That's why I said, there's not too much dirt there to absorb any water; it's all lava rock. So that's maybe only... ooh, I'm gonna take a guess, 10 feet? You would know if there was a leak. It'd be in my bedroom, because my bedroom is right here.

**MR. REYNOLDS:** Yeah, but I'm talking about the area from the meter to where whatever the pipe is comes into the house.

**MS. MCLAUGHLIN:** We did go... my husband went and you know, we went checking for leaks, thinking that might be a possibility. And when we got back from Las Vegas, that was the first thing we did was look. And when I called the caretakers, this was in '03, I said, where's the leak? And he said, they must've just used too much water, because there's no leak anywhere. And we finally said, okay, foolish tenants, and we kinda just forgot about it. And it wasn't until this episode again in '10, I kept thinking, this is happening three times, and it's always like a space of three, four years, and then you get an \$800.00 bill, \$700.00 bill, something like that.

**MR. REYNOLDS:** Well, were you aware that if you turn off all of the water in your house, you don't have water running anyplace, and you go out and look at the meter, it'll be stationary. It will not be moving. Is that what it does?

**MS. MCLAUGHLIN:** That's probably what...

**MR. REYNOLDS:** So it sounds to me like, if this, assuming this is no fault of your own, then somebody is either tapping into your waterline on your side of the meter...

**MS. MCLAUGHLIN:** Oh, we looked.

**MR. REYNOLDS:** Or somebody's doing something because...

**MS. MCLAUGHLIN:** We thought of that, too, because of all the condos surrounding us. There's only two, three houses on all of Kalawa, and they're the original homes. Everything else is condos. And it was kinda like, we bought the house, there was no billing system for the sewer. I mean, I thought it was free until I got a knock at the door saying hey, sign up. Pay for your sewer. And they didn't even know... they didn't know we were on sewer. So there were a lot of mistakes before we bought the

house. It did come to our attention. We thought that maybe somebody's piped into us or something. But how come it only happens every three or four years? It's not a consistent... And then, you see it stays consistent, about \$35.00 or \$40.00 a month, and then boom! And there's no change in people; there's no change in anything. Again, the first time it happened, in '01, we thought, oh, we're new, it's the house. Maybe that's normal. The second time it happened, it was a tenant. And we thought, you turkeys, and we threw 'em out. The next time it happened, we were living there and we knew exactly...because we'd gone through the whole house, and there's not a possibility...and again, if there was a leak from the meter to where it comes into our house, we would know it. We'd be sitting in a lot of water in our bedroom. So, because there's no dirt there, well, there's a little dirt, not like you have in Hōlualoa so, it was pretty... It just keeps happening every three or four years, and we'd keep saying something's crazy because if it was a leak, we would've known it.

**MR. REYNOLDS:** And it hasn't happened since '03?

**MS. MCLAUGHLIN:** No, no, it happened in '10.

**MR. REYNOLDS:** No, but since '03, now is the first time it's happened since '03? That's seven years.

**MS. MCLAUGHLIN:** We had in '01, '03, and '10.

**MR. REYNOLDS:** You said three or four years, but that's...

**MS. MCLAUGHLIN:** Well, we were thinking three years, and I went through everything; I went through all the bills, I saved them for 10 years, and everything has just been normal. And I thought, wow.

**CHAIRPERSON MUKAI:** You got a question?

**MR. REYNOLDS:** Thank you.

**CHAIRPERSON MUKAI:** Yeah, Mr. Harai?

**MR. HARAI:** You know, you mentioned the leakage. You said you weren't there...?

**MS. MCLAUGHLIN:** '03. In '03.

**MR. HARAI:** No, the current one, here?

**MS. MCLAUGHLIN:** Oh no, I was here. My 93-year-old, my 67-year-old, my 17-year-old. We were all here. And that's the first thing when I saw the bill. You go around like a chicken, like ahhhh! Because it's brand new. You look at and you saw, oh, you know? And that's why I started calling the plumbers and saying, we need another opinion other than us because we're in construction, and we have our own permit, you know, to remodel. And we have a lot of background and experience, so we know what leaks are all about. We don't ignore that stuff. And so we just kept trying to think, why does this keep happening?

