

MINUTES

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

October 25, 2011

Department of Water Supply, Operations Conference Room, 889 Leilani Street, Hilo

MEMBERS PRESENT: Mr. Dwayne Mukai, Chairperson
Mr. Robert Meierdiercks, Vice-Chairperson
Mr. David Greenwell
Mr. Kenneth Kaneshiro
Mr. Bryan Lindsey
Mr. Delan Perry
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: Ms. Kathy Garson, Assistant Corporation Counsel
Ms. Emarie Carvalho, Legal Technician, Corporation Counsel
Mr. Steve Lim, Carlsmith Ball LLC
Mr. Jason Knable, Carlsmith Ball LLC
Mr. Kaimi Judd, Kohanaiki Shores, LLC

Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy
Mr. Kurt Inaba, Engineering Division Head
Mr. Rick Sumada, Waterworks Controller
Mr. Daryl Ikeda, Chief of Operations
Ms. Julie Myhre, Energy Management Specialist
Mr. Keith Okamoto, Engineering Division
Mr. Kawika Uyehara, Engineering Division
Ms. Kanani Aton, Public Information and Education Specialist
Mr. Clyde Young, Operations
Ms. Crestita Hudman, Customer Service Supervisor (arrived at 11:25 a.m.)
Ms. Tennyson Noyes, Cashier I (arrived at 11:25 a.m.)

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- 1) CALL TO ORDER – Chairperson Mukai called the meeting to order at 10:02 a.m.
 - 2) STATEMENTS FROM THE PUBLIC
None.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the September 27, 2011, Water Board meeting.

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

The Chairperson entertained a Motion to approve the Minutes of the October 10, 2011, Special Meeting on the Selection of new Manager-Chief Engineer.

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

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA
(Note: Addendum requires Roll Call Vote)

Chairperson Mukai entertained a Motion to approve an Addendum, 7(B), JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE (MĀMALAHOA HWY TO PALANI NO. 2 RESERVOIR).

ACTION: Mr. Meierdiercks moved to approve; seconded by Mr. Taniguchi. The following roll call vote was held: Messrs. Kaneshiro (Aye), Greenwell (Aye), Lindsey (Aye), Meierdiercks (Aye), Taniguchi (Aye), Perry (Aye) and Chairperson Mukai (Aye). Motion carried unanimously with seven (7) Ayes.

Chairperson Mukai asked that Item 7(A), KOHANAIKI REIMBURSEMENT AGREEMENT -- QUEEN KA‘AHUMANU HIGHWAY WIDENING, PHASE 2, and Item 7(B), JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE (MĀMALAHOA HWY TO PALANI NO. 2 RESERVOIR) be moved to the top of the Agenda.

7) NORTH KONA:

A. **KOHANAIKI REIMBURSEMENT AGREEMENT -- QUEEN KA‘AHUMANU HIGHWAY WIDENING, PHASE 2:**

The developer, KOHANAIKI SHORES, LLC (Kohanaiki), is requesting the Water Board to enter into a reimbursement agreement, under which Kohanaiki shall reimburse DWS for changes to the new 16-inch waterline that will be installed with the Queen Ka‘ahumanu Highway Widening Phase 2 Project. The proposed changes will help improve the flow of water along Queen Ka‘ahumanu Highway in both directions.

The preliminary design has been reviewed, and the contractor, Goodfellow Bros, Inc., established a cost estimate, which Kohanaiki has accepted, and is subsequently proposing to enter into the subject reimbursement agreement with the Water Board.

The Manager-Chief Engineer said that the State Department of Transportation (DOT) wants to improve the highway from Honokōkau Harbor intersection all the way to the (Keāhole International) Airport. As part of those improvements, DWS will install some waterlines within the Right of Way, which DWS is paying for. In addition, Kohanaiki has requested that some changes be made. However, since the DOT is dealing directly with DWS (and not Kohanaiki) on this project, DWS will be doing the work, the Manager-Chief Engineer said. Kohanaiki will reimburse DWS for that portion of the work that pertains to Kohanaiki’s improvements (i.e., the portion that is necessary to provide service to Kohanaiki).

Mr. Inaba said that the current reimbursement agreement is similar to the one between DWS and Kohanaiki last year on the **design** portion of the project. This is a design-build project; DWS agrees to a “not to exceed” amount, and the contractor and Kohanaiki gave DWS the funds to execute the change order, he said. Under the current reimbursement agreement, DWS will receive the funds and DWS will execute the change order with the contractor. This agreement is to do the **construction** portion of the project.

Ms. Garson said she wanted to make clear that there was never a written agreement on the design contract. The current agreement encompasses the design portion because the parties never came to an agreement on the exact terms. Therefore, this agreement encompasses some of the design costs, and construction. She also clarified that the version of the agreement that the Board received is DWS’s version. The developer, Kohanaiki, had some changes that they wanted to request the Board to make, she said. This morning, the Board received the developer’s black-lined version of the agreement that the Board got from DWS. She suggested that the developer might want to explain why they wanted or needed the changes to the proposed agreement.

Chairperson Mukai asked Mr. Lim, the attorney representing Kohanaiki, to summarize the differences between the DWS version and the changes he recommended.

Mr. Lim said that he had made comments on the first version of the agreement, which Ms. Garson had provided to the Board. He said those comments were marked “Draft” on the top right hand of the page, and “Draft dated October 24” on the bottom. This is really a red-line of his proposed changes, Mr. Lim said. Mr. Lim gave the history of the agreement, which is part of the June 15, 1999 water agreement, whose three parties at this point in time are Hiluhilu Development on the Palamanui project, Kohanaiki Shores and the Water Board. The first amendment to the water agreement was dated January 11, 2007. The improvements at hand are all detailed in Exhibit A, Mr. Lim said. There are very detailed plans worked out over the past six to eight months, and this is probably the fourth iteration of the plans in terms of what will go into the Queen Ka’ahumanu Highway to service the project. Mr. Lim said he is pretty comfortable that this is the final design, and that is the reason for his proposed amendments. Turning to the proposed changes, Mr. Lim noted that in the DWS version, Kohanaiki must pay its share of the improvements, and if there are any changes to the improvements that are going to service Kohanaiki’s project, then Kohanaiki will have to pay for everything. Mr. Lim said he does not have a problem with that concept; he only has a problem with the lack of control over the concept. Kohanaiki does not determine what is going to go into the highway, and Kohanaiki does not design the water system. However, these are all requirements that are required by DWS, he said. The big change that Kohanaiki is asking for is that once there are additional, unforeseen costs or changes, Kohanaiki will be responsible for paying the *fair share* pursuant to the mutual agreement of DWS and Kohanaiki. If there is a change later on, for whatever unforeseen reason, Kohanaiki wants to be able to at least **have a negotiation** over that change, for the purposes of this present design that is attached to the agreement, Mr. Lim said. He noted that that is a total of about \$704,523.00 of the Kohanaiki share, which Kohanaiki is committed to pay within 30 days of the execution of the Memorandum of Agreement. That would allow DWS to have the certainty of the money in hand. Kohanaiki would then be able to tell DOT to accept Kohanaiki’s change order for this work, and things can proceed, Mr. Lim said. He said he hoped that this is a reasonable change for the Water Board to accept.

