

MINUTES

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

August 28, 2012

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

MEMBERS PRESENT: Mr. Bob Meierdiercks, Chairperson
Mr. Art Taniguchi, Vice-Chairperson
Mr. David Greenwell
Mr. Kenneth Kaneshiro
Ms. Susan Lee Loy
Mr. Bryan Lindsey
Mr. Delan Perry (arrived at 10:30 a.m.)
Mr. Rick Robinson
Mr. Jay Uyeda

Mr. Quirino Antonio, Jr., 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. LeeAnn Crabbe, Queen Lili'uokalani Trust
Mr. Jay Blake, Orchid Isle Auto Center

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy
Mr. Kurt Inaba, Engineering Division Head
Mr. Daryl Ikeda, Chief of Operations
Mr. Rick Sumada, Waterworks Controller
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Analyst
Mr. Kawika Uyehara, Engineering
Mr. Clyde Young, Operations

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- 1) CALL TO ORDER – Chairperson Meierdiercks called the meeting to order at 10:00 a.m.
 - 2) STATEMENTS FROM THE PUBLIC
None.
 - 3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the July 24, 2012, Public Hearing regarding DWS's security deposit.

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

The Chairperson entertained a Motion to approve the Minutes of the July 24, 2012, Water Board meeting.

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

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

None.

5) HĀMĀKUA:

A. **JOB NO. 2011-979, HONOKA‘A DEEPWELL REPAIR:**

The contractor, Beylik Drilling & Pump Service, Inc., is requesting a contract time extension of 42 calendar days. This is the first time extension request for this project.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	10/6/12	11/17/12	42	Increase scope of work to repair motor thrust bearing and to string test the pump/motor assembly.
Total Days (including this request)			42	

The project completion date is requested for extension due to the unexpected failure of the motor’s thrust bearing during repair facility’s inspection on the mainland. The motor was originally sent to the facility for routine inspection. The failure of the motor’s thrust bearing was unforeseen and beyond the control of the contractor. Additional time is required to order replacement parts and to complete the repair.

The scope of work for the project was also increased to include factory string testing of the pump/motor assembly, due to the repair of the motor, and to verify it is operating at factory specifications.

Staff has reviewed the request and finds that the extension of 42 calendar days is justified.

The Manager-Chief Engineer recommended that the Board grant this contract time extension of 42 calendar days to Beylik Drilling & Pump Service, Inc., for JOB NO. 2011-979, HONOKA‘A DEEPWELL REPAIR. If approved, the contract completion date will be extended from October 6, 2012 to November 17, 2012.

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

Mr. Young explained that the contractor was given notice to proceed in April of this year. Shortly thereafter, the pump was pulled. There was an indication that the pump was malfunctioning, and the initial intent was to replace the pump. However, it was deemed to be repairable, so the pump was shipped back to the Mainland to a repair facility. The motor was also sent for an initial inspection; there were no indications of problems with the motor. The repair facility decided to do a dynamic test of the motor, which was not in the original intent of the motor inspection, Mr. Young said. The facility did a “coast-down” test, in which the motor is turned on and timed to see how long it takes to spin down to zero. Ideally, it should take 15 to 20 seconds to spin down to zero, but when they ran the test, it took less than five seconds to spin down to zero. Therefore, it was clear that there was a problem with the motor; it was a good indication that the thrust bearing was bad. There had been no earlier indications of a problem with the motor, Mr. Young said. In summary, Mr. Young said this meant that the project’s

scope of work had increased, to include the repair of the motor (and the testing of the motor), as well as the testing of the pump. For this, Beylik is requesting an additional 42 days. Mr. Young acknowledged that DWS was giving Beylik more work; the extra 42 days is justified, to get the motor on queue, to order the parts, to do the repair, and to test the motor.

Mr. Greenwell asked whether this would have any effect on delivery of water service, and asked whether this time extension would mean extra expenditure by DWS.

Mr. Young said it was within the contingency.

The Manager-Chief Engineer said that DWS has the Haina Well as a back-up, so there would be no problem with delivery of water service.

Mr. Uyeda asked whether it was a submersible or a line-shaft.

Mr. Young said it was a submersible.

Mr. Uyeda asked whether the company that tested the motor could have caused the damage to the motor while it was testing the motor; he noted that the dynamic testing was not part of the initial contract.

Mr. Young said that was unlikely; there was no indication that the thrust bearing was bad.

Mr. Uyeda said that the contractor should be held responsible for the damages, because they performed work (i.e., the dynamic testing) that was not part of the contract. He asked whether that was a possibility.

Mr. Young said that would be very hard to determine, because DWS does not know the condition of the thrust bearing when it left the site.

Mr. Uyeda said he understood that, but the base contract was to pull the pump and repair the pump, not to test the motor. He asked Mr. Young if DWS gave notice to the contractor to proceed with testing the motor.

Mr. Young said yes, DWS gave them permission to test the motor.

Mr. Uyeda asked if that was when it was determined that the thrust bearing was bad.

Mr. Young confirmed that it was during the dynamic testing. The contractor asked Mr. Young for permission to do the dynamic testing, and Mr. Young gave them permission to do so. He said it is a very good test.

Chairperson Meierdiercks asked where the pump and motor were sent for repairs.

Mr. Young said they went to a repair facility in Phoenix, Arizona.

ACTION: Motion carried unanimously by voice vote.

6) NORTH KONA:

A. SECURITY AGREEMENT REGARDING COST-SHARING OF PALANI TRANSMISSION SYSTEM UNDER THE KEAHUOLU LANDS WATER RESOURCE DEVELOPMENT AGREEMENT PERTAINING TO LOTS 1 AND 2, TMK: NO. (3) 7-4-020 (PORTION):

(This Item was deferred at the July 24, 2012, meeting.)

The Manager-Chief Engineer recommended that Water Board approve the subject agreement, and that either the Chairperson or Vice-Chairperson be authorized to execute the agreement, subject to review as to form and legality by Corporation Counsel.