**CHAIRPERSON MUKAI:** I have a question for the Department, Milton or anybody from the Department. In regards to a new meter, like this, in your history, how often in your recollection, has there been a time when a new meter has a misreading?

**MANAGER-CHIEF ENGINEER:** Not that I can recall.

**CHAIRPERSON MUKAI:** Yes, sir, Mr. Greenwell?

**MR. GREENWELL:** Back to the Department, I have a question. If you look at this test page here, why is it that the percentage on Ms. McLaughlin's meter is so low, compared to all the other percentages, on the low side. You look at everybody else. Everybody else is running 91 percent, all the way up. But Ms. McLaughlin's one doesn't follow the norm; it's down in the 70's and the '80s. Can anybody explain that?

**MS. HUDMAN:** It depends on when the meter was purchased. Some of the meters purchased may be 10, 20, 15 years older, 25 years. So the percentage is gonna fluctuate. It depends on when the meter was purchased, and like Mr. Pavao said, it depends on what type of meter, because we have several types of meters, several types of brands. So you know, although we do depend on the AWWA standards, some of the meters that was removed for, well, for every meter that we remove out in the field, we test it. Regardless of whether the customer asked or doesn't ask us. But at this stage, I would say it's just that the purchase date varies, so that's why you have this up and down. It depends on when, and how much usage it goes through. Like, she can be using 35,000 gallons. Maybe that's her average, versus someone in Kona, 110,000 (gallons). So there's more wear and tear on that meter, compared to her meter. Or it could be less. It could be that they used, maybe, 10,000 gallons, and she uses 35,000, and you know, so therefore, the percentage of the wear and tear is not as much. I guess it depends on where we get the water from, too, because it has an effect on the meter, wear and tear. Clyde, would you know? No.

**MANAGER-CHIEF ENGINEER:** I think, too, in all our experience, the older the meter is, it'll read slower. In other words, when it reads, it's less that what goes through it. That's been...that's just the way it is, the meters. Because you understand, it's all by gears and movements, and as it gets older, it'll read less. I've never seen an old meter read more than what goes through it.

**CHAIRPERSON MUKAI:** Any further questions?

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

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

**MR. LINDSEY:** Ms. McLaughlin, when you asked the plumbers to come out and take a look at the pipes, did they use any leak detecting devices, or was it strictly visual?

**MS. MCLAUGHLIN:** Mister..., um, the one from Kailua-Kona, yeah. He did. He went over to the meter and checked it to see, and he said there was no leakage. And then he went underneath the house; my husband showed him. He went through the house, checked everything, you know. I mean, he was a nice guy. I offered to pay him and he said no, he said it happens. And I told him what I talked (about) to Mr. Willis, and he said it's correct. If it doesn't work one way, it doesn't matter whether it's too high or too low, there's something wrong with the meter. And he said maybe it's doing "catch up" or something. That's what I thought. I was getting nailed every five years or so. You know, catch up, so...

**MR. LINDSEY:** Thank you.

**CHAIRPERSON MUKAI:** Any other questions? So Craig, the process is that the Board, we, vote on...? Okay.

**MR. MASUDA:** Once you're done asking questions, then it's time for deliberations.

**MS. LUGO:** Are we going to give Closing (Statements)?

**MR. MASUDA:** I'm sorry. You're right. I forgot. The Closing... but let's see if they're done yet.

**CHAIRPERSON MUKAI:** Any further questions?

**MR. LINDSEY:** I'm sorry, if you can indulge me one more minute. You know, it said it was changed in 2001.

**MS. MCLAUGHLIN:** 2000. July 2000. I was under the impression...yeah, I didn't know that. That is the company I bought it from, so...