Mr. Taniguchi asked whether Kohanaiki was asking for the right to at least get an explanation if the amount exceeds the original \$704,523.00 due to unforeseen circumstances, etc. He asked if Kohanaiki was also agreeing to pay its fair share.

Mr. Lim confirmed this, saying that within 30 days after the determination of the fair share, Kohanaiki will pay that amount to DWS. He noted that Mr. Inaba had reported at a previous meeting that part of these infrastructure improvements with the highway are to enable DWS to adequately make its

connections to DWS's northernmost mauka-makai connector going through the Palamanui project. Part of these improvements are aimed at better serving DWS's existing customers like the airport and the Natural Energy Laboratory Authority of Hawai'i (NELHA). Mr. Lim said that is why Kohanaiki wants to be able to have that negotiation at the end of the day, because otherwise Kohanaiki would just write the check -- and have no protection. Kohanaiki is pretty comfortable with the design and does not expect anything else to come up, but Mr. Lim said he wants to protect his clients from exposure to undue cost.

Mr. Taniguchi asked for an example of what would constitute a reasonable fair share, and he asked what might cause Mr. Lim to advise his client that it is not a reasonable fair share.

Mr. Lim gave the example of an additional connecting transmission line that DWS wants to put in, where some of the line would get water to Kohanaiki, but where the lion's share would service the entire northern Kona system. That would be the kind of scenario where Kohanaiki would want to be able say, for example, the cost is \$300,000.00, but Kohanaiki's share should be only \$100,000.00; Kohanaiki would want to negotiate that number, Mr. Lim said. Mr. Lim said he was perfectly willing to do this; Kohanaiki wants to have the project go forward, and has a timetable that it wants to go forward on. He mentioned the County park at Kohanaiki Shores that is dependent on the water system going in, which Kohanaiki is very interested in doing.

Mr. Greenwell asked for the Manager-Chief Engineer to comment.

The Manager-Chief Engineer said that DWS always tries to be fair, and has no problems with the true concept of fair share. He said that he thought that the language was reasonable, and DWS has always tried to treat developers fairly. If something is the developer's fault, then the developer pays for it. If something is not the developer's fault, then the developer is not going to pay for it -- it is plain and simple, he said.

Mr. Inaba said that either agreement would have been fine. He said he understands that Kohanaiki wants protection.

The Manager-Chief Engineer expressed confidence that DWS has been really fair with Kohanaiki, and that Mr. Lim knows that.

Mr. Lim said he agreed with this, on the record.

Mr. Meierdiercks noted that with construction contracts, DWS usually has a 10 percent contingency, but he did not see a contingency in this agreement.

Mr. Inaba explained that the contingency is built into the contractor's estimate at this point.

Mr. Meierdiercks said that this was still an estimate, but he did not see a 10 percent contingency here.

Mr. Inaba said that this is a final change order cost, noting that this is a design-build project. In the cost breakdown, it shows that this is the leeway they have to work with.

Mr. Meierdiercks asked if it was already in there.

Mr. Inaba said that it is to account for things like minor design flaws.

Mr. Meierdiercks asked if this was the maximum, and whether it may come in cheaper than this.

Mr. Inaba said no, that is the cost, and Kohanaiki is taking some risk with it because it is a design-build project. Kohanaiki would be responsible for any changes to the original design (i.e., due to something in the original design that does not work). He said that Mr. Lim was referring to possible changes

whereby DWS sees a benefit to the system if DWS adds a connection or changes the line size. That kind of thing would be something above and beyond the contract, Mr. Inaba said. He gave the example of a party that wants a separate connection to their property; that would obviously be out of the scope of the amount in question.

The Manager-Chief Engineer noted that this is a design-build contract, similar to the one in Hawaiian Ocean View Estates. A design-build project takes some of the control away from the governing agency, he said. The reason for doing the design-build is timing. DWS would prefer projects that are the conventional pattern of design first, then build. In this case, the contractor does the design and also does the construction. The contractor is responsible for the price he gave, because theoretically he went through the entire design and priced it out, he said. The contingency should have been built into the contractor's fee, the Manager-Chief Engineer said.

The Deputy said that with a design-build, the contractor and the consultant are one team, and DWS is on the other side. The design consultant works with DWS to make sure that the design is what DWS wants. That is why DWS is paying for everything, he said. The contingency amount is covered in there, he added.

Mr. Kaneshiro noted that there may be some changes, and asked whether there is some type of leeway in the contract or a contingency, on the Department's side.

Mr. Inaba said that DWS did include a contingency on the Department's side, which gives DWS the leeway to have the added changes over and beyond what the contractor originally bid on to design and construct. DWS would have a limited amount to do added changes, Mr. Inaba said.

Ms. Garson requested three revisions to the agreement. She said that normally, DWS works very well with all of the developers, and they are very reasonable. She wanted language that covered instances where the parties do not agree. She asked for the Board's authorization to add a clause to provide for some sort of alternative dispute resolution for times when the parties do not agree. She suggested the Honolulu arbitration group called DPR.

Mr. Lim, introducing Kohanaiki's development manager, Mr. Kaimi Judd, said that he and Mr. Judd will agree to alternative dispute resolution with DPR.

Ms. Garson said that clause would be added. She noted that at the bottom of Paragraph 3, Kohanaiki understands that DWS is not going to process or submit any requests for a change order unless Kohanaiki deposits the full monetary amount caused by Kohanaiki's modifications. Ms. Garson said she wanted to add that DWS is not going to submit a request for change order unless the monetary amount is deposited under any circumstance, not only when Kohanaiki requests a modification but also including when there are unforeseen circumstances. She said this is just a clarification.

Mr. Lim said that was acceptable to him and his client.

Ms. Garson said the third item is a clarification in Paragraph 4. Kohanaiki added the statement that any payments made by Kohanaiki are also going to be credited to the prevailing facilities charges. Ms. Garson wanted to clarify that this is subject to the 24 percent mentioned in the agreement.

Mr. Lim said he agrees with that.