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

The Manager-Chief Engineer noted that this Item had been deferred because the Security Agreement was not attached to the rest of the documents. Since last month, Queen Lili'uokalani Trust (QLT) has submitted all of the required documents.

Ms. Crabbe, representing QLT, noted that the Trust had entered into the Security Agreement with the County of Hawai'i on two of the Trust's different subdivision approvals. Under this agreement, QLT avoids paying money for a surety bond, and instead, uses some of its marketable securities portfolio as security, in the Stock Pledge Agreement. Ms. Crabbe noted that QLT dedicated Well No. 1 back in 1996, and there was never a water agreement with DWS until February 23, 2010. In 2002, QLT dedicated 450,000 gallons per day that the Trust should be getting from the well (with no legal agreement), Ms. Crabbe said. QLT finally got the opportunity to participate in the Palani Transmission system, so of the 450,000 gallons per day that the Trust gets from Well No. 1, 60,000 gallons are already committed to the Makalapua Shopping Center. Therefore, QLT has 390,000 gallons per day that the Trust needs to bring down the hill to the Trust's commercially-zoned property around the shopping center. QLT was able to negotiate the purchase of an additional 110,000 gallons per day capacity in the Palani Transmission system, she said. QLT is now working on the easements that were granted for the pipes and the reservoir sites; QLT netted out the value of the reservoirs that QLT would have to build as part of the transmission system, as well as the pipe. After doing all of the calculations, the end result was that QLT owes DWS approximately \$1.49 million, based on engineering estimates. QLT agreed to pay DWS when the Palani Transmission system was completed. Once the project is complete, QLT will receive an accounting of the actual construction costs. QLT will have 30 days to pay on the balance it owes to DWS. Ms. Crabbe noted that the agreement calls for QLT to secure the balance that the Trust owes to DWS; QLT has used this method with the County of Hawai'i and is comfortable with this method. Ms. Crabbe said the previous two agreements that QLT did with the County were in 2004 for Loloku Street (i.e., Makalapua Business Center, Increment II) for \$3.5 million, and in 2008 for QLT's Kona Commons offset improvements for just under \$7 million. She noted that DWS had a portion of the Kona Commons improvements. Ms. Crabbe said that QLT is using a mutual fund, I.B.A., as security with DWS under the current agreement. QLT's endowment portfolio is just under \$100 million, she noted. Ms. Crabbe said that I.B.A. shares were trading at \$15.67, as of close of business yesterday. At 120 percent of the amount that QLT is bonding, the Trust has securities of about \$1.8 million. QLT's holdings of I.B.A., valued as of June 30, stood at \$2.6 million; QLT was at 149 percent of the pledge amount at \$15.13 a share. With shares at \$15.67 today, QLT is probably at 150 percent of securitizing the pledge amount to DWS. QLT can readily liquidate these shares at any time, and in the Stock Pledge Agreement, QLT is basically giving DWS power of attorney over this fund until the obligation is satisfied, Ms. Crabbe said.

The Manager-Chief Engineer said the Palani project is still ongoing, but will hopefully be completed in the next couple of months. Upon completion, DWS will send QLT an invoice. He noted that Ms. Crabbe said that the obligation will be paid within 30 days of the invoice; he asked Ms. Crabbe if it was QLT's intent to pay off the invoice with the securities.

Ms. Crabbe said yes, QLT would either remit the funds by wire or by cashier's check, as stipulated by the agreement. She said she has had it in QLT's budget for the past year, and noted that QLT shared everyone's frustration with the delayed completion of the Palani project. QLT has allocated funds to relieve this balance as soon as QLT has the appropriate documentation.

The Manager-Chief Engineer asked whether, once the payment is made, the agreement just disappears automatically.

Ms. Crabbe said that there is a release that DWS must sign; one of the Exhibits in the agreement is the release. She said that Exhibit E is a partial release, if QLT were to pay a portion of the approximately \$1.5 million. Exhibit F is the full release. As soon as QLT sends its cashier's check over to DWS, QLT will be sending Exhibit F as well, so that DWS can relieve QLT of the Stock Pledge Agreement and the Promissory Note, she said.

Mr. Taniguchi said that Ms. Crabbe mentioned the 30 days after completion, but he did not see any 30 days in the Stock Pledge Agreement.

Ms. Crabbe apologized, and said it was within the Water Resource Development Agreement,

Mr. Taniguchi asked whether it should be in the Promissory Note.

Ms. Crabbe said that QLT was actually delinquent, because the Stock Pledge Agreement should have been executed 60 days after the Water Resource Development Agreement, but it took QLT a while to get things through the attorneys (and the Planning Department as well, because it relates to one of QLT's zoning ordinances, which goes back to 2000.) QLT's entitlements in this area are old, and the Trust is taking another look at its existing entitlements, she noted. The Promissory Note is good for three years.

Mr. Taniguchi said he did not see a maturity date.

Ms. Crabbe said it was multiple documents.

Mr. Taniguchi said there usually has to be a maturity date. He asked what signifies a default in the agreement. He noted the language saying: "If Debtor fails to *timely* satisfy its commitments..." He said that the meaning of "timely" differs from one person to another. He said he wanted to see something more concrete, such as "30 days from this date, if it is not satisfied, DWS can confer collateral to pay off the Promissory Note." Mr. Taniguchi said he did not see the section giving DWS power of attorney. He added that maybe Ms. Garson could find that for the Board, so that DWS has complete access to the funds if necessary, without legal action.

Ms. Crabbe said the documents were all related and intertwined with each other; the Security Agreement calls out the Water Resource Development Agreement. She acknowledged that it may not be explicitly stated within the Security Agreement, but the documents are all related and intertwined.

Mr. Taniguchi said Ms. Garson needs to advise the Board on this, because if the Board is approving a Note, the collateral for the Note must be clear.