**MR. LINDSEY:** Is that normal...that they do that?

**MS. HUDMAN:** In this case, the prior owner had closed their account, and if we have no response to whether someone wants to take over the service, we will have the meter removed. In this case, Century 21 came and said I want the meter in, so they paid for the meter.

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

**MS. HUDMAN:** In 2000.

**CHAIRPERSON MUKAI:** I have a question. How was the meter, the previous meter reading, for the previous owner? Anything, any concerns?

**MS. HUDMAN:** Well, for me to compare the previous meter reading, compared to the new tenant...everybody has their own use. So it's unfair for us to compare to the previous holder of the account. In other words, if I take their consumption, her consumption, and compare them, it's just unfair because I don't know what her personal use is, and I don't know what the previous...

**MS. MCLAUGHLIN:** Yeah, the amount of people. I understand there was about 20 people lived in the house prior to me. So yeah, it was a different kind of house.

**MR. HARAI:** Mr. Chairman, you know, on the model, on your model? Is that the numbers, the numbers you have there, are they the model numbers? Like that's 430? 430. Is that the model number of the meter?

**MS. HUDMAN:** Yeah, it's a type of...the meter room uses as a code to determine what type of meter it is.

**MR. HARAI:** The 430?

**MS. HUDMAN:** Yeah, there's 430; there's 310.

**MR. HARAI:** You have 7-10.

**MS. HUDMAN:** It's a T. T-10. T like Tom.

**MR. HARAI:** Do you use that type of meter, or...?

**MANAGER-CHIEF ENGINEER:** Yeah, it's a Trident.

**MR. HARAI:** So on Line No. 2 and Line No. 5, that's the same type of...?

**MANAGER-CHIEF ENGINEER:** Yeah, we have several different makes of meters, yeah?

**MR. HARAI:** But they don't necessarily show the age, the difference between the two?

**MS. HUDMAN:** Not on the test, no.

**MANAGER-CHIEF ENGINEER:** The age can be gotten by referencing that meter number.

**CHAIRPERSON MUKAI:** Okay, any further questions? Hearing none, I guess we go into Closing Statements.

**MS. MCLAUGHLIN:** Okay. I thank you, gentlemen, for your time and dragging you, staying here her extra time. I guess it just kept happening so I thought I'd go ahead and go full gauntlet and face you guys. And I hope it can be rectified. I think by having the new meter, because so far everything looks pretty good. I certainly don't want to pay \$757.00, but if I have to, I have to. But I do sincerely think there was some kind of malfunctioning, and we went through so many years of heavy-duty construction on Kuakini. I bought a scooter because I couldn't drive back and forth, it was so bad when they were doing the new road there. And then on Henry, all that new boom, boom, boom. I thought that maybe all the construction might be the problem. We did go into the vacant lots next door, if somebody was stealing something from us. But it's kinda hard to tell because it's all lava, all blue rock. Because if they did it many years before me, I kinda thought, at one time, because the man who built that house that we bought, he built the Mexican restaurant, too. And my husband kept thinking, what if this guy did something, you know what I mean, because you know they have a separate meter. We do know that at one time, it was called The Eclipse. That was quite a party place, and so when we went through the records and stuff, we found that he did build The Eclipse, along with the house, in 1964. So that crossed our minds, too, but we had no way of figuring out how, or where. So anyway, thank you for your time and consideration. And this has been stressful for me, but we do the best we can. I really like the Water Department. They're really good people, so I don't have a problem with that.

**CHAIRPERSON MUKAI:** Craig, I know discussion, I know question time is over, but just jog my memory with one more question. Is it a done deal?

**MR. MASUDA:** No. As long as you also allow whoever makes statement before, also makes statements based on your question.

**CHAIRPERSON MUKAI:** Okay, my question is, you know that line to her home? I know the meter was changed in 2000, but was that line, or that line from...changed also? Is it a new line in 2000? Or was the line from the meter changed, or was it underground?