Ms. Garson apologized for making these changes in front of the Board. The parties did not have time to make all the clarifications before the Board meeting; Kohanaiki needed to have this Item on this month's Agenda.

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

Chairperson Mukai asked whether the Motion was just for the amendment or the amended agreement.

Ms. Garson said that there had not been a Recommendation on this Item because DWS did not come forward with a Recommendation. The Motion was to approve the amended agreement, she confirmed.

Chairperson Mukai said he had misspoken earlier about wanting to move up Item 7(B), JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE (MĀMALAHOA HWY TO PALANI NO. 2 RESERVOIR). He said the next Item should be 5(A), JOB No. 2066-899, CONSTRUCTION OF THE OLA‘A NO. 6 PRODUCTION WELL AND 1.0 MG RESERVOIR.

5) PUNA:

A. **JOB NO. 2006-899, CONSTRUCTION OF THE ‘ŌLA‘A NO. 6 PRODUCTION WELL AND 1.0 MG RESERVOIR:**

The contractor, Isemoto Contracting Company, Ltd., is requesting a contract time extension of 21 calendar days. This is the second time extension request for this project.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	5/26/11	11/25/11	183	Delays in receiving approval of the Medium Voltage switchgear submittal from HELCO.
2	11/25/11	12/16/11	21	Delay in receiving test electrical power from HELCO.
Total Days (including this request)			204	

The project completion date must be extended due to delays in obtaining test electrical power from HELCO. The test power was scheduled to be provided by mid-September 2011. However, test electrical power was not provided to the contractor until mid-October 2011.

Staff has reviewed the request, and finds that the extension of 21 calendar days is justified.

The Manager-Chief Engineer recommended that the Board grant this contract time extension of 21 calendar days to Isemoto Contracting Company, Ltd., for JOB NO. 2006-899, ‘ŌLA‘A NO. 6 PRODUCTION WELL AND 1.0 MG RESERVOIR. Upon approval, the contract completion date will be extended from November 25, 2011 to December 16, 2011.

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

Mr. Uyehara said that HELCO was three weeks behind schedule, but as of today, they are supposed to begin testing power in early or mid-November, about three weeks from now. DWS is hoping to test the wells at the end of November.

Chairperson Mukai said that DWS should open lines of communication with HELCO, to let HELCO know how DWS's jobs are progressing. This will let HELCO know when it is time for them to come in. DWS needs to give HELCO lead time because they are working on a skeleton crew. Hopefully, opening lines of communication with HELCO will prevent these kinds of delays in future, he said. If HELCO knows when the projects are coming up, HELCO can adjust its manpower accordingly.

The Manager-Chief Engineer said he had had a discussion with Mr. Jon Arizumi of HELCO about two weeks ago. Mr. Arizumi was unaware of all of these delays, and the Manager-Chief Engineer asked

Mr. Arizumi to help DWS to get everything done on time. Subsequent to that conversation, Mr. Inaba will try to work something out with Mr. Arizumi, the Manager-Chief Engineer said.

Mr. Inaba said that when DWS communicates with HELCO, it is usually a customer service representative who handles things, instead of the person assigned to the project. He mentioned a miscommunication whereby HELCO's field person on the Palani project got the tank site wrong. He said he will be working with Mr. Arizumi.

Mr. Taniguchi said that DWS should keep in mind that the Department is HELCO's biggest customer; DWS should not be dealing with the customer service person. He said that someone higher up in HELCO should be giving DWS attention. He said that he spoke with Mr. Arizumi at the HWWA conference, and Mr. Arizumi agrees with Mr. Taniguchi. Mr. Arizumi is very customer-oriented, but HELCO should have someone higher up give its biggest customer more attention – not the customer service person.

The Manager-Chief Engineer said that he had mentioned to Mr. Arizumi that DWS is indeed HELCO's biggest customer.

Chairperson Mukai said that DWS should work with HELCO to get a HELCO employee dedicated only to handling DWS's requests. He said he also talked with Mr. Arizumi and got a favorable response. He noted that HELCO needs DWS, its biggest customer.

The Manager-Chief Engineer agreed, and said that DWS should give Mr. Arizumi a heads-up when a project is coming up so that Mr. Arizumi can push from his side. He said that Mr. Arizumi apologized a lot for the delays, about which he was unaware.

Mr. Okamoto said Mr. Inaba was trying to set up a meeting with HELCO to find out who can be dedicated to DWS's projects. That person will be invited to DWS's pre-bid and pre-construction meetings.

ACTION: Motion carried unanimously by voice vote.

6) HILO:

A. **JOB NO. 2002-802, CONSTRUCTION OF THE PI'IHONUA RESERVOIR NO. 2 REPLACEMENT:**

The contractor, Isemoto Contracting Co, Ltd., has requested a 139-calendar day time extension. This request consists of additional time to take delivery of the Motor Control Center (MCC) equipment, complete the installation, and make the system operational, and then demolish the existing water tank and appurtenances.

Subsequent to the first time extension request, further revisions were required prior to manufacturing the MCC. This was the main factor behind the delay of delivery of the MCC.

Staff has reviewed the request and finds the 139 calendar days are justified.

This is the second time extension request.

Ext #	From (Date)	To (Date)	Days (Calendar)	Reason
1	12/28/2010	11/8/2011	315	Days required to order the MCC, and complete the remainder of the project including demolition of the existing

				facilities.
2	11/8/2011	3/26/2012	139	Days required to take delivery and install the MCC, and complete the remainder of the project including demolition of the existing facilities.
Total Days (including this request)			454	

The Manager-Chief Engineer recommended that the Board approve a contract time extension to Isemoto Contracting Co., Ltd., of one hundred thirty-nine (139) calendar days from November 8, 2011, to March 26, 2012, for JOB NO. 2002-802, CONSTRUCTION OF THE PI‘IHONUA RESERVOIR NO. 2 REPLACEMENT.

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

Mr. Inaba apologized for not bringing this Item to the Board sooner, when it became apparent that there would be a delay. The delivery of the MCC was delayed by almost three months; this delay was beyond the control of the contractor. There was a long downtime on this project, due to this delay. In addition, when the plans went in for the building permit, the comment came back that the door needed to be revised; a fire-rated door was needed. In the revised specifications, DWS specified a metal door with steel wool core. A further delay came when the supplier said he could not get the door that the contractor ordered; the supplier suggested a metal core door with fiber glass-type insulation. This was acceptable, Mr. Inaba said. Once the contractor started work on the building, the contractor discovered that the rebar for the walls and roof had been stolen from the job site. The tank was also vandalized, as was the electrician’s van. The van’s catalytic converter was stolen as well. Although the MCC is here now, the electrical contractor and the programming technician who have components in that system do not want the MCC installed until the building is secured. Based on what has happened already at the job site, the electrical sub-contractor said they would not be able to get a warranty if they installed the MCC now. Therefore, the contractor is going to wait until the building is completed, before installing the MCC. That is the reason that the contractor is asking for more than 90 days, Mr. Inaba said.

