

MINUTES

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

March 25, 2014

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

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

ABSENT:

Mr. Rick Robinson, Vice-Chairperson
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. Peter Young
Mr. Shiro Takata
Mr. Riley Smith
Mr. Milton Pavao
Ms. Paula Pavao
Mr. Greggor Ilagan, County Council Member, District 4
Mr. Steve Bowles
Ms. Pat Tummons
Ms. Nancy Cook Lauer, West Hawai'i Today
Mr. Jonathan Likeke Scheuer
Ms. Linnea Heu
Mr. Chris Brown

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy
Mr. Kurt Inaba, Engineering Division Head
Mr. Richard Sumada, Waterworks Controller
Mr. Daryl Ikeda, Chief of Operations
Ms. Kanani Aton, Public Information and Education Specialist
Mr. Clyde Young, Operations

-
- 1) CALL TO ORDER – Chairperson Kaneshiro called the meeting to order at 10:00 a.m.
 - 2) STATEMENTS FROM THE PUBLIC

(Mr. Greggor Ilagan, Hawai'i County Council Member representing District 4, spoke on the Department's Operating and Capital Improvement Budget.)

MR. ILAGAN: Good morning. It's so different to be behind here, but I just want to say it's good to be here, and thank you so much for giving me this opportunity. My name is Greggor Ilagan, and I'm the Council Member for District 4. I'm here to speak on behalf of your operations. I wanna... Because I represent District 4, I want to voice out concerns of my constituents. One of the things about Puna... especially the district that I represent...there's 20,000 people living in District 4, and 12,000 of them is in Hawaiian Paradise Park. And most people in Hawaiian Paradise Park in the 8,800 lots there...most of them is in catchment. And they always wish to be, or have, County water. And I know you guys have to deal with 4,028 square miles of this Big Island. And it *is* a difficult job to balance your Budget to provide County water for everyone. I just want to remind everyone, especially this distinguished body...that there is a need in Puna. And the people in Hawaiian Paradise Park would wish to be, to have, County water, and I'm just here to advocate for that, and to remind everyone here that...I know that it's very expensive, and I just want you guys to understand that the need is there. And thank you for giving me this chance to speak to you, and it's a wonderful day, so I just want to say thank you again. Aloha.

CHAIRPERSON KANESHIRO: Thank you very much. Next I would like to call up Jonathan.

(Mr. Jonathan Likeke Scheuer, representing the National Park Service, spoke on Items 8(A), (B), and (C).)

MR. SCHEUER: Aloha mai kakou. My name is Jonathan Likeke Scheuer, sort of like "shoyu", or rhymes with "lawyer." And I'm here today on behalf of the National Park Service. You have my written testimony. I just want to say a few things to you today. First of all, I wanted to thank you again for the opportunity that you gave to the National Park Service to present last month, um...especially for the question the Board asked after the presentation. And I want to especially thank the people that came to testify in opposition to the presentation that we gave, and the efforts that we're doing. It's...you know, it's hard in Hawai'i, local folks... We don't like going public and disagreeing. We don't like to do things, and I know it takes a lot of energy and effort, so I just want to acknowledge that and thank people. I also look forward to hearing the presentations from Mr. Young today, as well as from the Water Board staff...the departmental staff. And we had an opportunity last Thursday in Kona to hear what I think will be a substantially similar presentation today from the Department. I want to go on record and let you know that we absolutely agree; we think the Department of Water Supply does an excellent job in Kona, of pumping water, maintaining wells and distributing water in Kona. The issue that we have is really not about how good a job you guys are doing. The issue that we have is that you only control about 25 percent of the wells in Kona. Right now, about 85 percent of the pumping...and if there's a lot of projects that come on, they could either tie up to your system, which would increase the percentage, or they could actually create their own private water companies, which would put them into direct competition with you. In any case, what we acknowledge is that this Board, unfortunately, does not have the power to regulate all pumping from the Aquifer. It's limited to controlling its own wells, and so the concerns that the National Park Service has are outside of a significant amount of your guys' control. So you know, we appreciate that designation could present some challenges for you, but we also want to acknowledge that the lack of designation presents some challenges. And we think that would actually assist you in your duties. One of these I mentioned last month... It's the specific powers that are delegated to the Department of Water Supply in designated water management areas. It's very explicit that the Commission is supposed to delegate to you the power to allocate water from within your permits. The second thing, and I'm just gonna highlight this for you briefly... I mentioned in my presentation last month that there had been oral arguments on a case from the island of Kaua'i called the Kaua'i Springs case, which specifically dealt with what are the County's duties regarding protection of public trust interests in water in an undesignated water management area. Well, it turns out, three days after your meeting, the Hawai'i Supreme Court issued a ruling on that, and was actually particularly clear on what the Court felt the County's duties are in undesignated areas to protect public trust interests, as well as the particular tests that you should follow in

terms of looking at things and analyzing things before you make a decision. So I would just really encourage everybody on the Board to read that, work with your Counsel in helping to understand that decision, and what the implications are. We think it actually points out that, in...as long as Keauhou remains undesignated, there might be a significant burden to this Department, different than the operation that you already are doing successfully...that you might have to undertake. Finally...so that was the substance of my testimony. You know...we continue to obviously support designation, but we also support and really mahalo you guys for the respectful and engaged conversation that we're having on what is, I realize, for many people a really difficult issue. Mahalo.