**MANAGER-CHIEF ENGINEER:** The main pipeline to the meter?

**CHAIRPERSON MUKAI:** No, no. You know, from the meter to the house. Was that changed?

**MANAGER-CHIEF ENGINEER:** We have no knowledge of that.

**MS. MCLAUGHLIN:** Yeah, they moved it, I think it was in 2005. In 2005, they moved it from the side of the house out to the road.

**CHAIRPERSON MUKAI:** Or they moved the...?

**MS. MCLAUGHLIN:** The whole thing.

**CHAIRPERSON MUKAI:** Who?

**MS. MCLAUGHLIN:** The Water Department wanted it that way.

**MANAGER-CHIEF ENGINEER:** I think it was part of the Kalawa project.

**CHAIRPERSON MUKAI:** So, when they moved the meter in 2005, that's still the meter. But from the meter to the house, how about the pipes?

**MS. MCLAUGHLIN:** It's all new, because that's what we did. You can see the little red spot there. That's where the side of the house is. That was where the meter first was. And then, before we put the

rock wall up...because they were asking me about the rock wall... And I said, well, you know, we'll wait because we put a rock wall all the way around.

**CHAIRPERSON MUKAI:** So from the meter to your pole is new, as of 2005.

**MS. MCLAUGHLIN:** The line. They used the same meter; they just moved it out to the street.

**MANAGER-CHIEF ENGINEER:** It was part of the construction project along Queen K, along that road.

**CHAIRPERSON MUKAI:** So the Department could change the line from the meter to the individual home? That's why I'm asking...that's what I'm asking. I'm asking from the meter to the home, how old is that line? Not the main line to the meter. What I'm asking about is from the meter... I know the meter was changed in 2000, I'm asking from the meter to the residence, how old is that line?

**MS. MCLAUGHLIN:** I'd say five years; I'm guessing.

**CHAIRPERSON MUKAI:** So you replaced it in 2005?

**MANAGER-CHIEF ENGINEER:** The meter was here; the project relocated the meter close to the roadway, so that portion was replaced, but the rest of the line is the same as when the house was built.

**CHAIRPERSON MUKAI:** It's, like, 40 years old, right?

**MANAGER-CHIEF ENGINEER:** Yeah.

**CHAIRPERSON MUKAI:** That's what I'm asking. To the residence, how old is that line? That's what I was trying to get at.

**MS. MCLAUGHLIN:** Okay, here's the house. It's right next to the house, okay? So when they moved it out here, this was all new line.

**CHAIRPERSON MUKAI:** Yeah, but then, but the original meter location to the house is still the old line, right?

**MS. MCLAUGHLIN:** It's in the house; it's actually on the side of the house. It's not underground.

**CHAIRPERSON MUKAI:** Yeah, from where the original meter was, it's still the original line.

**MS. MCLAUGHLIN:** Yes, the original line is still right at the house.

**CHAIRPERSON MUKAI:** Okay, that's what I was getting at.

**MS. MCLAUGHLIN:** Yes, sorry. Sorry.

**CHAIRPERSON MUKAI:** Any further questions?

**MR. MASUDA:** Wait, wait, wait, because I gotta write this up. So, in 2005, they moved the meter closer to the road, correct?

**MANAGER-CHIEF ENGINEER:** Correct.

**MR. MASUDA:** So the new connection from the old meter site to the new meter site, and then from the new meter site to the road?

**MANAGER-CHIEF ENGINEER:** Correct.

**MR. REYNOLDS:** The company you're talking about did that? Because normally, the resident puts their line from the meter to the house, not the Department.

**MR. MASUDA:** Right.

**MR. REYNOLDS:** But the Department did, in this case. So we don't know if they spliced in or what they did, if they put all new...or...?