The Manager-Chief Engineer said the job site is above the hospital, off Waiānuenue Avenue. It is tucked away and its isolation lends itself to vandalism, he said. The job site has been vandalized twice already.

Mr. Taniguchi asked about the MCC.

The Manager-Chief Engineer explained that the MCC is a cabinet built to house all of the relays, starters and the rest of the electrical gear that runs and operates the booster pumps, etc.

Mr. Inaba said that to have the MCC “approved,” it needs to be completely installed, tested and certified. If a component is damaged or stolen from the MCC, it is not a matter of being able to just go out and get a new unit.

The Manager-Chief Engineer said that all of the components in the cabinet are linked together, so that if one section is taken away, all of the components need to be redone to make the unit function properly.

Mr. Taniguchi asked how long it takes to install an MCC.

Mr. Inaba said it takes a few weeks to install the MCC, and then the contractor has to tie in all of the external wiring to the MCC. Therefore, it takes at least a month to complete everything. The work is time-consuming, he said.

Mr. Perry asked if he was correct in thinking that the security of the MCC is related to one door. He asked if the door would be adequate. He asked whether there would also be fencing.

Mr. Inaba said the metal door will be adequate. There will be a fence, but someone can jump over it, he said. DWS wants to have the site as visible as possible, without bushes that would shield trespassers.

The Manager-Chief Engineer said that in some cases in the past, the MCC would be put in through the roof by a crane after the doors were installed, because the concerns about security were so great. The MCC is really expensive equipment, he said.

ACTION: Motion carried unanimously by voice vote.

7) NORTH KONA:

A. KOHANAIAKI REIMBURSEMENT AGREEMENT -- QUEEN KA'AHUMANU HIGHWAY WIDENING, PHASE 2:

(This Item was covered earlier in the meeting.)

B. JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE (MĀMALAHOA HWY TO PALANI NO. 2 RESERVOIR):

The contractor, CTS Earthmoving, Inc., has submitted a request for a contract time extension of twenty (20) work days, due to a delay by HELCO, which is being caused by a lack of available materials.

This would be the fourth time extension to the contract.

If approved, the contract completion date will be extended from October 31, 2011 until November 30, 2011. Engineering staff has reviewed the request, and finds that the twenty (20) work day time extension is a reasonable request by the contractor to allow HELCO to obtain materials, get on site and complete their work, as well as allow the electrical subcontractor finish their work after HELCO is done.

Extension #	From (Date)	To (Date)	Days (Work)	Reason
1	8/21/11	9/07/11	12	Add'l Work request by DWS
2	9/07/11	9/29/11	16	Add'l Work request by DWS
3	9/29/11	10/31/11	33	Add'l Work (DWS) & HELCO DELAY
4	10/31/11	11/30/11	20	HELCO DELAY (Materials)
		Total Work Days (incl. this ext.)	81	

The Manager-Chief Engineer recommended that the Board grant this extension of contract time of twenty (20) calendar days, to CTS Earthmoving, Inc., for JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE (MĀMALAHOA HWY TO PALANI NO. 2 RESERVOIR).

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

Mr. Beck said that HELCO has received the materials, but they are already three weeks behind schedule. However, the project is going forward, he added.

Chairperson Mukai said that hopefully, items like this will not come before the Board in the future.

ACTION: Motion carried unanimously by voice vote.

8) KA'U:

A. **JOB NO. 2009-959 (RE-BID), PĀHALA WELL #1 REPAIR:**

The contractor, Beylik Drilling and Pump Service, Inc., has requested a contract time extension of 94 calendar days. This is due to unforeseen events involving vandalism and property damage that occurred in the process of the pump installation. The pump and motor incurred damage during the incident, and required shipment back to the manufacturer for repair. In addition, new power cable and air line tubing needed to be re-ordered.

Note: There is no additional cost associated with this time extension. Material and labor costs shall be covered by the contractor's insurance.

Staff has reviewed the request, and finds that the extension of 94 calendar days is justified.

This is the first time extension request, which revises the contract completion date from September 28, 2011 to December 31, 2011.

The Manager-Chief Engineer recommended that the Board approve a contract time extension to Beylik Drilling and Pump Service, Inc., of 94 calendar days for JOB NO. 2009-959 (RE-BID), PĀHALA WELL #1 REPAIR. If approved, the contract completion date will be revised from September 28, 2011 to December 31, 2011.

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

The Manager-Chief Engineer said this was another site that was vandalized. DWS's well sites in Pāhala are above the old camp in the cane fields, an isolated area which is subject to vandalism.

Mr. Young reported that the contractor was in the process of installing the new pump and motor, and 100 feet of pipe had already been set in the hole with the pump and motor. The vandalism took place in the early morning hours of July 11, 2011. The belief is that more than one person was involved in the incident, during which the fence was cut and the facility was broken into, Mr. Young said. The perpetrators were probably going after the copper in the submersible cable, he said. Mr. Young showed on the overhead projector some photos of the damage the intruders caused. He showed what he called the elevator, which supports the entire column pipe that sits in the hole with the motor. The vandals decided to remove the elevator, and in the process, the pump started to fall into the hole. There were a little over 100 feet of column pipe, or more than 1.5 tons of weight pulling down the cable, Mr. Young said. The falling pump and column pipe pulled down the submersible cable off the mounts, and it slammed against the rig and the discharge pipe. Mr. Young showed the shaft that had supported the cable spool, and noted that some DWS equipment was damaged as well as the cable and the air line in the hole. Mr. Young said the vandals must have just taken off after the big cable spool flew off its mounts. He said the vandals were lucky that they did not get killed. Mr. Young showed some more photos of the damage, including a damaged flow switch, piping, etc. Because of the damage, DWS needs to get new cables and a new air line. The pump and motor have to be sent back to the manufacturer for repairs and testing, a process that takes months to complete.

The Manager-Chief Engineer said it was just fortunate that nobody got hurt in the enormous jolt that occurred after the vandals removed the elevator.

Mr. Young said that a police report was filed, but so far no arrests have taken place. He said he believed that insurance covered the contractor's costs in the incident; it was not DWS's responsibility.

Mr. Taniguchi noted that the Board never got the first time extension request; this time extension request is the second one.

