

**MINUTES**

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

September 24, 2013

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

MEMBERS PRESENT: Mr. Art Taniguchi, Chairperson  
Mr. Kenneth Kaneshiro, Vice-Chairperson  
Mr. Russell Arikawa  
Mr. David Greenwell  
Ms. Brenda Iokepa-Moses  
Ms. Susan Lee Loy  
Mr. Delan Perry  
Mr. Rick Robinson  
Mr. Jay Uyeda  
Mr. Quirino Antonio, Jr., Manager-Chief Engineer, Department of Water Supply (ex-officio member)

ABSENT:  
Mr. Duane Kanuha, Director, Planning Department (ex-officio member)  
Mr. Warren Lee, Director, Department of Public Works (ex-officio member)

OTHERS PRESENT: Ms. Kathy Garson, Assistant Corporation Counsel  
Mr. Richard Horn, Site Constructors  
Ms. Paige Horn, Site Constructors

Department of Water Supply Staff  
Mr. Keith Okamoto, Deputy  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Richard Sumada, Waterworks Controller  
Mr. Clyde Young, Operations  
Ms. Kanani Aton, Public Information and Education Specialist  
Ms. Julie Myhre, Energy Management Analyst

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1) CALL TO ORDER – Chairperson Taniguchi called the meeting to order at 10:01 a.m.

2) STATEMENTS FROM THE PUBLIC

None.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the August 27, 2013, Water Board meeting.

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

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

None.

5) HĀMĀKUA:

A. **RESOLUTION NO. 13-02, PROVIDING FOR THE ACQUISITION OF PRIVATE PROPERTY AND EASEMENTS SITUATE IN THE DISTRICT OF HĀMĀKUA, COUNTY AND STATE OF HAWAI'I, IDENTIFIED AS A PORTION OF TMK NO. (3) 4-7-002:035, FOR CONSTRUCTION OF A WELL, RESERVOIR, TRANSMISSION MAIN, ACCESS ROAD, AND RELATED FACILITIES:**

*(Note: Resolution requires roll call vote)*

This resolution is being introduced for the condemnation of a portion of Tax Map Key 4-7-002:035, for the purpose of acquiring the property surrounding an existing well which was funded by DWS. This site is adjacent to our existing tank site and matches its elevation.

The drilling and testing of the existing well was recently completed. Phase 2 of the project, which includes but is not limited to the outfitting of the well and controls, reservoir, transmission main and access road, is on hold until the land is acquired. This well will be the primary water source for the Kapulena-Kukuihaele Water System, which is currently being provided with water through a temporary line from the Waimea Water System. The original source for the system, the Waiūlili Spring, lost production after the 2006 Kīholo Earthquake.

The Manager-Chief Engineer recommended that the Board approve Resolution No. 13-02, and authorize the Department and Corporation Counsel to continue with the condemnation process.

**MOTION:** Mr. Perry moved to approve; seconded by Ms. Iokepa-Moses.

Ms. Garson noted that the Exhibits for this Resolution were distributed to the Board this morning. DWS is asking for the authority to condemn this parcel; there is a public purpose for the well, reservoir and transmission main, she said. DWS will continue to negotiate with the property owner throughout this whole process, but this Resolution give Ms. Garson the authority to file for the condemnation if necessary. This Resolution requires two readings by the Board, she added.

The Manager-Chief Engineer noted that DWS has already done the first phase of the drilling of the well, and has found good water at the site. The next phase is to do the production well, but DWS needs to acquire the property prior to going into that phase. He also noted that DWS will be using federal grant funding for this project, so it is very important that DWS can proceed.

Chairperson Taniguchi called for the question, but paused to ask if this was a roll call vote.

Ms. Garson said no, because the Resolution needs to go through another reading. Therefore, this will be a voice vote.

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

6) SOUTH KOHALA:

A. **JOB NO. 2011-972, LĀLĀMILO WIND FARM REPOWERING PROJECT, RENEWABLE ENERGY SERVICE AND POWER PURCHASE AGREEMENT:**

A Renewable Energy Service and Power Purchase Agreement (PPA) between DWS and Site Constructors, Inc., has been prepared that will allow DWS to purchase electricity at a rate of \$0.24 per kilowatt-hour from Site Constructors, Inc. An annual price escalation of 2.9 percent in years 6 to 20 is proposed, with an expected annual consumption of energy by the eight (8) Lālāmilo-Parker wells of

8,000 megawatt-hours, resulting in an annual savings to DWS of over \$1 million at today's electricity rate.

On April 26, 2013, Site Constructors, Inc. was awarded the winning proposal for the furnishing, delivery, installation, operation, and maintenance of a wind energy generation facility in the vicinity of eight (8) existing DWS wells within the Lālāmilo-Parker well system. The project encompasses:

- Constructing a new wind energy generation system to supply electricity to four (4) existing Lālāmilo wells A, B, C, and D that were previously connected to the Lālāmilo wind farm constructed in 1985;
- Installing power lines and connecting four (4) existing Parker wells 1, 2, 3, and 4 to the new wind farm equipment;
- Installing Supervisory Control and Data Acquisition equipment so that the pump motors can maximize the use of renewable energy generated electricity;
- Successfully negotiating a Standard Three Party Interconnection Agreement with Hawai'i Electric Light Company (HELCO); and
- Associated work such as grading, asphalt pavement of access road, security fence (if desired to keep livestock out), drainage, lighting, and landscaping.

Construction expenses will be funded by Site Constructors, Inc., at no cost to DWS. All permits and approvals are scheduled to be secured by September 15, 2014, and commercial operation of the wind farm is expected to occur within 18 months of the date that all permits and approvals are granted.

The Manager-Chief Engineer recommended that the Board approve JOB NO. 2011-972, LĀLĀMILO WIND FARM REPOWERING PROJECT, RENEWABLE ENERGY SERVICE AND POWER PURCHASE AGREEMENT, and authorize the Chairperson or Vice-Chairperson to execute the agreement, subject to review as to form and legality by Corporation Counsel.

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

Ms. Myhre did a brief overview of the re-powering project, for the benefit of newer Board members and as a refresher for everyone else. She noted that the old wind farm was built in 1984, with 120 towers generating 17 kilowatts each. The re-powering project will replace those towers with five towers using new technology. In 2009, DWS had the site of the wind farm restored. Today, there are two towers on site for communications purposes; these will be equipped with antennas. DWS has also installed a wind anemometer, which measures the wind speed every 15 minutes. The site is just mauka of Puakō, situated right next to eight existing deepwells. Ms. Myhre in her PowerPoint presentation showed in the north, Lālāmilo Wells A, B, C, and D, and in the south, Parker Wells 1, 2, 3 and 4. The eight wells are close to the site of the future wind farm.

The wind farm will stabilize the water rates that DWS will pay to power the eight wells; DWS will know exactly how much electricity is going to cost for those eight wells. It will be renewable energy production, Ms. Myhre said. She noted that 41 percent of the water bill is made up of electricity costs.

Once the PPA is approved and executed, the project proposer, Site Constructors, will start doing their Environmental Assessment (EA), the design and the HELCO review. Ms. Myhre noted that the wind farm will be tied to the HELCO grid. This is not an off-grid project; DWS is still tied into the HELCO grid. If the wind is not blowing, DWS will need to get electricity from HELCO as a back-up. Once ground is broken, construction will take about 18 months. The wind farm should be in service around the end of 2015 or by the first quarter of 2016.

The Manager-Chief Engineer said that the PPA starts the ball rolling as far as doing the Environmental Assessment, which DWS needs to secure the lease to the property.

Ms. Myhre said that the next action by the Board regarding the wind farm is to approve the lease. DWS will get one year of free rent, once the EA is done, which can occur during the time of construction. The lease will be paid by the contractor, as part of DWS's rates. The rate will be 24 cents per kilowatt-hour, with a 2.9 percent increase in Years 6 through 20 of the contract.