CHAIRPERSON KANESHIRO: Thanks, Jonathan. Next I'll call on Chris Brown.

(Mr. Brown spoke on water meter availability in North Kohala, which is covered in Item 6(A).)

MR. BROWN: Good morning. Thanks for letting me be here. I was here about a month and a half ago or two months ago, at a meeting, and the presentation is gonna be similar. I have been a teacher in Kohala...I was a teacher. I retired several years ago. I taught for about 40 years in Kohala. My wife also taught for 40 years and retired. My brother is a teacher there now, and is a principal at the Middle School, and his wife is a retired doctor in Kohala. The problem that we're having is that my wife and I own a three-acre parcel that's zoned A-3, and right adjoining this property is an eight-acre parcel that my brother and his wife and my wife and I own together. And it's zoned A-20. We're trying to get it divided so that there can be two separate parcels: my brother's property and our property...that we can separate so that each of us will have his own. We're going to go through... I've started the process of down-zoning, and then we have to subdivide, but we've been told that the possibility of getting that done is almost impossible without a water meter. We have one more water meter for the eight acres, but we'd like to get a second water meter. The water line is right along the road, and so it'd be just a matter of putting in a meter right on the lower property. My daughter at this time also teaches in Kohala, and has been there about 10 years. She lives with us. I'd like to get her out of the house...and it's impossible for her to find a house or a property that she can afford, but this would be an option for her...that she could build a house on the four acres that'd be adjacent to ours. And that distance would be fine with me. And that's... So my request is that you consider providing a water meter so that we can go through the process of down-zoning, and then subdividing the property, then make it separate so that my wife and I would own one of the four-acre parcels; my brother and his side would own the other four-acre parcel. Thank you.

CHAIRPERSON KANESHIRO: Okay, thank you. Okay, the next person I'd like to call on is Riley Smith.

(Mr. Smith, representing Lanihau Properties, spoke on the Keauhou Aquifer issue.)

MR. SMITH: Good morning. I think all of you should have a copy of my testimony. I emailed it to the Department the other day. Um, I'm just gonna paraphrase it. I testified at last month's meeting, and am just kind of reinforcing what I've said before, and providing some additional information. My name is Riley Smith. I'm the president of Lanihau Properties. I'm a lifelong resident of the State of Hawai'i; I'm born and raised in Kaneohe on Oahu. I'm a graduate of the Kamehameha Schools, and as such, am a beneficiary of an ali'i trust that is negatively impacted by the designation of the Keauhou Aquifer. For your information, I am also the CEO for the combined family enterprise that includes Palani Ranch. We have been stewards of lands in North Kona since the early 1900s, and used to own the ahupua'a of Honokōhau, which includes the portion that was later sold to the federal government for the Kaloko-Honokōhau National Park. My testimony is a follow-up to my comments at your meeting in February. As you may remember, at that February 25 meeting, I questioned why the National Park has not shared their water quality baseline data with the landowners and consultants of North Kona, after they told the County Council on February 18 that they did. This is a follow-up to a meeting that Ken Melrose, who is Chair of the Kona CDP Action Committee, and I had with the National Park Superintendent in January 2013, where