Ms. Garson said that the Promissory Note has the sunset date: July 31, 2015.

Ms. Crabbe added: "unless earlier satisfied."

Ms. Garson said that pursuant to the Agreement, it is 30 days from the time that DWS submits its invoice for the completed construction costs. She said that it may make it clearer if that specific term is in both the Promissory Note, as well as in the Security Agreement. It would not be a problem to put the exact term that is in the Agreement itself – into the Promissory Note.

Mr. Robinson noted that the time period was in fact 45 days. He quoted the part that said: "The threshold date shall be 45 days." He asked when the Palani Transmission Waterline would be completed.

The Manager-Chief Engineer said that it would probably be in the next couple of months.

Mr. Inaba confirmed that the system should be on-line within two months; there may be some punch-list items remaining to close out the project.

Mr. Uyeda asked what major items remain to be done.

Mr. Inaba said that chlorination is underway right now; the 2-million gallon reservoir is being filled up. The pipeline also needs to be filled up, and after that, the 1-million gallon reservoir will be filled up. Once those tasks are completed, the two tie-ins need to be completed. Among the minor punch-list items are the installation of a 60-foot section of fence, and the actual start-up of the system. He confirmed that DWS is looking at completing the project at the end of October.

Ms. Garson acknowledged that the time period is indeed 45 days (not 30 days).

Mr. Taniguchi asked for clarification on the documents in front of the Board; he said it looked like there were two Promissory Notes.

Ms. Crabbe said there is a Security Agreement, a Promissory Note and a Stock Pledge Agreement, along with a Resolution from QLT's Board to show the Board's assent.

Mr. Robinson asked how DWS would figure out how much QLT owes to the Department.

The Manager-Chief Engineer explained that the total construction costs were \$12.3 million, but QLT owes only a portion of that. The arrangement with QLT also includes some land that QLT is providing to DWS. The calculations include the upgrading of the facility, the utility costs, some of the land that QLT provided in the project itself, etc.

Mr. Robinson asked whether the \$7.3 million listed in the Promissory Note as the fair market value and estimated costs for the three reservoirs in the Palani project was the portion that QLT would be required to pay to DWS (after deducting the fair market value for the land QLT provided for the reservoirs.)

Ms. Garson said that was an estimate; the figure may change.

Mr. Robinson asked whether the figure could be higher, after all of the construction costs are tallied.

Ms. Crabbe confirmed that the figure may go higher.

Mr. Robinson asked whether the figure could actually go up *or* down.

Ms. Crabbe said yes, QLT and DWS are working from engineering estimates, versus actual costs. QLT will pay on actual costs, once the appropriate documentation is conveyed to QLT.

Mr. Robinson asked whether the Forest City development will draw off this new waterline as well.

The Manager-Chief Engineer said that Forest City needs to do additional improvements to DWS's system to get water down to their project. He did not know what Forest City was planning regarding additional transmission to their project, etc. The Palani Transmission system was not accommodating the Forest City project, he said.

Chairperson Meierdiercks asked that the Board stay on the subject of the QLT agreements.

Mr. Taniguchi asked Ms. Garson about the Promissory Note, which has a sunset date of 2015. He noted that the Note does not mention what constitutes a default. He asked whether this was sufficient, along with the Stock Pledge, for DWS to enforce its collateral – in the event of a default.

Ms. Garson said she understood Mr. Taniguchi's concern about the date. She said she could work with QLT's attorneys to modify the date, so that there is not a perceived conflict between the Promissory Note and the actual Agreement. She said she could work with QLT's attorneys to make that clearer.

Mr. Taniguchi said that because DWS is the lender, certain things need to be nailed down, such as accessing the collateral in the event of a default. The terms were not defined enough for him, he said.

Chairperson Meierdiercks agreed that it needed to be clear as to what happens if QLT does not pay within 45 days of DWS's invoice for the construction costs. He noted that DWS has the collateral.

Ms. Garson said that in that event, DWS would foreclose on the collateral. She noted that there is such a provision in the Stock Pledge Agreement.

Mr. Taniguchi said that it was on Page 2.

Chairperson Meierdiercks said that the Board needed to know how the process works, in order to feel comfortable. He said that the wording of the documents is a bit confusing.

Mr. Robinson said that the provision is on Page 2, Paragraph 4, of the Stock Pledge Agreement. The line in question says that if the Pledgor (QLT) is in default, then the Pledgee (DWS) "may at its option, without notice, exercise all rights and remedies available to a secured party."

Ms. Garson said that is the language that basically gives DWS power of attorney; she confirmed that this was in the Stock Pledge Agreement.

Mr. Taniguchi said that language should be defined in the Promissory Note, to state what would constitute a default.

Ms. Garson said the Promissory Note could be made clearer, so that it refers back to the time frame stated in the Agreement. She said she would be happy to work with QLT's attorneys to get that cleared up.

Mr. Inaba noted that DWS has not yet granted any of the water to QLT. He said that if there were no participation, QLT will not get the water that QLT is supposed to get from the initial well that QLT put in. There are two sections in the documents that deal with QLT getting the water. He noted that the Agreement requires QLT's payment for participation in order to get the water.

Ms. Crabbe said she is not an attorney, but she is fine with working to clarify the language. She noted that QLT had executed this exact form of agreement twice with the County of Hawai'i, back in 2004 and 2008. The agreements went through multiple layers of legal review in terms of enforceability.

Chairperson Meierdiercks said that once the project is complete, and DWS bills QLT, if DWS does not get paid, DWS will not turn the water on.

The Manager-Chief Engineer confirmed this.

Ms. Crabbe said that QLT has \$4.5 million sunk in the ground. Of the 450,000 gallons a day allotment, QLT has been drinking only 60,000 gallons a day for the past 20 years. Therefore, QLT is out a lot of money, she said.

Chairperson Meierdiercks said that it was a matter of making all of the documents easy to understand, amid all of the legal jargon.

Ms. Garson said that is correct.