Mr. Perry asked whether it were a bit unusual to have eight wells close to each other; he also asked if DWS has plans to expand the well field system.

The Manager-Chief Engineer said it may sound unusual. He explained that the well fields stem back to when the State drilled the Lālāmilo portion of the well field. Eventually, DWS started working with the resort developers in the area, who needed more water. The close proximity of the wells to each other makes it easier to supply water into the system, he said. The well system allows for easier transmission of water. Fortunately, the resort developers were able to secure these sites with the State and Parker Ranch; that is why the wells are in close proximity to each other.

Mr. Perry asked if there were plans to expand the well field system.

The Manager-Chief Engineer said that at this point there are no plans to expand, except maybe on the north end near Kawaihae. There are several wells in that area, known as the 'Ōuli Wells, but the land developer has not moved forward on developing those wells.

Mr. Inaba clarified that the wells are pretty spread out, so that the wells do not interfere with each other.

The Manager-Chief Engineer said these wells were pump-tested at the time they were drilled; DWS monitored to see whether or not there were any ill effects on the pumpage of the new wells.

Mr. Perry asked how far apart the wells are.

Mr. Inaba said he figured that they were about a quarter-mile apart, more or less.

The Deputy said Parker Wells 2 and 3 are the closest to each other, about 1,000 feet apart.

Mr. Robinson asked how the commencement of energy delivery date and the liquidated damages (to be paid at a discounted rate) for lack of delivery for a certain period of time would be computed. He understood the section regarding this in the PPA, but was a bit leery of referring to certain indices where there is a published source involved (i.e., the Wall Street Journal, in this case). That is because published sources cease to exist in many cases. He asked why there are price escalators after six years. He noted with similar contracts that the rate is fixed for a certain period of time, which allows the installer to get recovery of their cost of the installation. However, in this PPA, there is a 2.9 percent price escalator, which is consistent with what a CPI increase is, from Year Six to Year 20. He said he would still have assumed that the rate would be fixed for the PPA's entire 20-year period.

The Manager-Chief Engineer asked if Ms. Garson or DWS's engineers could respond to these concerns.

Ms. Garson said that regarding the liquidated damages, they are meant to be a penalty. Therefore, one would need to roughly estimate what the loss is going to be. However, the loss is actually incapable of being calculated directly, which is why there are liquidated damages in the PPA. She noted the provision in the PPA (on Page 10), regarding what happens if the Commercial Operations Date, does not occur within the 18 months of receipt of the provider's notice to DWS that all approvals have been obtained, etc. There is also a provision for what happens when the provider fails to deliver 95 percent of what is considered "Contract Energy" during a rolling 12-month period. She said Engineering came up with a calculation for what they thought the damages would be; it is not exact, but that is why it is in the contract that way.

Mr. Robinson said that rather than point to indices such as the prime rate mentioned in the PPA, it is much better to go ahead and state a set amount. (*Note: The PPA says: “discounted at the prevailing prime rate of interest as published in the Wall Street Journal on the day preceding the date of determination.”*)

Mr. Inaba said the calculation that Engineering says how much power DWS was missing, as opposed to saying that DWS did not get the 95 percent (of Contract Energy) that DWS pays for at a discounted rate. He said that the calculation provides DWS with a deeper discount if the provider provides DWS with, for example, only half of the energy that should have been provided.

Mr. Robinson said that is why he would feel better if the PPA just stated what the discount rate would be, rather than pointing to an index.

Mr. Inaba said that Engineering figured that by just stating a rate, there might not be any further penalty for the provider in the event that the provider did not provide the contracted amount of energy.

Mr. Robinson asked whether the fear was that if a discount rate was stated up front (as opposed to pointing to an index), it would not be enough incentive for the provider.

Mr. Inaba said that the calculation that Engineering did was based on the amount of energy that the provider was failing to provide.

Mr. Robinson said he understood that, but the PPA states liquidated damages as “an amount not to exceed the then present value (discounted at the prevailing prime rate of interest as published in the Wall Street Journal.)”

Mr. Inaba said okay, it should be just the rate.

Mr. Robinson said yes, just state the rate. He noted that in his experience, these indices sometimes cease to exist. He much preferred to just state the rate. Related to that, Mr. Robinson said he likes to insert into contracts language like “As an example...” Giving an example in a contract of what happens if someone fails to deliver by a certain date makes things clearer, and helps in the event of litigation, he said. Mr. Robinson asked why there is a step-up in the PPA after five years. He noted that HELCO just states a set period at a fixed rate; there is no step-up.

The Deputy said the Department is not really privy to the reason for that number on the step-up. That number was part of the provider’s proposal that DWS evaluated and accepted, which was captured in the PPA. He guessed that the step-up was meant to accommodate escalating maintenance and costs such as materials, labor, etc. The Deputy suggested that the provider might want to clarify that.

The Manager-Chief Engineer asked if it was appropriate for the provider, Site Constructors, to come up and comment on Mr. Robinson’s concerns.

Mr. Robinson asked what the rate would be at the end of 20 years.

Mr. Richard Horn of Site Constructors introduced himself. He explained that his company has built a number of renewable energy projects around the world, and his company has a fair amount of experience building projects just like Lālāmilo. He noted that as machines get longer in the tooth, there is a fair amount of increased maintenance that needs to be performed. There has to be some means of recapturing that cost. If there were no escalator in the PPA, the onset price level would be higher because of the need -- at the front end -- to amortize some of the later-ensuing maintenance operations and parameters, Mr. Horn said. That is why the PPA has an escalator built into it. HELCO, HEI and HECO have a lot of contracts with escalators in them. An escalator is a captured number, and everybody knows what that escalator will be throughout the life of the project.

Mr. Robinson asked if it was safe to assume that the escalators would be going into a reserve account for repair of the facility.

Mr. Horn said yes, his company has to maintain its own reserve, which is set by the company's board. He noted that the same situation prevails at the Hāwī wind farm, which Mr. Horn and his partners own. It is a substantial operating reserve, he said.

Mr. Robinson asked if that reserve would be proved up to DWS at any point, such as on an annual basis. This would show DWS that there are adequate reserves for repair and maintenance of the facility. He said he did not see such a provision in the PPA.

Mr. Horn said he did not think that was really a requirement of the contract as it is written, because that is his company's responsibility. If the project is not managed properly by his company, it would be his company's point of failure. Site Constructors would be the ones suffering a major setback, since the company is bearing all of the financial responsibility for the project. He noted that his company has operated the Hāwī facility for the past seven years, and have exactly the same format on reserves for that project. The wind turbines for Lālāmilo will be the same machines used in Hāwī. Therefore, Mr. Horn was confident that the PPA captured the requirement properly.

The Deputy noted Section 3.6.2 of the PPA, entitled "Continuity of Energy Delivery." This was how DWS worked to protect its side of the equation. This section addresses liquidated damages, based upon the start date when DWS can start buying the power. DWS wanted to have some level of assurance that DWS would have continuous access to the power. A fairly intensive thought process went into coming up with the \$400 per day in liquidated damages, as well as the provision regarding the 95 percent of the Contract Energy during any rolling 12-month period, he said. These provisions were meant to ensure DWS access to the power on a continuous basis. However, DWS did not want to tell Site Constructors in the contract what the company had to do to maintain their equipment, because DWS does not know what that would be, the Deputy said.

Mr. Robinson said that in his experience, the greatest source of revenue at the end of a 20-year contract involving machinery or buildings, etc., is deferred maintenance. He said his concern was just to ensure that Site Constructors maintain adequate reserves to ensure the continued maintenance of the facility throughout the 20-year life of the contract.