we asked, again asked, for this information, and they declined to provide it. As it turned out, the day after your meeting last month, I received via email a three-page summary of a number of different references that I had requested. So it kind of amazed me that for six years I couldn't get this information, and in 24 hours after testifying in front of you, they provided it to me. Okay? After reviewing the data, it became clear that the references they provided were *some* of the information that I had been asking for, but not the baseline water data and the constituents that my scientists would use to evaluate the impacts, or lack of impacts, to the Aquifer. On March 11, I asked the National Park Service to provide the missing information. On March 13, Jeff Zimpfer of their office said that he would work on it and get back to me as soon as possible. I have not received it yet. But...I also found interesting was that there are a number of us stakeholders in North Kona that have been diligently trying to communicate with the National Park and obtain this information. In an email that Paula Cutillo...and some of you may know her...she's the hydrologist for the National Park Service... She sent an email to Nancy Burns, who's, like myself and some or you are, professional engineers. And it's quoted in my testimony... But she says: "I have not completed the analysis you described, although I have been working on analyzing existing data for trends. Just to be clear: the National Park Service petition for Water Management Area action does not state that existing wells have adversely impacted water resources in the park. The legal standard we are addressing is that water resources *may* be threatened by existing or proposed withdrawals or diversions of water." So to me, it's clear that they possess the data, but have decided not to provide it to us. And again, when I conduct an Environmental Assessment... We have a well that's under construction right now... We're intending to dedicate it to the Water Department within the next couple months, to supplement your storage, source and distribution system, so that you can increase the capacity and confidence that you can provide water to your existing customers. We're working with the Department to do that now. When I do an Environmental Assessment, I publish it with the Office of Economic...Environmental Quality Control, and they distribute it to anybody who wants to see the information, so I share my data. They don't share theirs. Okay. My other concern was that last month's meeting, where the Superintendent said that the National Park Service is not anti-development, and they are not trying to stifle the economy in West Hawai'i... After hearing her statements, I was surprised to find the article that's attached to my testimony...and in it...this is a four-page article...that was co-authored by Sallie Beavers, who's the National Park's chief integrated resources ecologist. She's currently still employed at Kaloko-Honokōhau... In it, the testimony provided you shows a number of highlighted sections. The title of the document is how the National Park Service uses State laws and regulations to protect parks from adjacent parklands. So if you look at the last page of that article, there's a "Lessons Learned" section. There's a number for seven bullet points, and basically it talks about their recipe for trying to stop development around the park. So it's interesting to me when the Superintendent says we're not trying to stop development, but then they issue these papers that was authored in 2003, which gives a formula to do exactly that. So again, I question their motives; I question the accuracy of their statements. So I just wanted to share that with all of you. Thank you very much.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the February 25, 2014, Water Board meeting.

MOTION: Ms. Lee Loy moved to approve; seconded by Mr. Perry.

Ms. Lee Loy thanked the Secretary for her work during a very long meeting.

Mr. Greenwell said that the Board needs to address the Chairperson before making a statement. People were talking out of turn and talking over each other during the last meeting, and the Secretary had a hard time, he said.

ACTION: Motion carried unanimously by voice vote.

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

MOTION: Ms. Lee Loy moved to accept Supplemental Agenda Item 5(A), JOB NO. 2014-1004, WAIĀKEA OFFICE PLAZA LANDSCAPE IMPROVEMENTS, PHASE I; seconded by Mr. Uyeda and carried unanimously by voice vote.

5) SOUTH HILO:

A. **JOB NO. 2014-1004, WAIĀKEA OFFICE PLAZA LANDSCAPE IMPROVEMENTS, PHASE I:**

Bids for this project were opened on March 20, 2014 at 2:00 p.m., and the following are the bid results. This project generally consists of cutting Eucalyptus and Banyan trees, disposing of trees, grinding the roots and grading the area in accordance with the specifications.

Bids for this project were opened on March 20, 2014, at 2:00 p.m., and the following are the bid results:

Bidder	Bid Amount
Imua Landscaping Co. Ltd.	\$128,000.00

Project Costs:

1) Low Bidder (Imua Landscaping Co. Ltd.)	\$ 128,000.00
2) Contingencies (10%)	\$ 12,800.00
Total Cost:	<u>\$ 140,800.00</u>

Funding for this project will be from DWS’s CIP Budget. The contractor will have 45 calendar days to complete this project.

The Manager-Chief Engineer recommended that the Water Board award the contract for JOB NO. 2014-1004, WAIĀKEA OFFICE PLAZA LANDSCAPE IMPROVEMENTS, PHASE I, to the lowest responsible bidder, Imua Landscaping Co. Ltd., for their bid amount of \$128,000.00 plus \$12,800.00 for contingencies, for a total contract amount of **\$140,800.00**. 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: Ms. Lee Loy moved to approve; seconded by Mr. Perry.

The Manager-Chief Engineer said that there was only one bidder, although a couple of prospective bidders had attended the bidders meeting. The sole bid that came in was a fair one, as reviewed by a staff engineer.

Ms. Lee Loy asked if this project was aimed at minimizing the risk of tree branches, etc., falling near the DWS main building.

The Manager-Chief Engineer confirmed this. The tree removal and planting of smaller native trees will also handle the problem of leaves clogging the gutters, which could cause structural problems to the main building.

ACTION: Motion carried unanimously by voice vote.

6) NORTH KOHALA:

A. **PRESENTATION REGARDING WATER METER AVAILABILITY IN NORTH KOHALA:**

Mr. Shiro Takata, a resident of North Kohala, spoke on behalf of his friend, Mr. Chris Brown, and his family. Mr. Brown had earlier asked the Board to grant him a water meter. Mr. Takata praised

Mr. Brown for his work as a teacher and as an active community member, citing Mr. Brown's column for the Kohala Mountain News that promotes local people. Mr. Takata said Mr. Brown deserves the American dream of a residence for his kids. Mr. Takata asked the Board to grant Mr. Brown a water meter. Mr. Takata spoke of the declining student population in Kohala's public schools, and linked greater availability of water to more subdivisions and affordable housing for local families. He said he feared that Kohala schools with dwindling student numbers could be closed. Water availability would help Kohala, he said.