Mr. Taniguchi asked if Ms. Garson would make the addition to the Promissory Note.

Ms. Garson confirmed that she would.

Chairperson Meierdiercks, turning back to the Main Motion on the floor, asked if the Board would approve it as-is, or if the Board wanted to amend the Motion.

The Manager-Chief Engineer recommended that the Board defer the Item, until the language was worked out and the final documents brought back to the Board for approval.

Ms. Garson said that the documents could be worded to make them clearer. If the Board wishes to defer, the attorneys could come back with another set of documents which address Mr. Taniguchi's concerns.

Ms. Lee Loy recommended deferral; she preferred that the documents be more complete and thorough, to address Mr. Taniguchi's concerns. She supported a deferral at this time, so that clearer language can be put into these documents.

MOTION WITHDRAWN: Mr. Robinson withdrew his Motion; Mr. Uyeda withdrew his Second.

ACTION: Ms. Lee Loy moved to defer; seconded by Mr. Taniguchi, and carried unanimously by voice vote.

7) MISCELLANEOUS:

A. AD HOC FINANCE COMMITTEE:

No report.

B. NOTICE TO CUSTOMERS RE: REVISED RULE REGARDING CREDIT DEPOSITS:

The Board discussed the draft Notice to Customers regarding DWS's recently revised Rule 3-4, regarding credit deposits, which was distributed to the Board for review.

The Manager-Chief Engineer confirmed that the blue Notice is what DWS is proposing to insert with the water bills, to inform customers about the new credit deposit. On the reverse side of the Notice is a reminder regarding on-line payments.

There was a discussion regarding whether existing customers who apply for a second service after January 1, 2013, would be required to pay the new credit deposit.

Mr. Sumada confirmed that customers with an existing service and good credit with DWS will not be required to pay any deposit when applying for a second service after January 1, 2013.

The Manager-Chief Engineer said that the new credit deposit is for new customers, who do not have any credit history with DWS. Currently, existing customers who apply for second services do not have to put up a \$50 deposit, either, so long as they have a good credit history with DWS, he added.

Chairperson Meierdiercks clarified that from January 1, 2013, new customers will pay the \$150 credit deposit. Once they have established good credit, they will not be required to pay an additional credit deposit when they apply for a second service.

The Manager-Chief Engineer confirmed this. He noted that while the current \$50 deposit is refundable, the new credit deposit of \$150 which goes into effect on January 1, 2013, will not be refundable until the service is closed.

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

At the May 22, 2012, Water Board meeting, the Board approved a renewal of a Maintenance Agreement to Brantley Center, Inc., to perform site maintenance services for the Department in South Kohala, Hāmākua and Laupāhoehoe for two (2) years from July 1, 2012 to June 30, 2014, for a total cost over the two years of \$174,384.36.

The Department is requesting that rather than a renewal of a contract for two years, a contract be awarded for one year (Fiscal Year 2012-2013), for a total sum of \$86,293.56.

A two-year contract renewal was not able to be executed based upon HRS 76-77(16), which allows a specific civil service exemption for Qualified Community Rehabilitation programs for a period of one year.

The new contract would be as follows:

South Kohala	–	\$47,011.20
Hāmākua	–	31,422.60
Laupāhoehoe	–	<u>7,859.76</u>
Total:	–	\$86,293.56

The Manager-Chief Engineer recommended that the Board award a CONTRACT FOR MAINTENANCE AGREEMENT – SOUTH KOHALA, HĀMĀKUA AND LAUPĀHOEHOE SITES to Brantley Center, Inc., for July 1, 2012 to June 30, 2013, at a cost of \$86,293.56, and that either the Chairperson or Vice-Chairperson be authorized to sign the documents, subject to approval by Corporation Counsel.

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

The Manager-Chief Engineer said that although the Board had previously approved a two-year contract with Brantley Center, Inc., DWS is changing it to a one-year contract. He confirmed that Brantley Center, Inc., agreed to this. The reason why DWS is making it a one-year contract is because Brantley Center, Inc., could not comply with the rules as far as being a rehabilitation facility if it were a two-year contract, he said.

ACTION: Motion carried unanimously by voice vote.

D. VEHICLE BID NO. 2011-05, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, PART “C”:

The contractor, Inter-Pacific Motors dba Orchid Isle Auto Center is requesting to address the Board to appeal the Department’s decision to deny a time extension for Part “C” of VEHICLE BID NO. 2011-05, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, PART “C”.

The Manager-Chief Engineer said that DWS administratively denied the time extension request, based on the information that the Department received from the vendor. The Department felt that the information was insufficient to grant the time extension request. The Manager-Chief Engineer said that hopefully, the vendor, Mr. Blake, would be able to provide additional information that would justify a time extension.

Mr. Blake said that in retrospect, his dealership’s request for a time extension should have been clearer. After working with DWS for many years, this is the first time Mr. Blake’s dealership has ever had to

apply for a time extension on delivery. He acknowledged that in his initial letter to the Manager-Chief Engineer, he gave “economic reasons” as the reason for granting the time extension request; this was a poor choice of words. Mr. Blake distributed information packets to the Board, which included tracking information on the vehicle in question since the day it was ordered. The packets also included the dealership’s communications with the vehicle’s body builder, as well as email correspondence with Ford Motor Company. Mr. Blake said that Ford essentially let his dealership twist in the wind. In the past, the dealership submitted a 180-day delivery timetable, and it was never an issue before. Normally, the dealership takes delivery around two months into the normal 180-day timeframe. However, this vehicle fell off the radar screen during transport, Mr. Blake said. The email correspondence with Ford shows that the dealership was trying to locate the vehicle and expedite its delivery. The delivery deadline was clear to all parties, he said. Right now, the vehicle is on the ocean, and is slated to arrive in Honolulu next week. It is expected in Hilo the following week, and the dealership will need a few days to prep the vehicle. The documentation from the body builder, which is the second stage of manufacturing, shows the vehicle was on a normal timetable up to May 22, 2012. However, the vehicle did not leave there until July 10. The emails showed that the vehicle was completed within the normal timetable, but it dropped off the map after July 10. The dealership was trying to locate the vehicle, but nobody at Ford could give a solid answer, Mr. Blake said. Once the vehicle was found on August 7, it has been moving, and the dealership has been able to keep tabs on it ever since. The dealership is not Ford itself; it is a dealer. Mr. Blake wanted to show the Board that this was not negligence on the dealership’s part; it was Ford’s transport issue, and therefore the dealership is asking for a time extension.