Mr. Horn said his company has every intention of doing so; his company has 99 percent availability on the other wind farm (in Hāwī). By employing the same work ethic and thought process on reserves going forward on this project, the provider should be in good shape. He noted that of course there is no telling when a machine might go down, for whatever reason. The company did experience a serial failure, which it had to manage quite intensively at the Hāwī wind farm. In that case, there was a severed series of bearings that failed in the machines. Once the company figured out what the problem was, the company was able to calculate the time between failures, and the company made a design change. The company has never had a failure since that event five years ago.

Mr. Robinson said he would feel much better if Site Constructors furnished evidence of reserves on an annual basis, so that DWS could be assured that the facility was going to be maintained since the Department is going to be tying itself to Site Constructors for a 20-year contract. He wanted some assurance that there are adequate reserves to repair and maintain the facility, in the event that Site Constructors were to falter or fail. He said he meant no offense, but noted that business evolves all the time.

Mr. Horn said he was sure his company could discuss some sort of annual review with DWS's contract managers. He noted that Site Constructors has constructed over 7,000 megawatts of energy around the

world, and the company has never had a project fail. Site Constructors does not plan on failing anytime soon.

Mr. Robinson quipped that this what Detroit said many years ago.

Mr. Horn said his company was not the unionized machine that Detroit was.

Mr. Robinson said yes, but DWS just wants to ensure reserves.

The Manager-Chief Engineer asked whether that was something that could be worked into the PPA at this point.

Ms. Garson said that the PPA is here for the Board's approval, so the Department can take the Board's suggestions, and attempt to negotiate with the contractor, according to the Board's direction. She noted that there is a certain time limit, but she did not know what those time limits were. She looked to Ms. Myhre.

Ms. Myhre said she deferred to Mr. Horn.

Mr. Horn said that would have to be discussed.

Chairperson Taniguchi suggested that the Board listen to everybody's questions first.

Mr. Uyeda said he had specific detailed questions about the contract. He asked first about Paragraph 3.1, entitled "Detailed Design," which stipulates the 2002 National Electric Code (NEC). He noted that the County is using the 2008 NEC, and asked whether this project is using the 2002 version due to the high voltage involved. He asked whether a more current code could be found.

Mr. Horn said his company designed to the current code requirement for the voltage employed at the project site. His company has developed all of the single- and triple-line diagrams, the operating layout for all of the electrical, etc. All of it has been engineered, designed and is ready to be submitted to HELCO. His company has had preliminary discussions with HELCO on all of the designs, and HELCO seems to be fine with the designs so far.

Mr. Uyeda asked whether the County Building Division would need to review the installation.

Mr. Horn confirmed this.

Mr. Uyeda asked whether the 2002 NEC meets the Building Division's requirements as well.

Mr. Horn said that if the 2002 NEC does not meet the requirements, his company will have to modify its design. He said that there will be several iterations of the design before it reaches its final form.

Mr. Uyeda noted that the EA has to be completed by a certain date, but he did not know what "completion" actually meant. He asked whether completion meant getting a letter from the Office of Environmental Quality Control (OEQC); he asked whether completion meant just submission of the EA report. He said he did not know what completion meant, to meet the September 14, 2014, deadline.

The Manager-Chief Engineer said he was not sure what the process is, but he assumed that completion would not be just filing it with the OEQC; there is a review process that OEQC requires. Once that process is done, OEQC issues a final letter saying this is the final document as far as the EA.

Mr. Uyeda suggested putting language in the PPA to define what completion of the EA means, to make it clear and alleviate any potential for dispute.

The Manager-Chief Engineer said okay.

The Deputy agreed, saying that it could be clarified in the PPA. He said that the Department basically intended completion to mean the receipt of the Finding of No Significant Impact (FONSI), which gives the green light to proceed. The language in the PPA can be made more specific to define what completion of the EA means.

Mr. Uyeda asked about Paragraph 7.2.1, regarding Security. This section stipulates that DWS will provide and take reasonable measures on the security of the facility. Mr. Uyeda said the language in this section was not specific, and he was concerned that if someone damaged the contractor's equipment, etc., it could become a point of contention. He suggested that the SCADA system provided in the PPA could include some kind of camera system, to protect DWS and to provide adequate security.

The Manager-Chief Engineer said he was not sure exactly what the SCADA system will entail.

Ms. Myhre said the SCADA described in Exhibit B in the PPA does provide for security for all of the equipment, for DWS sites as well as for the wind farm site itself. These sites need to be secured.

Mr. Uyeda asked whether the "reasonable measures" for security come under the contract.

Ms. Myhre confirmed this.

Ms. Garson said she would add language to the effect that the reasonable measures would be "as provided in" the Section of the PPA dealing with SCADA.

Mr. Uyeda asked when the 20-year term of the PPA actually starts. He noted that there are a number of action items that need to be taken care of before the 20-year period commences. He asked whether there were an electrical performance timeframe, whereby a designated number of megawatts need to be adequately supplied over a certain period in order to be granted final completion.

Mr. Horn said that final completion will be when a third party has inspected and verified all of the installation, as well as all of the power generation equipment, and deemed it complete per the contract requirements. An independent third party will come in to do that verification and deem it complete; that will be the start of the contract, he said.

Mr. Uyeda asked whether this third party has been agreed upon by DWS. He asked whether this third party designation is in writing, or whether the third party would just be selected through the construction project.

Mr. Horn said it will be a third party selected by his company's electrical engineers and constructors, to make sure all of the tests are complete.

Mr. Uyeda asked if there could be language in the PPA that says how the third party contractor was agreed upon.

Mr. Horn said he did not know.

Mr. Uyeda asked whether the third party's independence is based on a contractor that Mr. Horn's company selects.

Mr. Horn said it was not necessarily a contractor that his company selects; it is also for his company's financing entity. The financing entity which provides the project's financing has to be assured that an independent third party is doing the inspection. Therefore, whether the third party is selected by DWS or the financing entity, that third party will be selected independently.

Ms. Lee Loy asked Ms. Myhre whether DWS has a lease in principle or in concept with the State Department of Land and Natural Resources (DLNR).

Ms. Myhre said it was a lease in concept.

Ms. Lee Loy asked whether once the Board executes this PPA, the trigger is pulled on preparing the EA and then ultimately the FONSI is issued. Once the FONSI is issued, construction can move forward.

Ms. Myhre said that once the EA is completed, DWS can then go to DLNR for the final lease, which will be for 50 years. Once the final lease is in hand, construction can begin. She noted that some things will be happening simultaneously. Ms. Myhre expects that the application to DLNR will be done within a week of the FONSI being issued, i.e., the notice of completion of the EA. She noted that construction cannot start until DWS gets the final lease.

Ms. Lee Loy noted that after the FONSI is published in the Bulletin, there is a 30-day appeal process; she just wanted to make sure that the PPA is capturing some of that time provided.

Mr. Robinson returned to Mr. Uyeda's question regarding the commencement date of Commercial Operation. He read through Paragraph 3.6.1 regarding Commencement of Energy Delivery, which mentions verification by a third party, and asked who the third party verifier would be.

Mr. Horn said the third party verifier would be an independent company that would be retained to do analysis and tests of all of the operating systems. He said that is a requirement of the financing company.

Mr. Robinson said then, it is not a requirement of the creation of the Commercial Operation date.

Mr. Horn said that was correct; it is a requirement for the financing of the project. On a different topic, Mr. Horn said that a seabird study needs to be done for the EA. His company has already hired the company to do the study, and they begin work next month. His company has hired a fish and wildlife biologist to interpret the new bird study results, as well as all of the other studies that have already been done for the EA. He said that his company is moving quickly to get the EA ready for application.

Chairperson Taniguchi referred to Paragraph 3.6.2, regarding Continuity of Energy Delivery. He asked if the system switches back on to the HELCO grid if the contractor fails to provide at least 95 percent of the agreed-upon energy.