**MS. MCLAUGHLIN:** Yeah.

**MR. MASUDA:** No, wait, you have to offer (Ms. McLaughlin) another chance to speak again on her Closing if she wants to add anything based on what was asked.

**MS. MCLAUGHLIN:** I don't think there's anything to add. It's just been a menagerie of problems, and I'm hoping, and again, I did go to what I thought were specialists because...I want to say this very quickly, this gentleman helped me...Cris helped me a lot. One gentleman, and I told him that if I ever go before the Board...his name is Calvin. Is he here? He's a sweetie. I mean, I was so confused, and this guy stepped up to the plate, because nobody...I kept calling and leaving messages. And nobody called me back. I mean, oh God, they're gonna shut my water off, you know? So Calvin really did a good job, so I told him I was gonna say he did a good job. He helped me an awful lot so...

**MR. MASUDA:** Now it's Molly's turn to do her Close.

**MS. LUGO:** Okay, I'll be very brief. The Department is asking this Board to follow their Rules. The Rules are very clear about when an adjustment to a water bill is allowed. In this situation, as Ms. McLaughlin has testified and as has been shown, there is no indication that there was a leak, which would entitle her to an adjustment. The Rules are very clear that the customer has the sole control and responsibility for water beyond the Department's meter, and the Department is not responsible for the negligence of the customer or any third party. As Ms. McLaughlin has said, it crossed her mind that it's possible that somebody used the water. The meter tested accurate; if anything, running a little bit slow. The Department's assumption is that water was used, and it's the customer's responsibility, and under the Rules, it's their responsibility to pay for that water. There just is no provision for an adjustment because it seems like a high amount. There's no indication that the water wasn't used, other than Ms. McLaughlin's own testimony. So we're asking the Board to uphold the water bill and the subsequent water shutoff notice, as consistent with their Rules and Regulations. Thank you.

**CHAIRPERSON MUKAI:** So, Craig, Mr. Counsel. Do we just take a vote now? How do we...? I can't remember how we did this.

**MR. MASUDA:** You folks can deliberate, but prior to deliberations, someone has to make a Motion...

**CHAIRPERSON MUKAI:** Okay.

**MR. MASUDA:** To review the merits of...

**CHAIRPERSON MUKAI:** Okay, the chair would like to entertain a Motion at this time.

**MR. HARAI:** I would like to make a Motion, Mr. Chairman.

**CHAIRPERSON MUKAI:** Mr. Harai?

**MR. HARAI:** That the Water Board uphold the Department's view, and that we go along with what they're proposing.

**CHAIRPERSON MUKAI:** Okay, there's a Motion on the floor.

**MR. REYNOLDS:** Can...?

**CHAIRPERSON MUKAI:** Can you repeat your Motion, please?

**MR. REYNOLDS:** I couldn't hear it.

**MR. HARAI:** Yeah, that we uphold the Water Department's, the Department of Water, their views, and go along with their Recommendation.

**CHAIRPERSON MUKAI:** Okay.

**MR. MASUDA:** For the denial. This Motion is for the denial of the appeal.

**CHAIRPERSON MUKAI:** Correct. Is there a second?

**MR. TANIGUCHI:** You gotta have a second before you deliberate, right? Second.

**CHAIRPERSON MUKAI:** Seconded by Art. Okay. Discussion.

**MR. REYNOLDS:** I'm still not sure what we're doing here. It's to deny...?

**CHAIRPERSON MUKAI:** Okay, what happened, basically, is a Motion's on the floor now. Okay?

**MR. REYNOLDS:** Well, I understand that, but what is the Motion?

**CHAIRPERSON MUKAI:** The Motion is basically to agree with the Recommendation of the Corporation Counsel to basically deny the appeal.