Mr. Lindsey said that given the extenuating circumstances, it would be reasonable to grant a time extension. The Board could not hold the dealership responsible for something that was out of its control.

The Manager-Chief Engineer asked what delivery date the dealership is proposing now.

Mr. Blake said that based on standard delivery time from Oakland to Hilo, the delivery date should be no later than September 15. That is the new delivery date that the dealership is requesting, he said.

Mr. Ikeda noted that the original delivery date was August 13.

The Manager-Chief Engineer said that in the initial request, Mr. Blake did not provide the tracking information that included where the vehicle got lost in transit, etc. The vendor may not have had control over the vehicle getting lost, so the Manager-Chief Engineer said he had no problem with granting a time extension to September 15.

Chairperson Meierdiercks said the first thing to ask DWS was whether the Department still needed the truck.

The Manager-Chief Engineer said yes, DWS still needs the truck.

Ms. Lee Loy asked whether September 15 was the firm delivery date to DWS, and asked whether it was the estimated date of arrival, with more days needed to prep the vehicle.

Mr. Blake said that the dealership was actually expecting the vehicle to arrive on September 5 or the following week. In any case, it would be enough time to get the vehicle ready, and September 15 was a firm date for delivery to DWS.

Ms. Lee Loy said she had experienced delivery delays that were outside of the control of the dealership. The dealership in this case had made its best efforts to be on top of things in terms of tracking and expediting, so Ms. Lee Loy said she had no problems with granting the time extension.

Chairperson Meierdiercks asked whether the Board wanted to accept the time extension, or defer it back to DWS to handle.

Ms. Garson said that because this would mean an amendment to the contract terms (i.e., changing the delivery date from the original August 13, 2012, to September 15, 2012), the Board would need a Motion to extend the date.

ACTION: Mr. Greenwell moved to approve a time extension for delivery to September 15, 2012; seconded by Mr. Robinson, and carried unanimously by voice vote.

E. **ENERGY MANAGEMENT ANALYST UPDATE:**

Ms. Myhre said the Lālāmilo Request for Proposals (RFP) was re-advertised on August 23, 2012, because the first advertisement schedule did not give enough time for the responses to come in. The re-advertisement allowed more than twice as much response time, (i.e., about seven weeks), for the questionnaires to come in.

Turning to the Green Initiatives report, Ms. Myhre said that energy use has risen, compared to last year, due to an improving economy and more visitors to the island. Fleet fuel use is lower than last year. The next report will probably provide more information about the benefit of installing the Vehicle Monitoring system on 15 vehicles in the Waimea district. Those devices were installed in early June, and DWS is just getting data which proves that the reduction in idling time and associated lower fuel use. DWS has a 15 percent goal for non-revenue water; the chart on page 2 of the report shows that DWS in Fiscal 2012 is doing pretty well – only 3 percent above that goal. DWS is doing more leak detection, she noted.

Regarding hydro-generator energy savings, Ms. Myhre said that DWS has almost doubled its receipts from HELCO. She explained that HELCO is paying DWS for the hydro-generators that are connected through a Schedule Q contract. Receipts went from about \$24,000.00 in Fiscal Year 2010-2011, to \$43,800.00 in Fiscal Year 2011-2012. This is because DWS is generating more electricity, and also because HELCO is paying DWS almost 19 cents per kilowatt-hour.

Ms. Myhre, who attended a meeting of the Energy Advisory Commission in July, reported on the County's latest initiatives to boost energy efficiency. The County is currently changing out all of the streetlights, etc., to energy-saving LEDs. This project will take about a year to accomplish, and is expected to show about \$1 million in energy savings to the County. The replacement of the bulbs is being funded through federal stimulus (ARRA) funds. The County is receiving three hydrogen-powered buses in the first quarter of 2013. The buses will be refueled by a hydrogen generation facility at Puna Geothermal, she said. Lastly, the County has hired a person to form a fleet owners' association, which will include fleet owners (trucking, County, etc.) from all over the island. The association's purpose is to allow sharing information about alternative fuels, fuel efficiencies, etc.

Mr. Robinson asked Ms. Myhre to show in *kilowatt-hours* the cost of DWS's energy bill.

Ms. Myhre said she used to have such a graph on the energy use cost, and would add that back into her Green Initiatives report.

F. **MONTHLY PROGRESS REPORT:**

No discussion.

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

No discussion.