Mr. Horn said the system is never *off* the HELCO grid.

Chairperson Taniguchi said that hopefully DWS will get most of its power from the wind farm. He asked how the \$400 a day in liquidated damages was arrived at.

The Deputy said he would have to go back and look at the spreadsheets, but basically that figure is an estimate of what DWS would have to pay per day for getting the power from HELCO at full price, instead of getting the cheaper power from the wind farm.

Chairperson Taniguchi asked why the PPA did not just state the difference that DWS would have to pay, instead of \$400 a day.

Ms. Garson said that would be considered an *actual damage*, which DWS would have to prove up.

Chairperson Taniguchi said DWS would have to prove up the \$400 a day.

Ms. Garson said no, the \$400 a day is based on an estimate. With this estimate, DWS does not have to go back and sue the contractor for damages based upon a breach of contract for failing to produce the 95 percent of agreed-upon energy per day.

Chairperson Taniguchi asked what if the amount DWS paid HELCO came out to less than \$400 a day. He asked again why the PPA does not simply state the difference. He said the \$400 a day threw him; he figured that DWS had some kind of calculation working backwards.

Ms. Garson said the other way to write this is to make it a breach of contract if the contractor does not produce 95 percent of the energy. With a breach of contract, DWS would sue to get *actual damages*, and DWS would have to prove what its actual damages are, based on the specific rate for that specific day, the wind available, etc. DWS would have to go through that kind of calculation, and it would be difficult to ascertain what the actual damages are. In those circumstances, the law allows DWS to put in a *liquidated damages* provision up front, with a rough estimate – instead of going through the whole calculation process. In this case, if DWS does not get the 95 percent of agreed-upon energy, the contractor just pays DWS \$400 a day. The law in these circumstances allows DWS to do that.

Chairperson Taniguchi indicated he understood. He asked about Paragraph 4.2.2 regarding Repairs. The section says that the contractor has 10 days to commence repairs to any malfunction, and 60 calendar days to proceed with due diligence to restore energy. He asked why the timeframe was so long.

Mr. Horn explained there are a number of reasons for that. One reason is the availability of repair parts. He gave the example of a series of failures at the Hāwī wind farm, involving blade bearings. Blade bearings used in the wind farm are only made in England, and they weigh about 2,000 pounds each. Shipping the blade bearings from England is very expensive, and even if the manufacturing of the blade bearings takes place quickly, it takes time to get the bearings from England to Hawai'i. That is why there is the 60-day grace period, although with a series of failures, it would barely be enough time to make it – even with the maximum degree of expediting. As a result, Site Constructors stocks spares. The Hāwī wind farm, for example, stocks two sets of spares.

Chairperson Taniguchi asked about Paragraph 4.2.2 regarding Repairs. The section says that in the event of an emergency, the contractor would have someone on-site within 12 hours. He asked for confirmation that the contractor actually has somebody on-island.

Mr. Horn said that was correct.

Chairperson Taniguchi said that 12 hours is a lifetime if there is an emergency; DWS would want someone there right away. The longest it takes anyone to drive from one point to the other is two hours.

Mr. Horn said that in an emergency, the machines will shut down on their own. The company will show how all of the shut-down procedures are followed, during the start of commissioning the wind farm, he said. He said his company picked a number for the response time, (i.e., 12 hours), that they felt comfortable with. However, in actual fact, the response time will probably be a maximum of two hours. The company was reluctant to box themselves into a corner on the response time, but the truth is that the company has personnel living in the general vicinity of the wind farm. The company would expect a staffer to get to the wind farm immediately in the event of an emergency, he said.

Chairperson Taniguchi asked whether the liquidated damages would kick in if Site Constructors fails to provide the 95 percent of agreed-upon energy.

Mr. Horn confirmed this.

Chairperson Taniguchi asked about the technical term “lock open” found in Paragraph 3.1. The sentence reads: “HELCO shall have the right to **lock open** without notice...the Disconnect Switch.” He asked what “lock open” meant.

Mr. Horn said that in several places on the interconnection, HELCO requires a visible disconnect, and that visible disconnect is fitted with a padlock. By opening the disconnect, it can be padlocked so that no one can re-close it in the closed position.

Mr. Inaba said “open” in this case means “electrical circuit.”

Chairperson Taniguchi asked whether that means the box is locked.

Mr. Inaba said no, that it means that there is no electricity going through it; it has been disconnected.

Ms. Garson suggested at this point that she provide a recap of the items that the Board wants to include in the PPA. The first item involves a fixed interest rate; Ms. Garson asked Mr. Robinson whether the Department could just use its discretion and fix a number.

Mr. Robinson said yes.

Chairperson Taniguchi said he took Mr. Robinson’s earlier point about avoiding a published rate. The PPA calls for using the prevailing prime rate published in the Wall Street Journal, but there was a question about whether the Wall Street Journal would exist in the future. In the old days, nobody would have thought that such published indices would disappear, but today, one never knows.

Ms. Garson said okay, she would try to recapture the points made by the Board. The first point, in Paragraph 3.6.1, the Board wants a fixed rate. Therefore, Ms. Garson would be removing the language saying “discounted at the prevailing rate of interest as published in the Wall Street Journal on the day preceding the date of determination.” She asked whether she should also give an example at the end of the paragraph.

Mr. Robinson agreed that an example should go there, showing what would happen if the contractor did not deliver for X period of time, and how much the liquidated damages would be.

Ms. Garson said she also would insert in the relevant paragraph some language about “adequate reserves to do repairs.”

Mr. Robinson suggested the following language: “On an annual basis, the contractor shall provide to the (Manager-)Chief Engineer of the Department of Water Supply a statement of annual reserves sufficient to facilitate repair and maintenance of the facility on an ongoing basis for an entire year.”

Ms. Garson quipped it was lucky that all of this was on tape. The next item involved more specific language regarding what the completion of the EA is. She suggested saying that completion would be “until such time as the FONSI has been issued, and all appeal periods have been satisfied.” She then asked whether there was still concern about having an independent third-party review. She said she believed DWS would have its own inspector inspecting the project as it is being constructed. She did not know if that was sufficient.

The Deputy said no, not really. He explained that when evaluating this PPA, it was helpful for him to keep in mind that this is unlike a DWS CIP project in which DWS is investing its monies and building something per plan design, done by a consultant hired by DWS. On this project, DWS is just waiting for Site Constructors to finish, so DWS can buy the power. The burden is entirely on the contractor; the contractor gets his own financing, gets his own equipment up and running, etc. Site Constructors wants

to get it done so they can sell us the power. DWS wants them to get it done so DWS can buy the power. DWS really does not want to inspect, because DWS does not know what the details will be.

Mr. Inaba said that DWS inspectors will be involved in modifications to the water system. However, DWS does not have the expertise to inspect a wind facility.

Mr. Horn agreed that DWS will only inspect the water system and the SCADA system.

Mr. Inaba confirmed this.

Ms. Iokepa-Moses said that the neutral third party will not be chosen by the contractor or DWS; it will be chosen by the finance company that is financing the project.

Ms. Garson said okay, there will be no language involving the third party review. The last item was in Paragraph 7.2.1 regarding security, where it says: "DWS shall provide and take reasonable measures for security of the System." Ms. Garson said she would just add some language like "as provided in the Exhibit B on the SCADA system." She asked whether she captured all of the items the Board wanted to be included in the PPA.

Chairperson Taniguchi said he had one last question, regarding who would be responsible for the clean-up. He asked where language regarding the clean-up was found in the PPA.

Ms. Myhre said it was under Termination in the PPA.

Ms. Iokepa-Moses asked if there were a timeframe.

Ms. Myhre confirmed that there was a timeframe.

Chairperson Taniguchi asked where it was in the PPA.