The Manager-Chief Engineer suggested that when the Board has its full complement of nine members, the Board should request a tour of a well site that has a well, a booster pump, a tank and an MCC. Seeing all of these things will make it easier to understand when topics such as pumps and electrical equipment, etc. are being discussed at a Board meeting.

Mr. Okamoto said that DWS could actually have lost this entire well if the pump wedged in the hole.

The Manager-Chief Engineer agreed, saying that had happened in the past.

Mr. Young said if the cable had snapped, the pump would have fallen right into the hole.

Chairperson Mukai asked Ms. Aton if some kind of press release could be done about the well being vandalized, along with the possible ramifications including injury to the vandals.

Ms. Aton asked if the Chairperson meant something educational.

Mr. Meierdiercks said there were pluses and minuses to doing such a press release.

Mr. Inaba expressed misgivings about exposing too many details.

Chairperson Mukai said the press release should not say the vandals went to steal copper, etc.

Mr. Inaba feared that somebody mad at the world might get an idea.

Ms. Aton said it might expose the vulnerability of the site.

The Manager-Chief Engineer suggested posting a sign warning: "Electrical Fence."

Mr. Meierdiercks suggested it say "High Voltage."

Mr. Taniguchi said it was a good idea.

ACTION: Motion carried unanimously by voice vote.

9) 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:

- Possible approval of DWS's vehicle policy, based on modifications following union comments;
- Decals on DWS vehicles;
- Discussion of DWS's cash handling procedures and proposed changes. Discussion may include a possible switchover to Oahu's billing system.

No report at this meeting.

B. DISCUSSION REGARDING DRAFT OF PROPOSED RULE CHANGE REGARDING WATER SERVICE TO CONSUMERS/RESPONSIBILITY FOR PAYMENT OF BILLS:

Ms. Garson said she did not have a chance to discuss this thoroughly with Customer Service. In the meantime, Mr. Sumada had submitted a number of other rules that he wanted to revise, she said.

Ms. Garson suggested that the Board look at a comprehensive revision of the Rules and Regulations beginning in January next year. She noted that the last such revision took place in 2004. She said that in conversations with the Department, there was a desire to revise certain things such as the facilities charge and how developers get credited, etc. Ms. Garson suggested putting the matter off until next year, when there is a full Board and a new Manager-Chief Engineer. At that point, the Board can take a good look at all of the Rules, but may choose to revise the Rules piecemeal. For any Rule change, a Public Hearing must be held. Therefore, it would be easier if the Board went to Public Hearing with a bunch of revised Rules at the same time, she said. In any case, it is the Board's call. If the Board wants to push this particular Rule Change (regarding water service to consumers/responsibility for payment of bills) towards the end of the year, it would be up to the Board to decide.

Chairperson Mukai said he concurred with Ms. Garson's advice to put it off to next year, when his term as Chairperson is over.

Ms. Garson said that if the Board agrees, she will remove this Item from the Agenda, and put it back on the Agenda in January.

C. REPORT OF AD HOC COMMITTEE TO REVISE THE MANAGER-CHIEF ENGINEER'S EVALUATION FORM:

The Water Board's Chairperson of the Ad Hoc Committee to Revise the Manager-Chief Engineer's Evaluation Form, Mr. Ken Kaneshiro, has been looking at a revised Manager-Chief Engineer Evaluation Form.

Mr. Kaneshiro said there was no report. He said that the Board needed to move on this matter before the new Manager-Chief Engineer is on board.

D. ENERGY MANAGEMENT ANALYST UPDATE:

Ms. Myhre reported that she presented at the HWWA conference on energy management best practices, on why the four counties' water departments should partner, and on Hawai'i County's perspective. She noted that she drew a tough time slot, at 3:00 p.m. when many attendees were sleepy. She did get some good feedback from attendees who paid attention to the presentation, she added. Prior to the presentation, Ms. Myhre met with Maui County engineers, who are interested in installing a hydro-generator. She took the engineers to DWS's various hydro-generator sites. Maui is looking into hiring an energy management person, she said.

E. MONTHLY PROGRESS REPORT:

No discussion.

F. REVIEW OF MONTHLY FINANCIAL STATEMENTS:

Mr. Taniguchi asked what caused DWS's receivables to increase so much, noting that it was a huge jump. He asked whether it was a matter of timing of the billing.

Mr. Sumada said yes, in this case it was a matter of timing. He said that it takes two months to bill the entire island so the change in the balance sheet from one month to the next only shows half of the accounts.

Mr. Taniguchi said the receivables had remained pretty constant before, but this time the receivables jumped.

Mr. Sumada said that the number goes up and down; although the number of accounts is constant from one month to the next, the amount that is billed is very different. This can be seen when looking at the consumption that is billed from month to month, he said. It can be 800 million gallons one month, and then go down to 600 million gallons the next month. The fluctuations are of that magnitude from month to month, and that impacts the receivable amount, which is related to consumption.

The Manager-Chief Engineer said that Mr. Sumada had recently done an interesting report about consumption. DWS has had a huge reduction in consumption over the years, which is leading to less-than-desirable revenues, he said.

Mr. Sumada said that the report, which looks at Operating Results for Fiscal Year (FY) 2011, includes an analysis of consumption for the past five years. From FY10 to FY11, consumption dropped about 700 million gallons; in FY10, DWS billed for 9.5 billion gallons and in FY11, it dropped to 8.8 billion gallons. This represents a tremendous decline in consumption. Mr. Sumada said that Ms. Myhre had looked at pumpage over the same period, and the pumpage followed the same trend as consumption. Because consumption plummeted so sharply, the revenues that DWS thought would increase in FY11 failed to increase at all. In fact, DWS lost money in FY11, budget-wise. DWS was expecting to generate \$2.8 million in FY11 to help contribute to C.I.P. construction. However, because consumption fell so much, DWS ended up losing \$400,000.00 for the year, Mr. Sumada said.

Mr. Inaba said that another contributing factor to the decline in consumption was the high level of rainfall in Kona over an extended period recently. That area posted the biggest drop in consumption, he said.

The Manager-Chief Engineer said that another factor is the lack of construction projects, which are a major consumer of water. Construction projects use huge volumes of water for dust control and to keep the job sites clean. With few construction projects underway, that kind of consumption is absent.

Mr. Sumada said that in conjunction with consumption was the Power Cost. Looking at FY11, the Power Cost that DWS paid was \$1.8 million more than the Power Cost revenues that DWS collected. That, along with the decline in consumption, wiped out any revenues that DWS thought it would be able to contribute to C.I.P., he said.

Mr. Taniguchi asked whether the receivables amount includes the Power Cost.

Mr. Sumada confirmed that it does.