H. MANAGER-CHIEF ENGINEER'S REPORT:

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

- 1) Palani Road Transmission Waterline Project – Timetable reported earlier in the meeting.
- 2) Hawaiian Ocean View Estates Project – DWS has called a community meeting for tomorrow night amid concerns about misinformation regarding water haulers. One complaint from residents has been why the water haulers' rates have not gone down. DWS has told the residents that the Department has no control over what the truckers charge for hauling water to residents, the Manager-Chief Engineer said. There have been allegations from residents that DWS colluded by allowing only certain truckers to sign up for meters. The Department has been very proactive in informing the community when the sign-up for the standpipe meters would be, and that it would be **strictly on a first-come, first-served basis**. Other information included the qualifications for sign-up, the fees that would be charged, the requirement that the applicant be current on any existing DWS accounts, etc. The Manager-Chief Engineer said that on sign-up day, people lined up from as early as 6:00 a.m. Once the first ten applicants were signed up, the Department took in additional applications as alternates in case payment for any of the first 10 applicants failed to come through. The sign-up was done as openly and as fairly as possible, in accordance with DWS's Rules and Regulations. DWS plans to explain the process to the public again at the community meeting tomorrow. Mr. Taniguchi asked whether 10 meters were the limit. The Manager-Chief Engineer confirmed that 10 was the limit, because there are only 10 available meters and 10 spaces for the meters. Mr. Greenwell asked if there were an Ocean View community member who could act as a point person or quasi-mediator to explain what the process is, etc. The Manager-Chief Engineer said that the intent is to clear the air tomorrow night, in the hopes of mediating any concerns. Mr. Greenwell noted that the (spigot) water is free; he wondered what else the community wants. Mr. Perry asked whether more meters could be put in, and whether they would fit. The Manager-Chief Engineer said it would call for further design and construction, and additional cost and construction funding, which DWS does not have. Therefore, the limit is 10 meters at this point. Mr. Perry noted that he had read in the newspaper that one low-cost hauler failed to get a meter. He asked if there were any DWS Rule whereby a customer would lose his meter if he fails to use it within three months or thereabouts. The Manager-Chief Engineer said no, there was no such Rule; as long as the customer pays the standby charge, DWS cannot cut off service. Mr. Taniguchi asked whether the water haulers just fill from one meter, or fill from individual meters. The Manager-Chief Engineer said the haulers have separate meters; the water spigots are for the small users and that water has been paid for by the County. Mr. Taniguchi asked about other areas that have similar fill stations; he asked whether there was a meter for each hauler in those places. The Manager-Chief Engineer confirmed this; DWS has facilities in Nā'ālehu, to which DWS intends to keep hauling water. He noted that the facility itself is temporary, because it is off of a fire hydrant, onto which meters have been installed; despite the establishment of the new Ocean View facility, DWS will continue to haul water to the facilities in Nā'ālehu, he said. There are similar facilities in Ho'okena, Kea'au, and Keonepoko. Mr. Lindsey asked why DWS does not charge the haulers for the meters, and he asked why DWS does not charge water haulers who want to come in, the cost to enable that area to have a meter. The Manager-Chief Engineer said that the Ocean View site was designed for a bank of 10 meters, five on one side and five on the other, with two standpipes. To accommodate additional banks of meters, DWS would need to have somebody pay for design and construction, etc. Mr. Lindsey asked whether DWS paid for the installation of the 10 meters now in place. The Manager-Chief Engineer said the money came from the \$6 million (from the State of Hawai'i). Mr. Lindsey said his question was why DWS from the beginning did not have the truckers/water haulers pay for meters to be installed. The Manager-Chief

- 3) Kawailani Tank update – Mr. Inaba said he talked with the electrical sub-contractor, who will be submitting a list of equipment that he thinks should be replaced. There are ultra-sonic meters that need to be reset, and taken apart to ensure the contacts are good, etc. Some of the expensive electronic equipment on site will be tested first (instead of automatically deciding that it needs to be replaced). There are three units that could cost upwards of \$20,000 to replace, so it makes sense to test it to see if the equipment actually works. He noted that the fencing sub-contractor is no longer in business, so a new, qualified sub-contractor will be coming in.
- 4) Pu‘ukala/Kona Ocean View Properties Subdivision Improvement District Update – DWS has gotten the State Highways Division of the Department of Transportation (DOT) to approve the construction plans. DWS will not get a permit until DOT and DWS can agree on the Letter of Conditions and the Use and Occupancy Agreement. DWS is trying to schedule a meeting with DOT to discuss some of those Conditions, so that DWS can sign off on the Conditions. DWS also needs to go back to County Council, to get the Council to approve a Resolution to proceed with going out to bid and constructing the project. The Manager-Chief Engineer thinks that DWS can go to Council pending DWS’s negotiations with DOT; he asked staff to schedule DWS’s meeting with the County Council to get the Resolution to move forward with the project. DWS hopes to go out to bid on this project by the end of the year.
- 5) Class action lawsuit against Syngenta, a manufacturer of Atrazine, a herbicide Water Systems – DWS is participating in a class action suit involving the manufacturer of Atrazine, a herbicide which leached into water systems on the Mainland, and into 10 of DWS’s water systems. The herbicide had been used by the plantations, and had leached into some DWS aquifers. Several of DWS’s water sources have traces of Atrazine. Mr. Uyehara said that the plaintiffs’ lawsuit, filed in U.S. District Court in Southern Illinois, was heard some eight years ago. While Syngenta, the defendant, is not claiming any responsibility, it is seeking to resolve the issue so that they can continue to sell their product. Syngenta has agreed to a proposed class action settlement whose estimated value is \$105 million. Once that agreement for potential settlement was made, water systems across the nation that detected Atrazine were sent letters or postcards inviting them to join in the class action lawsuit. The 10 DWS systems that have had Atrazine detected since the mid-1990s have been below the maximum contaminant levels, with traces that were fractions of a part per million, Mr. Uyehara said. However, DWS felt that this lawsuit would help the Department in the event that DWS needed to treat for Atrazine at some future time; that is why DWS decided to participate in the class action suit. The Manager-Chief Engineer said that DWS participation will not cost the Department anything; if the lawsuit goes the plaintiffs’ way, DWS may see about \$5,000.00 per system. Mr. Uyehara said it would be a minimum of \$5,000.00 per system, and some systems elsewhere have gotten \$20,000.00 to \$50,000.00. Mr. Uyehara noted that the deadline for joining the suit was really tight, the day of the Board meeting, August 28, 2012.. The Manager-Chief Engineer said that Kauai Water Supply was participating in the suit, but it was not clear if Honolulu or Maui were participating.

Mr. Robinson asked if it was okay to inquire about the Palani project, which was covered earlier. Referring to the Forest City project, he asked if there was any cost recovery to other entities who put money into improvements on the Palani Transmission facility.