Mr. Inaba said it was in Paragraphs 10, 11 and 12. There is an option in the PPA whereby if DWS feels the contractor has defaulted, DWS can either purchase the facility, or decide not to purchase the facility and tell the contractor to do the clean-up.

The Deputy directed everyone's attention to Paragraph 10.4.

Ms. Garson read the relevant language: "Provider shall remove all of its tangible property..."

Chairperson Taniguchi asked whether that covered everything.

Ms. Garson said it would cover what the contractor put there.

Chairperson Taniguchi said okay, as long as Ms. Garson was okay with that language.

Ms. Garson said yes, and the language is also in Paragraph 10.5.1, that says if DWS does not exercise an option, and the contractor terminates for cause, the contractor removes his property. She asked whether she had covered everything now. She said she basically had four revisions to make to the PPA, provided that the contractor agrees. She suggested that the Board do a friendly Amendment to the Main Motion, giving the Chairperson authority to sign the contract, subject to these amendments.

Chairperson Taniguchi asked whether the Board should amend the original Motion, or withdraw the original Motion and do a new one.

**ACTION ON AMENDMENT TO THE MAIN MOTION:** Mr. Robinson moved to amend the original Motion, which would allow for the inclusion of the four revisions to the contract, provided the revisions

are accepted by the contractor; seconded by Mr. Perry. Amendment to the Main Motion carried unanimously by voice vote.

Ms. Garson said the Board should now vote on the original Motion as amended.

ACTION: Main Motion as Amended carried unanimously by voice vote.

Ms. Garson said she had made a mistake when the Board voted on Item 5(A), regarding Resolution 13-02. The Resolution did indeed call for a roll call vote, because the Board must, before the second reading, publish the Resolution with the first reading's Ayes and Nays. She said the Board needed to return to this item.

5) HĀMĀKUA:

A. RESOLUTION NO. 13-02, PROVIDING FOR THE ACQUISITION OF PRIVATE PROPERTY AND EASEMENTS SITUATE IN THE DISTRICT OF HĀMĀKUA, COUNTY AND STATE OF HAWAI'I, IDENTIFIED AS A PORTION OF TMK NO. (3) 4-7-002:035, FOR CONSTRUCTION OF A WELL, RESERVOIR, TRANSMISSION MAIN, ACCESS ROAD, AND RELATED FACILITIES:

ACTION: The Secretary took a roll call vote: Mr. Arikawa (Aye); Mr. Greenwell (Aye); Ms. Iokepa-Moses (Aye); Mr. Kaneshiro (Aye); Ms. Lee Loy (Aye); Mr. Perry (Aye); Mr. Robinson (Aye); Mr. Uyeda (Aye) and Chairperson Taniguchi (Aye). Motion carried with Nine (9) Ayes and Zero (0) Nays.

7) NORTH KONA:

A. JOB NO. 2013-995, KAHALU'U D DEEPWELL REPAIR AND IMPROVEMENTS:

This project generally consists of the replacement of the existing deepwell submersible motor, pump, power cable, column pipe and all appurtenant equipment, such as strapping, chlorination of the well and pumping assembly, and installation of a new step-up transformer, in accordance with the plans and specifications.

Bids for this project were opened on September 5, 2013, at 2:30 p.m., and the following are the bid results:

<b>Bidder</b>	<b>Bid Amount</b>
Alpha, Inc.	\$345,384.75
Beylik Drilling and Pump Service, Inc.	\$158,500.00
Derrick's Well Drilling and Pump Services, LLC	<b>\$141,900.00</b>

Project Costs:

1) Low Bidder (Derrick's Well Drilling and Pump Services, LLC.)	\$141,900.00
2) Contingency (10%)	\$ 14,190.00
<b>Total Cost:</b>	<b><u>\$156,090.00</u></b>

Funding for this project will be from DWS's CIP Budget under Deepwell Pump Replacement. The contractor will have 180 calendar days to complete this project. The Engineering estimate for this project was \$200,000.00.

The Manager-Chief Engineer recommended that the Board award the contract for JOB NO. 2013-995, KAHALU'U D DEEPWELL REPAIR AND IMPROVEMENTS, to the lowest responsible bidder, Derrick's Well Drilling and Pump Services, LLC., for their bid amount of \$141,900.00 plus \$14,190.00

for contingencies, for a total contract amount of **\$156,090.00**. It is further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

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

The Manager-Chief Engineer said the Kahalu‘u Deepwell has been in disrepair for some time now, and DWS needs to get it back in service. With the reduced pumpage from the Kahalu‘u Shaft, DWS needs this deepwell to be in place. DWS got good bids for this project.

ACTION: Motion carried unanimously by voice vote.

9) MISCELLANEOUS:

A. DEPARTMENT OF WATER SUPPLY PROPOSED TABLE OF ORGANIZATION:

The Department recognizes the need to revise its current table of organization to align with current and future needs as identified in the Strategic Plan. As such, the Department proposes the following:

REVISED POSITION ORGANIZATION CHART -- ADMINISTRATION DIVISION – PUBLIC RELATIONS BRANCH

The Department proposes to amend its Table of Organization, Position Organization Chart, Public Relations Branch by creating a Public Relations Section, a Strategic & Business Plan Section, and a Support Section. The proposed amended branch will allow the Department to better administer and execute public information, education, and strategic planning programs. The existing Public Information Education Specialist position is proposed to change to an Information and Education Manager (SR-26) that will supervise the proposed subordinate positions: Public Relations Technician I (SR-14), Public Relations Technician II (SR-16), Information and Education Specialist I (SR-18), Information and Education Specialist II (SR-20), Information and Education Specialist III (SR-22), and a Clerk III (SR-10).

The proposed changes will provide the Department the ability to meet its goals of improved efficiency, through the appropriate separation and distribution of workload. Please note that although numerous positions appear on the proposed organization chart, positions will only be filled as needed.

The Manager-Chief Engineer recommended that the Water Board approve the proposed revised Table of Organization.

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

Mr. Kaneshiro asked what the additional cost of this proposal would be.

The Manager-Chief Engineer said that the Clerk III position has an annual salary of \$27,000.00. The Technician position has an annual salary of \$32,000.00. The difference between the Information and Education Manager (and the current position) is \$4,000.00 annually. If DWS proceeds with this reorganization, there would be the additional \$4,000.00, plus the \$27,000.00 and the \$32,000.00. He noted that this is not funded for this Fiscal Year. If the Table of Organization is approved and if funds are available, DWS wants to program this Reorganization for next Fiscal Year.

Mr. Kaneshiro asked if this means a reorganization of the Department, meaning that some personnel will move from one section to another section (within DWS); he asked if this instead meant that DWS would be advertising these positions.

The Manager-Chief Engineer said that one position, which is currently held by Ms. Aton, will be reallocated into the Information and Education Manager's position, and then DWS will be advertising for the additional personnel. He noted that DWS tends to recruit in-house first, or goes open immediately when there are no available personnel in-house.

Mr. Robinson asked whether the focus of this reorganization is on increasing public relations.

The Manager-Chief Engineer said there are two basic focuses here. When one looks at Ms. Aton's current position, Public Information and Education Specialist, and one looks at the list of her position tasks, they are actually two different tasks. One is the Public Relations side, and the other part is the Strategic and Business Plans side. Therefore, there are two sections within this proposed Reorganization.

Ms. Lee Loy said Ms. Aton does a fabulous job; she is juggling a lot of things. However, her question was: what are the goals and objectives here. She asked whether the reorganization's goals and objectives are to divide the job into two parts, where one person would take care of relaying public relations information, and another person would facilitate educational information.

The Manager-Chief Engineer said that was generally correct. He explained the proposed Table of Organization, where the Administration Division would have a branch head overseeing the two proposed sections: the Public Relations Section and the Strategic and Business Plan Section, supported by the Clerk position.

Mr. Arikawa asked whether right now DWS has one person in the public relations position.