Mr. Taniguchi said that the receivables this time jumped by about \$1.7 million, which is a huge change. Therefore, he was just wondering what caused that; all of a sudden, DWS was billing way more than it had been billing. He now understood that it was the timing, and it could also be the Power Cost, that caused the big jump.

The Manager-Chief Engineer said he did not see how DWS could adjust the Power Cost Charge more frequently than every other month, because of the statutory Public Notice period.

Mr. Taniguchi said he was just asking why the receivables jumped so much.

Mr. Meierdiercks wondered whether the Board could use these numbers, assuming they keep going consecutively, to anticipate the Power Cost and raise it accordingly. He said that, after all, it is an actual cost, and it would be over time.

The Manager-Chief Engineer said DWS has an obligation to charge the customer what it costs DWS; he did not think DWS could go beyond that.

Mr. Meierdiercks said that it is an actual cost.

The Manager-Chief Engineer said yes, DWS has to go with the actual cost, but DWS cannot anticipate something and tack it on to customers' bills.

Mr. Meierdiercks said that DWS has a track record of that.

The Manager-Chief Engineer countered that it would not be *actual*.

Mr. Meierdiercks countered that they are actual costs.

The Manager-Chief Engineer said they are *anticipated* actual costs. He asked Ms. Garson if DWS could tack on anticipated actual costs.

Ms. Garson said that DWS would have to revise the formula that the Department is using for the Power Cost.

Mr. Meierdiercks said that is what he meant. If DWS has the statistics that substantiate it, DWS should be able to charge the anticipated cost, because DWS keeps losing it. If DWS keeps losing it, then at least DWS has a track record that it is losing it. In other words, if DWS is not charging enough, DWS had better charge what it can, at least to cover its costs. That, Mr. Meierdiercks said, is basically what it is all about.

The Manager-Chief Engineer noted that sometimes, DWS puts the Public Notice in the paper, and in the process of advertising the Public Hearing, the Power Cost goes up again and DWS is stuck with the rate it advertised. Unfortunately, DWS cannot adjust the Power Cost Charge more frequently, because the timing of the Public Notice will not allow it.

Mr. Kaneshiro said that eventually, DWS will get its money back; the recouping is delayed by about three months, but the money does come back. He asked Ms. Garson if there is a possibility of doing away with the Public Hearings on the Power Cost.

Ms. Garson said no.

Mr. Kaneshiro said the reason he was asking is that no one testifies at the Public Hearings on the Power Cost, and it is wasting the Board's time. He asked if there is a way to tweak the Rules so that DWS can adjust the Power Cost more frequently, without holding Public Hearings.

Ms. Garson said that the requirement to hold Public Hearings is a Statute.

Mr. Kaneshiro noted that his Oahu water bill never mentions any Power Cost increases. As he said earlier, DWS eventually gets its money back. However, the bottom line looks bad for DWS and the delay is not helping DWS, he said.

The Manager-Chief Engineer said that because the Power Cost Charge is considered a rate, and because the Statute says that whenever DWS adjusts rates, DWS must hold a Public Hearing. The solution might be if DWS can factor the Power Cost out from the rate, and not call it a rate. If the Power Cost is not a rate, then DWS will not need to hold a Public Hearing, he said.

Mr. Taniguchi said the Power Cost is just a pass-through.

Mr. Kaneshiro said it is a pass-through of whatever HELCO charges DWS.

Ms. Garson said she can look into the matter; she knows that Honolulu treats the Power Cost differently. She said that she felt it better to play it safe to hold the Public Hearings before adjusting the Power Cost Charge, because the Statute talks about rate increases, etc. She feared that if DWS did not hold a Public Hearing, that the rate adjustment could be considered invalid. She said she would explore the matter, acknowledging that DWS does treat the Power Cost differently than Honolulu does.

The Manager-Chief Engineer asked Ms. Garson whether it would make a difference if the Power Cost was not part of DWS's rate structure, and if that would alleviate the need for Public Hearings.

Ms. Garson said she did not think it would make a difference, saying if you call it a duck, it is still a duck.

Mr. Greenwell asked Mr. Taniguchi and Mr. Sumada about the possibility of setting up an escrow account that would provide a cushion against such shortfalls. He said that when DWS does not receive what it should, DWS is not only losing the money, but also a great deal of interest.

Mr. Taniguchi said that even if there were such an escrow account, it would still come out of DWS's money.

Mr. Greenwell said that at least an escrow account would be earning a return while the money was just sitting there.

Mr. Taniguchi said that would work if DWS had the money, but if DWS collects less, the balance would drop and even possibly go into negative territory.

Mr. Greenwell said if DWS collects less, it could take the money out of the account, and then in the following month if it collected more, it could put that back into the escrow account. An escrow account would at least create a cushion, so that DWS is not always behind.

Chairperson Mukai asked how DWS would create funds to put into an escrow account. The money would have to come from someplace, but the way the formula is written, DWS cannot overcharge money to put into an escrow account.

Mr. Taniguchi said Mr. Kaneshiro's proposal has a lot of merit. DWS should look into doing what Honolulu Board of Water Supply is doing on the Power Cost; this would give DWS the ability to adjust rates without holding a Public Hearing. Honolulu must surely have done due diligence to come up with their rationale, he said. He thought it was a good starting point. Mr. Taniguchi asked Ms. Garson if she could look into it.

Ms. Garson said she would speak to the Honolulu Board of Water Supply's attorney.

G. MANAGER-CHIEF ENGINEER'S REPORT:

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

- 1) Palani Road Transmission Waterline Project – Noting the time extension approved earlier in the meeting, the project is wrapping up and hopefully will be done by the end of the extension period. This project will bring a lot of mauka water makai, and reduce the pumping at the Kahalu'u Shaft. As a result, the quality of the water will be greatly improved for the customers along Ali'i Drive.
- 2) Hawaiian Ocean View Estates Project – Mr. Inaba said that HELCO encountered a voltage problem, and will be going back to the site on Thursday to resolve it. The Manager-Chief Engineer said that once the electrical work is done, DWS can start the pump, do the efficiency test, take the water samples and send them to the Department of Health (DOH). Mr. Okamoto