The Manager-Chief Engineer said that QLT and Hawaiian Homes were the only participants in the Palani project. Forest City was not a participant; they will need to do additional things to get their water to their project, he said. DWS is discussing potential well sites with Forest City; Forest City will have to do their own well sites, and will have to make sure that those wells can feed into DWS's system and transmit water to their project. Forest City still has a lot to do on their side, the Manager-Chief Engineer said.

Mr. Robinson asked whether there would be any cost recoveries to other entities that may have put up monies or donated facilities or granted easements ahead of time.

The Manager-Chief Engineer said that avenue is not available, unless the entity has a Development Agreement with the Water Board; he did not think anybody else could participate right now. He said he did not know whether Forest City had any additional lands in the area that they might be able to enjoy some of the benefits of the water system improvements.

Mr. Inaba clarified, saying that when a developer does off-site improvements by participating in transmission, storage, donation of the source, etc., the developer can get a Facilities Charge credit at the time that the developer wants to use the water. In such a case, the developer will get a percentage taken off the Facilities Charge. There would be, in a sense, a recovery, he said.

The Manager-Chief Engineer reiterated that the developer would first have to have a Development Agreement with the Water Board.

Mr. Robinson said the reason he was asking about recovery was because that whole area in question is so crucial for growth, and getting water to that area is crucial to growth, as is getting everyone to participate.

The Manager-Chief Engineer noted DWS's agreement with Mr. Dan Bolton for the Waiaha Water System Improvements. That agreement involves bringing water down to Kailua village from Waiaha; Mr. Bolton proposed to do the transmission system down from DWS's well in Waiaha to Kailua village. Under that agreement, the developer participates in the improvements, and gets a break on the Facilities Charge. That agreement will be expiring at the end of the year, unless Mr. Bolton comes back with some kind of time extension. It would be a good project because it would bring water from Waiaha to Kailua, he added.

Mr. Robinson asked whether there would be a waterline in the extension of the new highway in the Palani Transmission area, where work will begin in September.

The Manager-Chief Engineer said yes, DWS will be improving its transmission system on the highway. In fact, DWS deposited its share of the funding into that project already, he said.

- 6) Public Information and Education Specialist Update – Ms. Aton and Mr. Okamoto attended an intensive two-day Tropical Cyclone exercise with other departments at Civil Defense. Ms. Aton also attended a training session in emergency mass notification software. She also attended a meeting in Honolulu of the Water Conservation Advisory Group regarding water consumption statewide. DWS is working with the Department of Health (DOH) on a joint conference in January next year, possibly combining it with the Kona Water Roundtable. Ms. Aton noted that DOH has funds to hold such a joint conference, and hopefully will

Mr. Greenwell asked if an update on the now-empty Waikoloa Reservoir No. 1 can be provided at a future meeting; the Manager-Chief Engineer said he would have it on next month's Manager-Chief Engineer's Report.

I. CHAIRPERSON'S REPORT:

Chairperson Meierdiercks reminded the Board that protocol calls for any communications with DWS staff to go through the Manager-Chief Engineer.

The Manager-Chief Engineer said that the Hawai'i Water Works Association (HWWA) meeting is set for October 17-19. The main question is how many Board members may attend; he noted that all of the Board (except Mr. Kaneshiro) expressed interest in attending. Unfortunately, not all of the Board may attend, so the Manager-Chief Engineer said he left it to the Chairperson to decide who may attend the HWWA. The number of Board members who may attend is limited to four members, he said.

Chairperson Meierdiercks said the past practice was based on seniority, whereby the Chairperson, Vice-Chairperson, and longest-serving members would have precedence in attending.

The Manager-Chief Engineer said that based on seniority, it would be the Chairperson, the Vice-Chairperson, with Mr. Lindsey and Mr. Perry as members whose terms expire first.

Mr. Perry said that the Board has for a while had limitations on the number of people attending conferences, but he asked whether there was some flexibility in the number of members who may attend, and whether the Board could approve the number.

Ms. Garson said that the number is less than a quorum, which is why up to four members may attend. Five is a quorum, and four is the maximum number who may attend – even under the new Sunshine Law. She said it basically was a Sunshine Law issue. Under the new law, the Board does not have to form a committee in order for four members to attend a meeting. However, the four must come back after the meeting and report. Ms. Garson said she talked to the Office of Information Practices (OIP) this morning regarding how much flexibility there was in the number who may attend; four is the maximum number of members who may attend.

Chairperson Meierdiercks said that technically, the Board could not hold a meeting because it was not publicized.

Ms. Garson said the question is whether it becomes a meeting when more than a quorum goes to a conference. The need to report to the Board after the HWWA conference (with the need to take Minutes, etc.) makes it complicated, she said. In the conversation with the OIP attorney, Ms. Garson and the attorney explored whether the Board could go on different tracks by attending different, consecutive working groups. The Board could split up, but the problem arises when there is only one Item on the conference's Agenda. By having more than a quorum attend, there were more issues created than it was worth, Ms. Garson said. Therefore, Ms. Garson and the OIP attorney decided that it was best to stick to having attendance be limited to four members. In that way, there would be absolutely no questions or complaints, and the four members could actually discuss matters, as long as they report on it.

Mr. Taniguchi asked for confirmation that the HWWA conference would *not* constitute a County Water Board meeting.

Ms. Garson said she thought that the OIP's concern was that it was the *Hawai'i* Water Works Association conference; there might have been a little more flexibility if it was the national American Water Works

Association meeting on the Mainland, whereby Board members could separate out and avoid going to the same events. She said she called OIP this morning to make sure that she was not being overly strict with the Board.