**MR. REYNOLDS:** Okay.

**CHAIRPERSON MUKAI:** That's what's on the floor.

**MR. TANIGUCHI:** Okay, so what is the appeal? The appeal is we're not..., I mean?

**MR. MASUDA:** The appeal is asking for relief from paying...

**MR. TANIGUCHI:** From paying the bill.

**MR. MASUDA:** And the shutoff notice.

**MR. TANIGUCHI:** That's it? There's no adjustment or anything? So it's either one or the other?

**MR. MASUDA:** That is according to what the Rules are. Within the Board's Rules, okay?

**MR. REYNOLDS:** You mean the Department Rules; not our Rules.

**MR. MASUDA:** Yeah, the Department Rules. The Rules of the Department.

**CHAIRPERSON MUKAI:** Any comments, discussion? I would just like to make a comment. Based on what I've heard today, I would like to speak in favor of the Motion, because nothing in that I've heard really...like I say... "preponderance of the law,"... that persuades me otherwise. So I would speak in favor of the Motion.

**MR. TANIGUCHI:** So what options do we have? I mean, just one or the other, or...?

**MR. MASUDA:** Well, right now, the Motion has been made and seconded. The option is either to vote Yea or Nay on the denial. Should that fail, then you can make your own, deliberate your own Motion, if you want to.

**MR. REYNOLDS:** Yeah, I'm maybe unduly sympathetic to the appeal, the appellant, having had this happen to me on two different occasions. And I know how frustrating it can be. And I would like to see us do some compromise, rather than just a straight denial. So I will vote Nay on this Motion.

**CHAIRPERSON MUKAI:** Okay. Any further discussion? No? No further discussion? Hearing none, I guess we're ready for the question. Okay, so all those in favor of the Motion, which is to abide by the Recommendation of the Corporation Counsel, which is to deny the appeal. That's the Motion on the floor. Everybody straight? So if you vote affirmative, that means you're denying the appeal.

**MR. REYNOLDS:** Mr. Chairman, I request a roll call vote, please.

**CHAIRPERSON MUKAI:** Okay?

**MR. MASUDA:** It's up to you.

**CHAIRPERSON MUKAI:** Okay, to clarify again...

**MR. MASUDA:** So if anybody...if you're voting Aye, you're voting to maintain the status quo, that there will be no relief granted for the \$700.00 and the shutoff notice, and it'll stay as it is. Okay?

**CHAIRPERSON MUKAI:** Okay, so...Mr. Kaneshiro?

**MR. KANESHIRO:** Are we still in discussion?

**CHAIRPERSON MUKAI:** Yes, well...

**MR. MASUDA:** Still in discussion.

**CHAIRPERSON MUKAI:** Yeah, we're still in discussion phase. Yes, sir?

**MR. KANESHIRO:** You know, I've been looking at the information that has been presented to us, and it's very unusual for, if the meter was malfunctioning, why does it malfunction periodically? Why doesn't it, if it malfunctioned, it should malfunction, meaning that if it malfunctions, then it'll keep on malfunctioning until something happens? I look at this, and then, it seems at the beginning, whenever the water use went up, then supposedly it malfunctioned, if you look at this first page. And if you look on the second page, the same thing. When the water...

**MR. TANIGUCHI:** Pressure did...

**MR. KANESHIRO:** Went up...

**CHAIRPERSON MUKAI:** Wait, what are you looking at?

**MR. KANESHIRO:** This is what was presented to us. If you look, as the water use went up, then it meant malfunctioned. On this side, water use went up; it malfunctioned. On this page, water use went up; it malfunctioned.

**CHAIRPERSON MUKAI:** So that's, like, Section 2 of the...

**MS. MCLAUGHLIN:** Of the three different incidents.

**CHAIRPERSON MUKAI:** Ms. McLaughlin's...

**MR. KANESHIRO:** The third one, now, it says, "Replaced 10-year-old (plus) meter." It didn't follow this, so I don't even know what to think. But it seems that, if it would malfunction, it would malfunction, like anything else. If you have a car and something happened, it would malfunction until

you fix it, because this is a mechanical object. And so I...you know...in looking at it, it seems that, whatever's wrong, I can't see why...or whatever...