Mr. Takata said that there are two wells in the area, one at Hala'ula owned by a Canadian bank, and one near Kokoiki owned by Surety. Mr. Takata suggested that DWS acquire one of the wells, and said that it would be easier to deal with Surety to buy their well because Surety is local, and is willing to sell. Before finishing his presentation, Mr. Takata again made a plea to help Mr. Brown get a water meter.

Mr. Greenwell asked for more information about the two wells. He asked Mr. Takata whether the Surety well was complete, partially complete, or just a site. He also asked what it would take for the Water Board to take over the Surety well.

Mr. Takata said that the Hala'ula well has been around for years; Surety used to own it, but Mr. Takata said he heard that it is now owned by a Canadian government pension fund. The well near Kokoiki is owned outright by Surety, he said. Surety had intended to use the well to supply water to a large subdivision in Māhukona. However, due to bankruptcy, Surety no longer owns Māhukona and they are now willing to sell the well, Mr. Takata said. Mr. Takata said he learned that the well is ready to go; the only problem is that the well site does not have enough acreage surrounding it. He suggested that DWS or the Water Board buy the surrounding land from its current owner, a Mr. Yap. Mr. Takata said he is sure that Surety is willing to sell the well. He said DWS should buy the well and acquire the land from Mr. Yap; he noted that DWS has the right to eminent domain. Mr. Takata said that would be the fastest and easiest way because DWS would be dealing with people who live in Hawai'i, instead of dealing with the owners of the Hala'ula well. Mr. Takata said that what frustrates him is that the water is there, Kohala needs the water, Kohala needs development, and needs better education. All of this depends on water; in order to do all of this, Kohala needs to get water first, Mr. Takata said.

7) SOUTH KOHALA:

A. SUBLEASE BETWEEN THE DEPARTMENT OF WATER SUPPLY AND LĀLĀMILO WIND COMPANY, LLC, FOR 44.5 ACRES OF LAND AT LĀLĀMILO, SOUTH KOHALA, HAWAI'I FOR A WIND FARM:

The Water Board and Site Constructors, Inc., entered into a Renewable Energy Service and Power Purchase Agreement dated October 22, 2013 ("PPA"), and subsequently that PPA was reassigned to the Lālāmilo Wind Company, LLC, on December 23, 2013.

The Department of Water Supply (DWS) will be seeking a Direct/Master Lease from the Board of Land and Natural Resources (BLNR) for 83.997 acres: TMK (3) 6-6-001:002, 071, and 076 (portion), for the purpose of constructing a wind farm and related communication/energy facilities by the Lālāmilo Wind Company, LLC.

In conjunction with that process and the PPA, DWS will seek BLNR's approval to sublet a 44.5 acre portion of TMK (3) 6-6-001: 071 to Lālāmilo Wind Company. DWS and Lālāmilo Wind Company have tentatively negotiated terms of the sublease.

The term of the sublease will be for twenty (20) years; rent shall be either \$6,000 per year or ten (10) percent more than the amount that DWS is charged by the BLNR under the Direct/Master Lease.

Lālāmilo Wind Company understands that these terms and those contained in the draft sublease are subject to approval, and any modifications made by the BLNR in either the Direct/Master Lease or in their approval of the sublease. Lālāmilo Wind Company is requesting that the Water Board conceptually approve the sublease in its present form.

The Manager-Chief Engineer recommended that the Water Board approve *in concept* the sublease of approximately 44.5 acres located on the northeast portion of TMK (3) 6-6-001:071 to Lālāmilo Wind Company, LLC., per the terms contained in the draft sublease subject to the DWS receiving the Direct/Master Lease for the property from the State of Hawaii, Board of Land and Natural Resources (BLNR), and subject to BLNR's approval of the sublease.

MOTION: Ms. Lee Loy moved to approve; seconded by Ms. Iokepa-Moses.

Mr. Uyeda noted that he did not see any provision for property taxes in the sublease. He recommended that if the sub-lessee needs to pay property tax, the Department should write a one- or two-sentence addition to address that issue.

The Manager-Chief Engineer said that was fine; DWS does not normally pay real property taxes on its water system facility sites.

Ms. Garson asked for clarification on what the Board wanted her to do. She asked if the Board wanted her to put into the sublease a line to the effect that if there is any tax, that it is passed on to the sub-lessee.

Mr. Uyeda said he would make a Motion.

AMENDED MOTION: Mr. Uyeda moved that Corporation Counsel add one or two sentences to address property tax if the sub-lessee needs to pay; seconded by Mr. Arikawa. Motion carried unanimously by voice vote.

Ms. Garson said that this Motion was to direct her to add that language to the draft sublease; now the Board needs to vote on the Main Motion to approve in concept the sublease with that amendment.