The Manager-Chief Engineer confirmed this.

Mr. Arikawa asked whether DWS wants to extend it to include another six positions.

The Manager-Chief Engineer confirmed that the proposed Table of Organization shows six new positions. He said that DWS is not necessarily going to recruit all of those positions initially. The reallocation of Ms. Aton's current position, SR-24, would become a Branch Head. There may also be an assistant position and the Clerk position, so initially there would be three positions in the Public Relations Branch.

Mr. Arikawa asked whether, in other words, Ms. Aton is doing six jobs.

The Manager-Chief Engineer said he would not say six jobs; he would say maybe three.

Chairperson Taniguchi asked about the additional \$4,000.00 and the \$27,000.00. He was not clear where the difference of \$4,000.00 came from.

The Manager-Chief Engineer said the reallocation of the Branch Head and the current Public Information and Education Specialist position is \$4,000.00. The difference between Ms. Aton's current SR-24 position and the new SR-26 position is \$4,000.00, he said.

Chairperson Taniguchi asked who DWS is going to add on the chart.

The Manager-Chief Engineer said that the proposal adds the Public Relations Section, the Strategic and Business Plan Section, and the Support Section.

Chairperson asked whether all of that would cost only \$27,000.00.

The Manager-Chief Engineer said no, if DWS hired all six positions, it would cost more than that. He reiterated that the Clerk III position would cost \$27,000.00. He noted that one of the Public Relations Technician positions would cost \$32,000.00.

Chairperson Taniguchi asked how much it would all cost if the Board were to approve the Reorganization now; that is the question because that is what DWS is asking the Board to approve. The Department has to tell the Board how much it is going to cost; if DWS just wants a Clerk position, that will cost \$27,000.00.

The Manager-Chief Engineer estimated that hiring five technicians would be about \$150,000.00.

Chairperson Taniguchi said that is a big difference from the \$27,000.00.

The Manager-Chief Engineer said again that DWS is not going to recruit all of the positions. Initially, DWS might start off with the Clerk and just one of the technician positions, so the cost would be \$27,000.00, plus \$32,000.00.

Ms. Iokepa-Moses asked if the Board could revisit this Item. She asked if the Board could approve a certain cap amount, such as \$40,000.00, and have DWS come back to the Board again for approval as the positions grow. She feared that if the Board approved the Recommendation as written now, DWS may go ahead and hire five people.

Chairperson Taniguchi agreed, saying the Board will then have approved the Recommendation without knowing how much it is going to cost.

The Manager-Chief Engineer said that it is correct to say that once the positions are approved, they are created. The cost is also there, but it is still up to the Board to decide when DWS goes before the Board to approve the Budget. The Board can direct DWS whether or not to fund positions when the Board does its Budget approval.

Ms. Aton said that in the Strategic and Business Plan, a career series within the Reorganization was to be developed. Not all of the positions in the proposed Reorganization will be filled immediately; this Reorganization creates a career series that creates an opportunity for technicians or specialists to advance in the future. She said it was not the intent to fill any of these positions immediately. It is really about the workload: the difference between working on the Strategic and Business Plan as opposed to the Public Information and Education part of the workload. It is really broad and straddles a lot, she said.

The Manager-Chief Engineer thanked Ms. Aton for mentioning the career series, which makes it easier to recruit because it creates opportunities for advancement.

Mr. Uyeda noted that the Board had voted on a Reorganization of the entire Table of Organization several months ago; he said he did not see the difference between this proposal and the proposal that the Board approved several months ago. He wanted the Board to remember that it had approved a total reorganization of the Department then, whereby a lot of positions were added but not funded.

Chairperson Taniguchi said he thought that the Reorganization several months ago was just a switching around of responsibilities; it did not add positions.

Mr. Uyeda said he believed there *were* some new positions added.

The Manager-Chief Engineer confirmed that DWS did add some positions.

Mr. Kaneshiro said he was sure that when DWS came up with this proposal, the Department must have had some kind of justification or plan of work. He asked if it were possible for DWS to present its

thinking on why all of these positions were needed; he was sure that DWS had some kind of written documentation to justify this increase in the section. He said he liked the idea of upward mobility; this is very important.

The Manager-Chief Engineer said that when the Board adopted the Strategic and Business Plan in 2004, one of its provisions was to hire a public relations person. Ms. Aton was hired for that position. When creating the position Ms. Aton holds now, DWS had in mind that there was a public relations side to the position, as well as the strategic and business planning side of the position. However, it transpired that most of what Ms. Aton did was public relations. It was only when Mr. Antonio became the Manager-Chief Engineer that he decided that DWS needed to revive its Strategic and Business Plan. Now that DWS is implementing its Strategic and Business Plan, Ms. Aton's position is now being seen more as involving both public relations and strategic planning. Ms. Aton is rather overwhelmed with doing both the public relations and strategic planning. Therefore DWS is trying to seek relief here, to efficiently operate in both the public relations and strategic planning, the Manager-Chief Engineer said. That is basically why DWS is doing the Reorganization, he added.

Ms. Iokepa-Moses said regardless of how much time the Board goes back and forth with the same kind of questions, she planned to vote Nay on the way it is written now.

Chairperson Taniguchi said he had not called for the question yet.

Ms. Iokepa-Moses said yes, but the same kind of questions are going back and forth.

Ms. Garson said that one option is for the Board to defer the Item. If the Board wants to direct the Department not to fund certain positions, DWS can come back with something on the Agenda that pinpoints what positions will not be funded. The positions will be created, but they will be unfunded until the Board authorizes funding those positions in the Budget. Ms. Garson said she is a little uncomfortable at this point, because she does not know how a revised proposal from DWS will look. She suggested deferring this Item until next month's Board meeting, when DWS will have a proposal that may give the Board more of a say.

The Manager-Chief Engineer noted that DWS has over 200 positions, but only 160 employees; there are many vacant unfunded positions. He said the Board could direct DWS not to fund certain positions until further notice.

Mr. Kaneshiro said that was why the Department needs to explain to the Board why these positions are needed; such an explanation would make things easier for DWS in coming before the Board. The way the proposal is written now, it will be very difficult for the Board to approve.

The Manager-Chief Engineer said he understood. The Table of Organization is just a graphic of the positions. DWS needs to work with Human Resources to provide the details on the position descriptions, duties of the positions, etc.

Mr. Kaneshiro said that maybe it had been a little premature to bring this Reorganization before the Board.

The Manager-Chief Engineer said yes, he still needs to work with Human Resources on this.

Chairperson Taniguchi said this has nothing to do with the great job Ms. Aton is doing. However, a lot of the private sector people on the Board, including Mr. Taniguchi, would need to show how adding positions would be balanced with cuts elsewhere. He said a business case would have to be submitted as to why the additional positions were needed, and what positions would be taken away. He said the Board was having a hard time here because a *true* reorganization means moving people from one

section to another – not adding bodies. A true reorganization does not really cost anything; it is net neutral.

Ms. Iokepa-Moses asked how this proposed Reorganization would add value; she asked how these new positions would increase revenue.

The Manager-Chief Engineer said it is a matter of efficiency; it is a matter of not overworking an individual or having a certain employee work overtime. By creating the additional positions, it would reduce that, he said. He reiterated that although there are a number of new positions on the proposed chart, DWS is not going to recruit all of them at once; that would be too much. He said that initially, the reallocation would come first, along with maybe the technician and the clerk positions. He said that the Board has the upper hand as far as approving the Budget and approving what positions will be recruited for the next Fiscal Year. If this Reorganization is approved, DWS will still need to come back to the Board for approval of the Budget.

Chairperson Taniguchi asked whether the Board should move to defer this Item.

MOTION TO DEFER: Ms. Iokepa-Moses moved to defer this Item to the next meeting.

Chairperson Taniguchi asked if the original Motion needed to be withdrawn first.