**MS. MCLAUGHLIN:** Me neither, and that's why...

**CHAIRPERSON MUKAI:** You know, I have another...are you done, Mr. Kaneshiro? I have another comment. I didn't notice that, but I looked at the 2001 and 2002, were in the same months.

**MR. MASUDA:** You know, I'm gonna ask both parties to refrain from making comments during deliberations.

**CHAIRPERSON MUKAI:** Yeah, I just noticed...

**MR. MASUDA:** Unless you're directly asking questions by the parties.

**CHAIRPERSON MUKAI:** Except for the 2000, the other spike up, I guess, and it happened in the same month. And I find that, the question, kind of interesting. Any further questions? Any further discussion? Hearing none, I'll call for the question. A roll call vote was asked for, and granted, so let's do a roll call vote. Doreen?

**SECRETARY:** We'll start down the other end. Mr. Harai? (Aye); Mr. Kaneshiro? (Aye); Mr. Greenwell? (Aye); Mr. Lindsey? (Nay); Mr. Meierdiercks? (Aye); Mr. Taniguchi? (Aye); Mr. Perry? (Nay); Mr. Reynolds? (Nay); and Chairman Mukai? (Aye). Six Ayes and three Nays. Motion carried.

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

**MR. MASUDA:** I'm sorry, once the vote is taken, you can't discuss it anymore, until you recess. In which case, you shouldn't... Findings of Fact, Conclusions of Law, Mr. Chairman.

**CHAIRPERSON MUKAI:** Speak English. What...?

**MR. MASUDA:** Gotta write da pepah.

**CHAIRPERSON MUKAI:** I don't have the foggiest idea.

**MR. MEIERDIERCKS:** You have to say what happened.

**MR. MASUDA:** Usually, it's the prevailing party, unless it's a pro se.

**MS. LUGO:** Mr. Chair, I'll prepare the Findings of Fact, Conclusions of Law.

**MR. MASUDA:** Unless so directed by the Board, then I'll be happy to prepare the Order.

**CHAIRPERSON MUKAI:** Okay, I'm sorry, basically I'm spazzing. What was all that?

**MR. MASUDA:** Usually, the prevailing party prepares the Order, or a lot of times, when it's pro se, then you have your attorney prepare the Order, when the pro se is the prevailing party. That's why I moved, somebody... So do you want me to prepare the Order, or are you gonna have Molly to do it?

**CHAIRPERSON MUKAI:** Um, what's the norm? Wouldn't it be the prevailing party?

**MR. MASUDA:** Either way. I have no problem, because Ms. Lugo is extremely busy.

**CHAIRPERSON MUKAI:** Okay, so please prepare the documents.

**MR. MASUDA:** Okay. As part of the documents that I'm gonna prepare, the Findings of Fact, correct me if I'm wrong, Mr. Chairman. But this is your call: there was no leak shown; there was no evidence provided of any criminal activity or report; and there is no provision for adjustment. And you're also finding that the Board rules that sole control of the water usage from the meter to the customer. Is that correct? What I'll do for the parties is I'll prepare a formal Order, send it out to you folks, and you can then have five days to respond back, on if you agree or disagree with the form of the Order. Okay? At that time, I will look at the thing, and I'll discuss with the Chairman whether they want...it's their Board, whether they want to change it or not.

**CHAIRPERSON MUKAI:** Okay. All right. Anything else? Last comments. I forgot to thank Delan for the longan. Thank you very much. Mr. Perry brought some longans for us in the back. And also, I remember, Mr. Kaneshiro at an earlier meeting brought malasadas and manapua. So thank you very much. Mahalo.

## ADJOURNMENT

Mr. Meierdiercks moved to adjourn; seconded by Mr. Taniguchi, and carried unanimously by voice vote. Chairperson Mukai adjourned the meeting at 1:01 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.*

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