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

8) NORTH KONA:

A. **PRESENTATION BY DEPARTMENT OF WATER SUPPLY ON NATIONAL PARK'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:**

The Deputy and Ms. Aton presented the Department's position on the petition by the National Park Service to designate the Keauhou Aquifer as a Ground Water Management Area.

The Deputy noted that the County is mandated to conserve and protect Hawai'i's natural and cultural resources, including water; all public natural and cultural resources are held in trust by the County for the benefit of the people.

Ms. Aton said that the Department of Water Supply is directly accountable for its protection of water as a public trust resource, and therefore, DWS disagrees with the petition to designate the Keauhou Aquifer as a Water Management Area. The County of Hawai'i has a track record, as guardian of the public trust, of being good stewards, and DWS takes seriously this responsibility in what it does as a provider of drinking water. She likened DWS to a good parent, protecting Hawai'i Island's water, and the Keauhou Aquifer in particular, as a parent watches over her child. DWS's motto, "Ka Wai A Kāne" (Water, our most precious resource) embodies the values governing the Department's daily work.

The Deputy noted that DWS has been in business since 1949. He offered some background information regarding the services that DWS provides on the 4,028-square mile expanse of Hawai'i Island. DWS operates and maintains 23 separate water systems, within which the Department has 64 pumped ground water sources, eight spring water ground water sources and two surface water sources. DWS services 42,000 service connections, and about 115,000 of the island's population. DWS has a sizeable task, he said. DWS has 160 employees, a main office and four district baseyards. When DWS drills a well, there are a lot of safeguards and evaluations that must be taken care of before a well gets put into the system. Before water reaches the customer's tap, DWS must do an Environmental Assessment, and in the meantime, there is an opportunity for input from the public and the government. DWS takes public input and environmental concerns very seriously, the Deputy said. DWS also files for a well permit from the Commission on Water Resource Management (CWRM), in order to get approval to drill a hole into the ground. That is a multi-step process that involves collaborative efforts to get input from the public; there are many opportunities for people who have concerns to raise them – and to be heard. DWS does not unilaterally go through with plans without seeking public input. CWRM directly oversees and holds DWS accountable for the health of the aquifers. He elaborated on the many reporting obligations that DWS complies with, and once a well is online, DWS is continually held accountable by CWRM and the Department of Health (DOH). DWS treats water as a precious resource, and works through its leak detection program to ensure that water is not wasted. DWS works with DOH's Safe Drinking Water Branch through an EPA-funded grant to share the message with the public that water is a precious resource. The Deputy showed a graph that illustrates how DWS has reduced its dependence on the Kahalu'u Shaft, where chlorides are a concern which was raised in the NPS petition. While the Kahalu'u Shaft was once looked to as the main water source for Kona, DWS has invested substantial resources of time, money and manpower to shift the Department toward high-level, fresh (i.e., low chloride) water. The Deputy cited the County's Water Use and Development Plan (WUDP), which ties together water resource availability and the sustainable yield of the aquifers with long-term land use decision-making and policy-making strategies. This plan is a tool that CWRM will scrutinize regarding its decision on the petition. The Deputy said he wanted to make sure that everyone understood what sustainable yield meant.

Ms. Aton likened sustainable yield to the guidelines that must be followed by the Blood Bank when taking people's blood donations. A certain amount of blood can be donated without affecting the donor's health; sustainable yield is similar. There is a regular recharge to the Aquifer through rainfall, according to the sustainable yield calculations that are done by CWRM. The sustainable yield that DWS watches for the Keauhou Aquifer at this time is 38 million gallons per day (mgd).

The Deputy said that the WUDP talks about sustainable yield, and NPS's petition specifically claims that this plan paints a doomsday scenario of 400-500 percent above sustainable yield. The Deputy said that level would be reached if every square foot of property were developed according to the General Plan, using water based on numbers from DWS's water system standards. However, a more realistic number that is in the same WUDP is the number showing the area's **historical growth**. The plan shows that in the Year 2025, the area will be at 18.6 mgd – including all water sources in the Keauhou Aquifer (i.e., not just DWS's water sources). Looking at the historical projections, the increase in sustainable yield will be an increase of three mgd every 10 years. The Deputy likened sustainable yield to a checking account, with the prudent person budgeting only a certain amount of spending, with one's paycheck acting as a replenishing source (like recharge from rainfall). In the Keauhou Aquifer's case, 38 mgd is the sustainable yield (like a budget). In this way, one can sustainably manage spending indefinitely and still be good, he said. Sustainable yield works the same way. The Deputy said that DWS is not the only entity that safeguards the water resource; other departments and agencies also watch over the resource. There is also community input, environmental assessment reviews, engineering report reviews, etc.; DWS does not want to be the only entity responsible for protecting the resource, the Deputy said. Cutting to the chase, the Deputy said that DWS is opposed to designation of