Mr. Taniguchi said that when DWS hosts the HWWA conference, the Board wants all of their counterparts on the other islands to attend and support DWS. Attendance at the HWWA meeting would not be like attending a Board meeting; this should be clarified. By sitting in on a workshop at the conference, the Board would not be doing Board business. The Board would be learning things. The HWWA conference would not be the Board's meeting, so the quorum issue has no validity, Mr. Taniguchi said. He said that whoever from the Board wants to go should be allowed to go, and show support for Honolulu. When DWS hosts the same conference, the Board wants the Boards from other islands to come here to show their support for DWS.

Ms. Garson said she understood Mr. Taniguchi's concern.

Chairperson Meierdiercks said this conference is an educational opportunity for Board members; educating themselves about DWS matters is part of each Board member's mandate. He asked how Ms. Garson could justify the Board being educated, and yet not allow the Board to attend.

Ms. Garson said the idea is that Board members come back from a conference and report.

Chairperson Meierdiercks said yes, everybody can go to the conference, and everybody can report back.

Mr. Taniguchi said that if Board members go to different workshops, they could split up. Attending conferences like HWWA is a real eye opener; Board members learn a tremendous amount about water.

Ms. Garson said she can only advise the Board; she cannot make the Board listen.

MOTION: Mr. Taniguchi moved that whoever on the Board wishes to attend the HWWA conference, should be allowed to attend; seconded by Mr. Lindsey.

Ms. Garson said that all she can do is tell the Board what the law says. She reiterated that she checked with OIP, and actually read the HWWA Agenda to the OIP attorney. Ms. Garson and the attorney discussed whether or not certain Items were Board business, and ultimately Board business will come up. There are Items of importance to the Board on the conference Agenda. OIP considers this Board business, so OIP's recommendation – and Ms. Garson's recommendation – is that the Board limit attendance to four members. The alternative is to suffer the consequences of an intentional Sunshine Law violation, which the Board will end up having to defend.

Mr. Uyeda noted that he is the administrator of the utility company he works for. He asked whether he would be breaking quorum if his water company pays for his attendance.

Ms. Lee Loy said Mr. Uyeda would be attending in his capacity as the utility's administrator.

Ms. Garson said well, Mr. Uyeda must not talk to the rest of the Board at the conference. In such a case, Mr. Uyeda's company would be sending him to the conference for an entirely different purpose; DWS would not be paying for Mr. Uyeda to attend, nor would Mr. Uyeda be going as a member of the Board. Mr. Uyeda cannot be barred from attending in his own personal capacity, Ms. Garson said.

Chairperson Meierdiercks asked what would happen if he (Mr. Meierdiercks) paid *his* own way, and went to the conference on his own.

Ms. Garson said it was not a matter of who is paying; it is a matter of the discussion. Citing the Kona Water Roundtable as an example, she said that there was always a question of whether the event involves Board business. The OIP considers that the Board is kind of having a meeting that was not publicized

and the public is not there. Therefore, it is a Sunshine Law violation. It is not necessarily a matter of who pays. It is more a matter of the discussion of Board business. She noted that the new Sunshine Law allows up to four members to actually discuss Board business at a seminar, provided that the Board members come back and report.

Mr. Taniguchi asked what happens if the Board does not *want* to discuss Board business during the conference. He asked what happens if the Board makes it a condition that the Board members do not meet during the conference.

Mr. Robinson asked Ms. Garson whether OIP would have cause of action against the Board if all eight or nine Board members attended, and had no discussion regarding Board business (and only listened to presentations for educational purposes.)

Ms. Garson said that OIP does not bring causes of action. It would be a member of the public complaining that the Board had an unnoticed meeting. The issue would be whether or not it was an intentional move to skirt the Sunshine Law.

Mr. Robinson said the member of the public would have to prove that the Board had held a meeting and discussed Board business.

Ms. Garson agreed. She said that one of the issues that came up when Ms. Garson was talking to OIP regarding the Kona Water Roundtable, was the open-forum type of situation. In such a setting, there may be question and answer sessions, etc., but OIP may consider that to be a discussion that pertains to Board business. Ms. Garson and OIP talked about various scenarios, and it started to get a bit ridiculous, she said.

Mr. Robinson quipped that “ridiculous” could be the operative word of the day.

Chairperson Meierdiercks noted that there was a Motion and Second on the floor.

Ms. Garson said that instead of having a Motion and a Second, she could call back the OIP attorney to present the various scenarios that the Board mentioned, in hopes of figuring out how to work the issue. She reiterated that the back-and-forth with OIP on the scenarios was getting ridiculous.

Mr. Taniguchi said the Chairperson should call for the question.

ACTION: Motion carried unanimously by voice vote.

Chairperson Meierdiercks said he concurred with the Board’s thinking on this matter; some of these Sunshine Law concerns go over the top. He said that at times, the Sunshine Law may have to be tested.

8) ANNOUNCEMENTS:

1. Next Regular Meeting:

The next meeting of the Water Board will be held at 10:00 a.m. on September 25, 2012, at Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

Chairperson Meierdiercks asked whether there would be a Public Hearing on the Power Cost Charge.

Mr. Sumada said no.

2. Following Meeting:

The following meeting of the Water Board will be held at 10:00 a.m. on October 23, 2012, at Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

9) ADJOURNMENT

ACTION: Ms. Lee Loy moved to adjourn; seconded by Mr. Taniguchi; and carried unanimously by voice vote.

Chairperson Meierdiercks adjourned the meeting at 11:56 a.m.

Secretary

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 Janet Snyder, Secretary, at 961-8050 as soon as possible, but no later than five days before the scheduled meeting.

The Department of Water Supply is an Equal Opportunity provider and employer.

Notice to Lobbyists: *If you are a lobbyist, you must register with the Hawai'i County Clerk within five days of becoming a lobbyist. {Article 15, Section 2-91.3(b), Hawai'i County Code} A lobbyist means "any individual engaged for pay or other consideration who spends more than five hours in any month or \$275 in any six-month period for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials." {Article 15, Section 2-91.3(a)(6), Hawai'i County Code} Registration forms and expenditure report documents are available at the Office of the County Clerk-Council, Hilo, Hawai'i.*