Ms. Garson said no, the original Motion can stay on the table as a Motion to approve.

ACTION: Mr. Robinson seconded Ms. Iokepa-Moses's Motion to defer. Motion carried unanimously by voice vote.

Chairperson Taniguchi said the Board would now return to the original Motion.

Ms. Garson said no, the original Motion is deferred; it will show up again on next month's Agenda. It is basically a Motion Pending.

The Manager-Chief Engineer asked the Board what additional information he should provide at the next meeting; he asked if it were something he could work on with the Board.

Chairperson Taniguchi said Mr. Kaneshiro would work with the Manager-Chief Engineer on the details of the Reorganization.

Ms. Iokepa-Moses said the issue for her was that although the Item says: "Positions will be filled as needed," the Board would have been basically approving those positions, and DWS could fill those positions at its discretion, or "as needed." She feared that DWS could fill all six of the positions right after the Motion to approve is passed.

Chairperson Taniguchi agreed.

The Manager-Chief Engineer said that normally DWS states that positions will be recruited as needed, but as he said, the positions are not budgeted in this Fiscal Year. DWS will definitely not be recruiting in this Fiscal Year.

Chairperson Taniguchi asked if Mr. Kaneshiro had anything to say.

Mr. Kaneshiro spoke to the Chairperson inaudibly.

The Manager-Chief Engineer said he would work with Mr. Kaneshiro ahead of the next meeting.

D. **AD HOC COMMITTEE PURSUANT TO HRS SECTION 92-2.5(B) TO PRESENT, DISCUSS AND/OR NEGOTIATE FOR LEGISLATION REGARDING THE PLACEMENT OF SUCH LIENS ON REAL PROPERTY FOR NON-PAYMENT OF WATER BILLS:**

The Ad Hoc Committee is exploring legislation pursuant to HRS Section 92-2.5(B) which would allow the placement of an automatic lien on property for non-payment of water bills. The Ad Hoc Committee will present, discuss, and/or negotiate for such legislation with any necessary person including, but not limited to, any water or wastewater department or division of any county, and/or with any legislators in the State of Hawai'i.

The Ad Hoc Committee is also exploring a revision of the Department of Water Supply Rules and Regulations to hold a property owner responsible for any water bill for water service to such property, whether or not the property owner resides on the property; and that no water service will be granted to such property until all such delinquencies are paid or other agreement is reached.

Ms. Lee Loy said that she had gone through a number of existing legislation regarding liens. This was aimed at coming up with a framework about defining liens, defining the purpose of the Statute, etc., which is tailored to what Real Property Tax Division has done (as well as what the State and Federal government have done regarding taxes and liens for non-payment of taxes). She would be sharing her findings with her Committee colleagues, Messrs. Robinson and Uyeda. There is a lot of language out there in these rules and policies that Ms. Lee Loy has been able to capture and frame up. Ms. Lee Loy said she had also spoken separately with a few legislators about what the Committee's goals and objectives are as far as creating this new piece of legislation; all of the legislators she spoke to were encouraging. The legislators felt that if the Committee got the proposed legislation to a place where the legislators could just introduce it, they would be more than happy to carry the ball and introduce it at the next Legislative Session. Ms. Lee Loy pointed to the upcoming Maui conference as a networking opportunity, where DWS could get a larger buy-in – and even get the other counties to support the legislation together as a package.

Chairperson Taniguchi said this was excellent.

The Manager-Chief Engineer said that the other water department heads are aware of the Committee's initiative, and have expressed their support for what the Committee is trying to do here. He agreed that the Maui conference would be a good opportunity for networking.

Ms. Lee Loy said she bounced the idea of the new legislation off Ms. Bobby-Jean Leithead-Todd, the director of the Department of Environmental Management, whose Waste Water Division could benefit. Ms. Leithead-Todd was very supportive.

Chairperson Taniguchi said that the whole idea behind this legislation was to include the Waste Water Division as well. He said he had also shared the idea of the legislation with Ms. Leithead-Todd, as well as with the Water Board chairpersons of Honolulu and Kauai. He understands that Maui is supportive as well. He thanked the Committee for its work. This legislation will provide good leverage for DWS, as well as for Waste Water Division.

Mr. Arikawa, speaking as a real estate professional, wanted to know how many billings would take place before action was taken. If it goes to three or four billings, the amount of money could be quite a lot. He noted that Waste Water Division has a form that the owner can fill out to designate who is responsible for the bills, i.e., the tenant, the owner or the property management company. If the tenant is designated as responsible, Waste Water Division goes after the tenant. The tenant's name goes on a list, and being on the list can bar the tenant from renting another property, he said.

Chairperson Taniguchi said that is a very good point. The framing of this legislation is still in its infancy, so he welcomed all of the Board to offer their input such as Mr. Arikawa did. The Committee can incorporate all of the input shared with the Committee. He said that this can be incorporated even in DWS's Rules and Regulations, as far as who is responsible for the bills, etc.

Mr. Arikawa noted that the Department pulls the meter on delinquent accounts. Mr. Arikawa said that if the tenant is behind on three billings or whatever, the landlord could pull the lease. The owner would rather pay that \$75.00 installation charge than have a lien against his property.

Ms. Lee Loy said she did a lot of research on residential, commercial and agricultural property, to capture an amount or some kind of cap where once a delinquency exceeds a certain amount, it triggers the next process. It was worthwhile gathering all of that information, she said.

Chairperson Taniguchi said that having the ability to place a lien is good leverage; even if DWS does not necessarily place a lien, the threat is there.

The Manager-Chief Engineer said DWS got into this situation because DWS has allowed different tenants to apply for service for the same particular property, with no responsibilities for the land owner himself. With this legislation the lien would be against the land owner. Tenants come and go, and DWS has had trouble collecting from delinquent tenants. He said that is the reason why DWS has talked about placing liens, whereby the land owner becomes ultimately responsible for that delinquent bill.

Ms. Iokepa-Moses asked if a landlord gets a copy of the tenant's bill. She asked if there is a point in the delinquency that DWS notifies the landlord.

The Manager-Chief Engineer said that at this point DWS works only with whoever the customer is; if the customer is a tenant, DWS will have no dealings with the landowner himself.

Chairperson Taniguchi noted that the Committee has a lot of work to do, and thanked the Committee.

**E. AD HOC FINANCE COMMITTEE REPORT:**

Mr. Sumada said the Department will start the lock-box processing next month. On October 7, DWS will start sending bills out with the revised format, with the remittance stub on the bottom. DWS will also be including a brief notice explaining what the changes to the bills are, why the changes were made, and what the customer needs to do. Shortly after the new bills go out on October 7, the lock box will be receiving payments that previously would have come directly to DWS. When this starts happening, the bank will start processing these payments for DWS, and sending DWS a file to load into the Department's billing system.

**F. ENERGY MANAGEMENT ANALYST UPDATE:**

Ms. Myhre attended the Mayor's Energy Advisory Commission meeting last week. The focus going forward appears to be energy related to agriculture and energy related to transportation, building on what the Commission has done since 2009.

Ms. Myhre said that HELCO is looking at DWS's rate structures on a couple of smaller pumps, with an eye to helping DWS save money (by changing the rate structure). DWS will meet on this with HELCO next week.

Ms. Myhre is exploring grants for energy projects, working on one grant with State Civil Defense as well as obtaining some money from FEMA.

**G. MONTHLY PROGRESS REPORT:**

Regarding the Queen Ka‘ahumanu Highway Widening project, Mr. Robinson noted that somebody emailed him a 314-page archaeological report. He looked through the report, which showed various archaeological areas beside the highway; the report showed how the plan should be redesigned, etc. Assuming that the report which the Department of Transportation (DOT) is working from is a recent report, Mr. Robinson expected the project will take a good deal longer to complete. He asked whether DOT had said anything to DWS about this.