the Keauhou Aquifer, because designation is serious, with potential long-term impacts for DWS and the entire community. If designation goes through, the first step is for DWS to reapply for water use permits for the 12 sources the Department has in the Keauhou Aquifer. DWS is concerned about the potential for objections that could be raised by anyone for whatever reason; these objections could lead to filings of contested case hearings for each of the permits. Contested case hearings could stall all of DWS's existing permits. Before any new use permits are considered, all of the existing use permits must be resolved first. There are a lot of community projects in the Keauhou Aquifer that could be put on hold indefinitely. These projects include affordable housing, school expansions such as the University of Hawai'i-West Hawai'i campus, the State Judiciary, the Keāhole Airport expansion, the Natural Energy Laboratory of Hawai'i Authority (NELHA), park facilities, etc. These projects are for the community, and bring jobs and housing, and boost student enrollment. DWS is concerned that these projects could be held in limbo indefinitely if designation goes through.

Ms. Aton said that DWS's track record of stewardship continues into the future, and includes a comprehensive perspective of care for all interests and best practices incorporated into governance of public trust resources. DWS continues to collaboratively work to address the concerns of the petition, and to cultivate understanding with those who support designation of the Keauhou Aquifer as a Management Area. DWS is working to find custom-fit solutions that resolve valid and precautionary concerns, while safeguarding the public trust. DWS is a primary guardian of the Keauhou Aquifer, and the Department protects its water resources through careful monitoring, reporting and planning, Ms. Aton said. DWS is mindful that the decisions made today need to endure, so that Hawai'i's future generations will have safe, reliable, high-quality drinking water.

(The Chairperson called for a short break at 11:02 a.m.; meeting resumed at 11:13 a.m.)

**B. PRESENTATION BY FORMER BOARD OF LAND AND NATURAL RESOURCES
CHAIRPERSON ON NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE
KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA:**

Mr. Peter Young, former Chairperson of the Board of Land and Natural Resources (BLNR) and former Chairperson of CWRM, provided a presentation on the National Parks Service's petition to designate Keauhou Aquifer System as a Ground Water Management Area. Mr. Young noted that he is currently a planning consultant for Queen Lili'uokalani Trust (QLT) as well as for the Kaloko Makai project in Kona, and had served as Deputy Managing Director for the County of Hawai'i.

Mr. Young said that he attended a presentation by NPS regarding what its petition means, and he was concerned that the Water Board might be lulled into misinterpreting what is going on. Water Management Area designation is a big deal and should be taken seriously. Designation would mean that a federal agency would be asking a State agency to take control away from a County agency, Mr. Young said. Designation will bring budgetary ramifications. As Mr. Smith testified earlier, there have been parts of the designation story that have not been told, Mr. Young said. There have been some mischaracterizations about what the Board has been told. Mr. Young said that his presentation would give his perspective of what designation means.

Mr. Young said that he was the Chairperson of CWRM when 'Iao Aquifer was designated. He said he would talk about what that designation meant, and what designations really mean about water in the future, and what designation of Keauhou Aquifer would affect how the Water Board and DWS will operate relative to managing resources on the island. During NPS's presentation, there was a slide about State water law, with the words "may" and "shall" highlighted. NPS said, "If there *may* be an impact, the Commission *shall* designate." Mr. Young said this was not the standard. The preceding words in the law are that "The decision needs to be *reasonably determined* after conducting scientific investigations and research." As Mr. Smith noted, it took years to get what was stated as the research

that the National Park was doing. There were 23 items on that list of research, but one item was the petition itself, and the remaining 22 items were done in the last century, and nine of the items did not even relate to the National Park. Those nine items were studies done by others such as Messrs. Steve Bowles and Tom Nance about projects in that region. Mr. Young noted that the National Park in its 1994 General Management Plan stipulates that the Park shall do baseline studies and ongoing monitoring; one would expect that these studies would be readily available to everyone. However, a baseline study and ongoing monitoring by the Park regarding the impact of projects there have not been provided to anybody, Mr. Young said. He returned to the part of the water law that says that after conducting scientific investigations and research, CWRM will make a “reasonably determined decision.” Mr. Young said that at last month’s Board meeting, someone asked a very simple question: Who needs to apply for a permit after designation, and what is that process? Mr. Young said that everybody who has water now would need to apply for the permit. DWS would have to apply for the permit for the wells that it has now, including wells it has been operating in the Kekaha area since 1990, he said.

Mr. Young said there is no guarantee about what allocation DWS would receive after designation. He said that priority goes to existing user permits, which get reviewed first, and then, new user permits get considered if there is water available. Everyone must apply for a permit after designation; the County will have to apply to CWRM, a state agency, because a federal agency (the National Park) is saying that DWS was not doing its job to protect the resources, Mr. Young said. However, NPS has not produced any report about what the impact has been on the resources, and NPS has not documented any loss of traditional and cultural practices in the area. He noted that DWS was reminded today that once CWRM tells DWS how much water can be withdrawn, DWS gets to do the allocation. In a scenario where the allocation is less than what is presently being pumped, DWS and the Water Board will be the bad guys, because they will have to tell somebody that they will not get the water they have been getting. He said that there was no guarantee that anybody will get a permit, and there is no guarantee that existing users will get the amount of water that they have been getting.