- 3) Pu‘ukala/Kona Ocean View Properties Subdivision Improvement District Update – DWS will be meeting with the new head of the U.S. Department of Agriculture (USDA) tomorrow. USDA provides a loan/grant program for improvement districts like this one, and is eager to loan money, the Manager-Chief Engineer said. The meeting tomorrow is aimed at seeing how DWS can take more advantage of their loan/grant program. The loans are low interest, and the program is a good one. USDA seems to think that DWS can wrap up a loan program in 60 days; it used to take 9-10 months to get a USDA loan, the Manager-Chief Engineer said.
- 4) Public Information and Education Specialist Update – The Manager-Chief Engineer congratulated Ms. Aton on a very good conference. Ms. Aton said it was a group effort among all of DWS’s divisions. She said that prior to the conference, DWS met with the Ocean View community at a meeting facilitated by Council member Ms. Brittney Smart. DWS gave updates on the construction of the fill station and the water quality timeline, based on when the electrical power would be able to pump up water samples from the well. The timeline runs three months out from the date of the meeting, she said. DWS explained the voltage issues and how the water quality timeline would not start until the power was on and the samples were taken. The community appeared to accept the explanation, she said. Most of the concerns that the community expressed were regarding the fill station road. There were no major concerns regarding the gate hours, she said. The Manager-Chief Engineer said that the community has formed a committee to determine the gate hours; the committee was to meet in about two weeks’ time from the date of the meeting. The community will let DWS know what gate hours the community considers to be reasonable. He noted that there is a residence right next to the fill station, and DWS does not want to disrupt the residents. Ms. Aton said that another community meeting is expected to take place soon.
- 5) HWWA conference report – Ms. Aton reported that there were 115 registrants, with 122 attending the meet-and-greet event and 123 at the banquet. The hotel offered the same food and beverage rates for the conference as they did for the 2009 conference. Attendees expressed appreciation at the diversity of presentation topics, she said. Among the suggestions were a panel of water supply managers from each county and a panel of finance directors from each county. Regarding upcoming educational events, Ms. Aton said there are Career Days coming up at Kalaniana‘ole Intermediate and at the Youth Challenge Academy at the former Kūlani Prison. The Manager-Chief Engineer expressed appreciation to the Board for attending the conference. Mr. Taniguchi complimented the DWS Kona staff for their great hospitality. Mr. Kaneshiro said he was particularly interested in the speaker on watershed protection, and asked the Department if there were any initiatives regarding watershed protection and groundwater recharge. Funding for such initiatives is always a consideration, and he suggested that Ms. Garson talk with the hotel association here to see if they were willing to help with the watershed coalition on a voluntary dollar-a-night fund. Hotel guests would be asked to pay a voluntary dollar per each night’s stay in the hotel, to be contributed to watershed protection. Mr. Kaneshiro said that he had experienced such a fund-raising campaign while staying in Puerto Rico for a coral reef initiative. He said nobody would refuse to pay a voluntary dollar a night, and he thought it was something for DWS to think about. The Manager-Chief Engineer noted that there had been similar bills before the Legislature, but none passed. The Manager-Chief Engineer said that DWS is active in watershed restoration, participating in a number of such groups. DWS has not actively raised funds for such initiatives, but Ms. Aton represents DWS at watershed committee meetings. Ms. Aton confirmed this, noting that she will attend such a meeting in November. DWS is basically continuing to keep the conversation going; it is more at the talking level but the issue of watershed protection is coming to the fore, Ms. Aton said. Mr. Kaneshiro said everything comes down to money, and the dollar a night initiative is something to think about. Mr. Okamoto said that DWS is working with DOH,

- 6) Employee of the Quarter for Third Quarter 2011 – Ms. Hudman, the Customer Service Supervisor, introduced Ms. Noyes, who joined the Department just over a year ago. She said it is most impressive to be recognized like this after such a short time of service. Ms. Hudman said that Customer Service is very proud to have Ms. Noyes as part of the family. Chairperson Mukai said Ms. Noyes should be sure to attend the Board’s end of the year luncheon, among this year’s Employees of the Quarter. Ms. Noyes said it was an honor to work for DWS, and thanked the Board for the recognition.

H. CHAIRPERSON’S REPORT:

No report.

10) **DISCUSSION OF PROCEDURES AND TIME FRAME TO SELECT NEW MANAGER-CHIEF ENGINEER:**

Chairperson Mukai reported that 15 or so letters were submitted to the Board from DWS employees regarding the desired qualities for the next Manager-Chief Engineer.

Ms. Garson reported that on November 1, 2011, the nominations of two new Board members will go before the Planning Committee of the County Council, and the nominations go for a vote in Council on November 16, 2011. Assuming that both of the nominees are approved, they can be sworn in, in time for the November 22, 2011 regular Board meeting. Ms. Garson said that the Board might want to consider holding another Special Meeting in early December; otherwise the only remaining meetings will be on November 22 and December 20.

Chairperson Mukai proposed setting up a date for a Special Meeting in December today.

Mr. Meierdiercks proposed holding the Special Meeting on the second Tuesday of December, which would be on December 13.

Ms. Garson said she would not be available on December 13.

Chairperson Mukai asked whether Wednesday, December 14, would be okay for the Special Meeting.

Ms. Garson said December 14 would be fine. She suggested that the Board hold back-to-back Special Meetings, on both December 14 and December 15. She said it would depend on where the Board is in the interview process. Even if the Board sets aside those two days, it can always cancel the second day if it is unnecessary.

Chairperson Mukai said that December 14 is a Wednesday, and December 15 is a Thursday. If December 15 turns out to be unnecessary, that date can be cancelled.

The Manager-Chief Engineer asked whether the interview process is considered a Public Meeting, with the usual procedures of announcing it.

Ms. Garson said yes, an Agenda has to be posted because the entire Board is meeting.

The Manager-Chief Engineer said that might create problems trying to conduct interviews.

Ms. Garson said no, it would still be an Executive Session; it is still considered a Public Meeting.

Chairperson Mukai said yes, the Board takes public testimony at the very beginning like any Board meeting, and then the Board goes into Executive Session.

The Manager-Chief Engineer asked whether it was the intent to have the two new Board members be part of the interview panel.

Ms. Garson said she would assume so, and that is why she was asking for the two additional Special Meeting days. With the new members confirmed on November 16, their first Board meeting would be on November 22; it will be hard for them to get up to speed that first meeting.

Chairperson Mukai asked the Board if December 14 and December 15 were okay for the Special Meetings. He asked whether the meeting location had to be decided today.

Ms. Garson said the Board could decide before November 22.

Chairperson Mukai proposed deciding on the locations now, with December 14 in Hilo and December 15 in Kona. He said he proposed this because the members living outside of Hilo would otherwise have to stay overnight.

Mr. Meierdiercks said he could stay overnight.

Chairperson Mukai asked what the Board's feeling was on this; he said he felt for the West Hawai'i Board members having to drive over.

The Manager-Chief Engineer said most of the Board lives in East Hawai'i.

Chairperson Mukai said yes, but the two incoming Board members are from West Hawai'i.