Mr. Inaba said that DOT is approving the redesign (i.e., the change order) for Goodfellow Brothers. DWS has assured DOT that the Department is going to be in this project. DOT has not said how long things would take, and has not mentioned to DWS about possibly relocating some of the archaeological sites. He did know that DOT intends to work to avoid the majority of the sites.

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

Chairperson Taniguchi asked Mr. Sumada why there was a 25 percent increase in depreciation. He asked what kinds of items were added on.

Mr. Sumada said that the last three years, DWS’s auditors have looked at DWS’s CIP projects, and advised the Department to close the projects out sooner. Most recently, multimillion dollar projects like the \$5 million air conditioning renovation at the Waiākea Office Plaza and the Palani Road project have been closed out, and they are now starting to depreciate, which accounts for the big jump in depreciation, Mr. Sumada said.

**I. MANAGER-CHIEF ENGINEER’S REPORT:**

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

- 1) Pu‘ukala/Kona Ocean View Properties Subdivision Improvement District Update – DWS closed the loan with USDA and the Department of Finance. The next step will be to give the contractor the Notice to Proceed. The contractor is expected to break ground sometime in November. This is basically a 9-month project, the Manager-Chief Engineer said.
- 2) Queen Ka‘ahumanu Highway Widening Project Update – This topic was covered earlier, but the bottom line is that the State DOT did not give the contractor Notice to Proceed.
- 3) Kawailani Tank update– The Manager-Chief Engineer said that the contractor is not at the site; he is waiting for the sealant material that is being shipped over from the Mainland; the sealant needs to go inside of the new tank. One major task is the removal of the steel tank, but that will not happen until the new tank is in operation. Mr. Inaba confirmed that the contractor had ordered the sealant, which should arrive in about three weeks. The contractor should be back on-site in the second week of October. The electrical contractor has to go back to redo some of their work, due to disused and corroded material. Once DWS is able to fill up the new tank, the connections can be made, the steel tank can be removed, and all of the heavy equipment can be taken out. The property will be fenced. The scheduled completion date is December 31, Mr. Inaba said.
- 4) Waikoloa Reservoir No.1 Update – DWS had a conference call with FEMA and State Civil Defense. FEMA asked DWS to do an EA on this reservoir, to make sure that DWS is not disturbing any wildlife, etc. He noted that DWS had done an EA for Reservoir No. 2, but FEMA insisted that a separate EA be done for Reservoir No. 1. DWS has asked its consultant to submit a proposal to start the EA process. Mr. Inaba said that FEMA had asked DWS to assure them that DWS is not disturbing any new ground; DWS feels it is not disturbing any new ground. FEMA wants a statement from the consultant to assure that DWS is not digging undisturbed ground; to dig in undisturbed ground would mean that DWS would need to consult

with the State Historic Preservation Division. DWS is confident that it will not dig in undisturbed ground. Mr. Greenwell asked whether any of the FEMA money was expiring. Mr. Inaba said that he believed FEMA would be more receptive to a time extension, in light of all of the requirements they have come up with. FEMA is discussing how to monitor DWS's contract, so that DWS can pass for what FEMA calls "over-runs," i.e., costs that are higher than anticipated.

- 5) Parker Well Repairs Update – The Manager-Chief Engineer said the project engineer expects to get the cabling, and it should be two to three weeks before the repair will be completed. Waimea is getting dry, and DWS's reservoir levels are dropping significantly. Meanwhile, the Waimea Well is pumping 24/7, and it is important that the Parker Well gets back on-line. DWS wants to avoid having to declare a water restriction or mandatory conservation.

The Manager-Chief Engineer noted that a couple of things were passed out to the Board today; these items are not for discussion today. One of the things is a letter from Rev. Norman Keana'aina regarding DWS's Kalaoa Well site, which was addressed to the Water Board. If need be, this can be agendaized for discussion at next month's meeting.

The other piece of information that was circulated was the petition by the National Parks Service to the Commission of Water Resource Management (CWRM). This petition seeks the designation of DWS's Keauhou Aquifer as a Management Area. There is a deadline for responding to this petition, and the Manager-Chief Engineer intends to request CWRM to extend the deadline for comments. If CWRM does not grant an extension for comment, the Board may want to hold a Special Meeting so that DWS can provide comments to the petition; the Secretary will contact the Board if a Special Meeting is needed. The deadline for comment is October 16. That date is prior to the next Board meeting, so if CWRM does not grant the time extension, then a Special Meeting might be scheduled prior to October 16, the Manager-Chief Engineer said.

- 6) Public Information and Education Specialist Update – Ms. Aton said that the department newsletter will be coming out soon. DWS participated in Government Career Day at the West Hawai'i Civic Center for high school students. DWS has had inquiries from Council Members Brenda Ford and Valerie Poindexter regarding water availability for different projects in their jurisdictions. DWS will participate in the Āhualoa Community Association's meeting next week. Ms. Aton said DWS has a plan in place in the event that a situation develops at the Kalaoa Well site vis a vis Rev. Norman Keana'aina; DWS is working in concert with the Mayor's Office, the Police Department and Corporation Counsel. DWS has held meetings regarding the National Parks Service petition to CWRM; the Department is strategizing on public information and education efforts in this regard. DWS submitted testimony to the City Council of Honolulu regarding the resolution on the Board of Water Supply's semi-autonomy; Ms. Aton had a copy of the testimony in case Board members wanted to read it. The Legislative Auditor's report on Hawaiian Ocean View Estates water meter allocation is due out; DWS is waiting for this final version for review and comments. The Board will take the findings and recommendations in the report, and decide what to do regarding the application process. Regarding the Kalaoa Well site situation, Mr. Greenwell asked whether DWS could continue to operate through a by-pass pipe or some other means, around that particular tank and well site if things go bad. The Manager-Chief Engineer said yes, DWS can operate its system without that tank, but it would be a rather jury-rigged system; DWS could look at other options as well. Mr. Greenwell, noting Ms. Aton's reference to a plan in place, asked whether DWS could provide water to the customers if this situation worsens. The Manager-Chief Engineer said yes. Ms. Aton said that the plan she mentioned was more of a public relations plan. The Operations plan was worked out early on, before the public relations plan was prepared; the public relations plan, coordinated with the Mayor's Office, the Police Department and Corporation Counsel, involved procedures DWS would follow in the event that there was obstruction to the site. The Deputy said the customers would still get water in

any event. Mr. Inaba confirmed that DWS operationally has the ability to keep its system whole, without that particular site. However, losing this source would be a big hit because it provides about one million gallons a day to customers. Mr. Robinson said he was under the impression that interference with a public drinking water supply is a federal crime. The Manager-Chief Engineer said this Item could be agendaized for next month's meeting. Ms. Garson agreed that tampering with a public drinking water system is a federal crime. Turning to Honolulu City Council's resolution regarding Board of Water Supply's semi-autonomy, Chairperson Taniguchi asked whether the Council had voted yet. Ms. Aton said it was on the Council Agenda today. Chairperson Taniguchi asked her to keep the Board posted.

J. **CHAIRPERSON'S REPORT:**

None.

10) **ANNOUNCEMENTS:**

1. **Next Regular Meeting:**

The next meeting of the Water Board will be held at 10:00 a.m. on October 22, 2013 at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

2. **Following Meeting:**

The following meeting of the Water Board will be held at 10:00 a.m. on November 26, 2013 at the West Hawai'i Civic Center, **Bldg. B, Liquor Control Conference Room**, 74-5044 Ane Keohokalole Hwy, Kailua-Kona, HI.

9) **ADJOURNMENT**

**ACTION:** Mr. Robinson moved to adjourn; seconded by Mr. Arikawa, and carried unanimously by voice vote.

Chairperson Taniguchi adjourned the meeting at 11:58 a.m.

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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.*