Mr. Young refuted NPS’s claim that this is just another permit. Mr. Young noted that he was Chairperson of CWRM when ‘Iao Aquifer was designated. An engineer gave Mr. Young what was a very complicated flow chart for the water use permit process. Mr. Young said this is not a simple application; it is a complicated, expensive and time-consuming process.

The Board was not told by NPS in its presentation that all of these applications for existing use, as well as new use, are subject to contested court hearings. Contested court hearings are administrative trials, involving the hiring of attorneys and consultants. Mr. Young said the ‘Iao Aquifer designation in 2003 took place because under the law, once 90 percent of sustainable yield has been exceeded, the aquifer shall be designated as a Water Management Area. In the summer of 2003, the 12-month moving average of withdrawals exceeded 18 mgd, versus the 20 mgd sustainable yield. After designation, everyone in the area had to apply for a permit; the first permit that was issued was more than two years after designation, Mr. Young said. In 2014, Maui’s Department of Water Supply has two pending permit applications for existing use of 2.3 mgd that have not been permitted yet; the permits are still in contested case.

Sustainable yield is based on recharge, and CWRM’s policy is dependent on the nature of the aquifer, Mr. Young said. He said that there will be an allocation to the total recharge of the aquifer, to determine what constitutes sustainable yield. He said that for a traditional basal aquifer, the computation for sustainable yield is 44 percent, and for high elevation water, the computation for sustainable yield is 75 percent. This is what was allocated to the Keauhou Aquifer system area, based on an impression that it was a basal aquifer. However, it is believed now that about 62 percent of Keauhou Aquifer is high-level water, and the rest is basal. Mr. Young explained that withdrawals are calculated by taking the water

and the recharge. With 44 percent as the computation for sustainable yield, 56 percent will continue to be flowing through the aquifer – and will not be subject to withdrawals, he said.

Mr. Young said that the County's WUDP projected withdrawals in 2025 to be 18.6 mgd, which represents 49 percent of sustainable yield; it also represents about 22 percent of all of the recharge. That is saying that about 78 percent of the rest of the water is continuing to flow through the aquifer and is continuing to go to the anchialine ponds.

Mr. Young said that there have been repeated presentations injecting the fear factors of drought and climate change. He noted that the U.S. Geological Survey (USGS) study already accounts for drought and climate change, and has already computed the sustainable yield. The Board was not told that in 2011, USGS updated its recharge study; USGS now believes that the recharge estimate for the Keauhou Aquifer should be 77 percent higher than what the calculations are today. The Board was not told that, he noted. Mr. Young said he called Mr. Steve Anthony at USGS to ask if USGS was re-evaluating any of the recharge on the Big Island, and Mr. Anthony said no, USGS was not doing any more recharge studies on the Big Island. Mr. Young reiterated that the math is different now, with about 62 percent of the water in the Keauhou Aquifer seen as high-level water. Meanwhile, CWRM policy is that sustainable yield can be as high as 75 percent of that (but right now CWRM is using the 44 percent calculation.) Because of the change in math, sustainable yield can and should be higher, based on the information available now, Mr. Young said. The USGS update states that the recharge is higher by 77 percent, but NPS is saying in its presentations that sustainable yield in Keauhou Aquifer is 38 percent, he said. That is *way low*, he said.

Mr. Young said that NPS believes that taking water from the basal wells in the area may impact traditional and cultural practices. One of NPS's theories is that there is *up-coning* that can draw some of the fresh water away from the coastal area. The NPS petition cites the County's 2010 Water Use and Development Plan (WUDP) as saying that land use protections for water demand exceed the sustainable yield of the Keauhou Aquifer system by over 600 percent. He said that is not what the County's WUDP says. Instead, the WUDP says that it is going to be 18.6 mgd overall, or 22 percent of the withdrawal of the entire Keauhou Aquifer.

Mr. Young noted that NPS's neighbors, Kuki'o and Hualālai Resorts have got golf courses all around them, and have wells up and down their respective properties. They have both high-elevation wells as well as lower, brackish wells. Both resorts have won awards for restoring and creating healthy ponds. Both are growing fish such as mullet and moi. The ponds that NPS wants to protect are a similar type, except that they are drawing from a basal lens. Mr. Young noted that to get healthy ponds, the sediment and invasive species must be removed, and native species must be planted around the ponds. Mauna Lani Resort did this, and they have healthy ponds with fish; their wells are both high-elevation and lower brackish wells.