Mr. Taniguchi asked if the Special Meetings in December would be for interviews, or if they would be just meetings.

Ms. Garson said she assumed that by that point, the Board would be interviewing.

Mr. Taniguchi suggested waiting to see where most of the applicants are from. If all of the applicants are from East Hawai'i, there would be no sense holding interviews in West Hawai'i.

Chairperson Mukai said the point was well taken.

Ms. Garson said that the location of the December Special Meetings could be set at one of the November meetings.

Mr. Taniguchi said the Board should set the dates of the December Special Meetings now, at this meeting.

Chairperson Mukai confirmed the dates would be December 14 and December 15.

Ms. Garson said the location is to be determined later.

The Manager-Chief Engineer asked Ms. Garson if the interview panel had to consist of the same people throughout the interview process. In other words, if the panel starts with nine members, all of the interview sessions would have to have all nine members in attendance.

Ms. Garson said that would be wise.

The Manager-Chief Engineer said it would be very important that everybody on the Board understands that everybody needs to commit to the interviews.

Mr. Taniguchi asked if that was correct, or whether just the questions all need to be the same throughout the interview process.

Ms. Garson said that the questions must be the same; she believed that it would be wise if everyone were present for all of the interviews because the Board will need to make an assessment of the applicants.

Mr. Greenwell said that if it is that critical that everyone be present at the interviews, the Board had better go home and check their calendars to make sure the dates are okay.

Chairperson Mukai said in a perfect world, it would be good for everybody to be present both days of interviews. However, if it is not possible, it is not possible.

Mr. Taniguchi asked what happens if somebody on the Board gets sick.

Chairperson Mukai said that in a perfect world, everybody should be present both days of interviews.

Mr. Taniguchi agreed with Mr. Greenwell that everybody should go back and check their calendars.

Ms. Garson said that both December 14 and December 15 will be tentatively reserved, and if adjustments need to be made, adjustments will be made.

Mr. Taniguchi asked who the Board should notify as to their availability on December 14 and December 15.

Ms. Garson said that Board members should notify the Secretary on their availability for December 14 and December 15.

11) **EXECUTIVE SESSION RE: PROCEDURES AND TIME FRAME TO SELECT NEW MANAGER-CHIEF ENGINEER:**

The Water Board anticipated convening an executive meeting, closed to the public, pursuant to Hawai'i Revised Statutes, Sections 92-4, 92-5(a)(2), 92-5(a)(4), 92-5(a)(8) and Hawai'i County Charter Section 13-20(b) to discuss interview questions and the interview process for the position of Manager-Chief Engineer, where consideration of matters affecting privacy will be involved, to deliberate or make decisions upon matters that require the consideration of information that must be kept confidential pursuant to state or federal law, or a court order, and for the purpose of consulting with the Water Board's attorney on questions and issues pertaining to the Water Board's powers, duties, privileges, immunities and liabilities. A two-thirds vote, pursuant to HRS Section 92-4, is necessary to hold an executive meeting.

MOTION: Mr. Meierdiercks moved to go into Executive Session; seconded by Mr. Taniguchi, and carried unanimously by voice vote.

Chairperson Mukai called a five-minute break before going into Executive Session.

The Manager-Chief Engineer asked whether he should recuse himself from the Executive Session.

Chairperson Mukai said yes, it would be best if the Manager-Chief Engineer were not present.

(Executive Session began at 11:38 a.m. and ended at 1:17 p.m.)

Ms. Garson said that there was a question about whether the Executive Session Minutes were always going to be confidential. Her understanding was that the Office of Information Practices (OIP) rules say that when the purpose for which the Executive Session was held is gone, that there is a possibility that the Executive Session Minutes become public. In many cases, however, the purpose of the Executive Session will last far beyond, for example, the hiring of the Manager-Chief Engineer. Ms. Garson could not guarantee that the Executive Session Minutes would remain confidential forever; it depends on how the OIP rules apply. However, as an example, Corporation Counsel goes into Executive Session with the County Council at times to discuss the settlement of legal cases. Although a case might settle, Corporation Counsel's opinion is that the details of a settlement must never become public. She noted that no one should ever disparage other people during an Executive Session.

12) **ANNOUNCEMENTS:**

1. **Next Regular Meeting:**

The next meeting of the Water Board will be held on November 22, 2011, at 10:00 a.m. at the West Hawai'i Civic Center, Bldg. G, 74-5044 Ane Keahokalole Hwy, Kailua-Kona. *(A special meeting regarding the selection of the Manager-Chief Engineer will be held on Tuesday, November 8, 2011, at the Department of Water Supply, Operations Conference Room, 889 Leilani Street, Hilo, HI.*

2. **Following Meeting:**

The following meeting of the Water Board will be held on December 20, 2011, at the Department of Water Supply, Operations Conference Room, 889 Leilani Street, Hilo, HI. *(A special meeting regarding the selection of the Manager-Chief Engineer will be held on Wednesday, December 14, 2011, at a venue to be announced. Another special meeting regarding the selection of the Manager-Chief Engineer is tentatively scheduled to be held on Thursday, December 15, 2011, at a venue to be announced.)*

Mr. Perry asked whether the Board could hold its December Special Meetings the week before, on the first Tuesday of December.

Mr. Kaneshiro said he would not be in town during the first week of December.

Chairperson Mukai said that because of a conflict, Mr. Kaneshiro would not be able to attend during the first week of December.

Mr. Meierdiercks asked whether the first Tuesday of December was December 6.

Chairperson Mukai said that it would be Tuesday, December 6 and Wednesday, December 7. He said it did not matter to him whether the Special Meetings were held the first or second week of December.

Mr. Taniguchi said he was okay with the first week of December, too.

Ms. Garson, noting that Mr. Kaneshiro would not be available during the first week of December, asked the Board if it was okay if someone were absent.

Mr. Perry said that it might be difficult for him to attend a two-day session; a one-day session would be okay.

Ms. Garson asked whether the Board could discuss this further at the Special Meeting on November 8. By that time, it will be clear how many applicants there are, and it may be unnecessary to hold a Special Meeting on December 15.

Chairperson Mukai agreed that for now, the Special Meeting will be set for December 14, for further discussion.

13) ADJOURNMENT

Chairperson Mukai adjourned the meeting at 1:23 p.m.

Acting Secretary-Administrative Assistant

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 Jollimore, Secretary, at 961-8050 as soon as possible, but no later than five days before the scheduled meeting. Notice to Lobbyists: If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist. {Article 15, Section 2-91.3(b), Hawai'i County Code} A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration forms and expenditure report documents are available at the Office of the County Clerk-Council, Hilo, Hawai'i.

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