Mr. Young returned to his theme that designation is a big deal. It would impact a variety of projects that are considered new uses: the Community College at Palamanui, the implementation of the Kona CDP, the Judiciary, expansion of Kona International Airport, new affordable housing, a new Middle School that the Department of Education desperately wants, a new regional park. Mr. Young said that these projects will all be at the back of the line after designation, after CWRM deals with existing users. Designation is complicated, expensive, time-consuming, and it would take jurisdiction away from DWS and the Water Board.

Mr. Young said that if NPS had a study that says that there is a negative impact, that information would have been the first thing that the NPS would have shown in its presentations. NPS is still calibrating data that they took back in 2008. Mr. Young said he does not know what the data says, but it certainly might lead people to think that the data does not support their petition. If the data supported NPS, it

would be in everyone's face right now. If the data showed that there was an impact, the Keauhou Aquifer would be designated now, and all of the back-and-forth that is going on would not be happening. Mr. Young said that CWRM is smart enough to see if there is a negative impact and if a lot of the community agrees that there is a negative impact – then something must be done to address it. However, if there is no negative impact, then this designation is not needed.

Mr. Young noted that designation is required if sustainable yield is at 90 percent; sustainable yield stands at 32 percent. Designation is required if there are impacts, and designation takes place after a reasonably determined decision is made, based on scientific investigation and research. NPS started talking about designation in 2000; he noted that NPS has been intervening at every application. Mr. Young said that a reasonable question is whether NPS is going to intervene on any or all of the permit applications if designation takes place. If so, Mr. Young asked why NPS would do that.

Mr. Young said that NPS's general plan stipulates that they do a baseline study regarding the impact of the wells in its area. He said that determining the impacts is not complicated science; hydrologists like Mr. Bowles and others do such studies all the time – and they determined that there was no impact. Mr. Young said it was reasonable for NPS to produce the data that caused it to believe that there is an impact. Just whimsically saying there "may" be an impact is not what the law says. Research needs to be done, and NPS has not produced its research. Either the data does not exist, or the data may not reflect anything to support NPS's petition, Mr. Young said in conclusion.

Ms. Iokepa-Moses noted that she opposes the NPS petition. She said she purposely did not make eye contact with Mr. Scheuer when he made his testimony today because she wanted to hear every word he was saying without getting caught up in his charismatic and eloquent delivery. She said she heard nothing new from Mr. Scheuer today; it was a fluffy presentation with nothing new. Mr. Young, by contrast, came out with facts and expert testimony. She noted that Mr. Bowles is in the room, and suggested that NPS should talk to him. She said that all of the experts are saying that the NPS petition is not valid. Ms. Iokepa-Moses said that maybe Mr. Scheuer could come back 20 years from now when he has a chance to get all of his information together. She said that NPS has been wasting the Board's time with presentations that do nothing for the Board. Mr. Young has brought facts to the Board; he is an expert as is Mr. Bowles, she said, adding that the Board should listen to the experts. Ms. Iokepa-Moses noted that she had asked Mr. Scheuer last month about the "additional form" involved in applying for a permit after designation. She said she is from rural Ka'u, where public testimony takes place on every issue, and she was aware all along that getting a permit after designation is not a short, easy process. Ms. Iokepa-Moses said that the Board has wasted enough time on this petition issue, and suggested that NPS do another 20 years of research and come up with definitive data that shows that there "shall" be an effect on the aquifer. For now, the petition should not be granted, she said. NPS has a lot of work to do, such as dealing with invasive species.

Ms. Lee Loy asked Mr. Young if any of the new USGS information about the recharge at 77 percent had been incorporated in the County's WUDP.

Mr. Young said no, it had not, noting that it was in a study done in 2011. He noted a variety of water plans done by the State: the Water Resource Protection Plan done by CWRM; the Water Quality Plan done by DOH; the Agricultural Use and Development Plan done by DLNR. Sustainable yield is part of CWRM's Water Resource Protection Plan, which is being updated by CWRM now. He noted that the precautionary principle is written into the formula that CWRM uses in establishing sustainable yield, and the precautionary principle is written into the way that the counties and the State deal with the management of water. The update of CWRM's Water Resource Protection Plan is an opportunity to establish sustainable yield. Mr. Young said that nobody wants to overpump or harm the resources, and so sustainable yield may start being written in *ranges*. This is probably a good idea, he said. He noted

that sustainable yield is a part of the whole; that is what water is being drawn from – the other part is water that is still going through the aquifer.

Ms. Lee Loy asked if there are any allowances in the WUDP that could incorporate this new information. She asked how long the process of incorporating that new data would take. She said she keeps hearing that the information that is being pointed to is old.

Mr. Young said that 2011, in government terms, is pretty new. He said that it is hopeful that the new information will be incorporated into CWRM's Water Resource Protection Plan.

Ms. Lee Loy asked what designation would do to the Kona Community Development Plan (CDP).

Mr. Young said he has heard testimony saying that designation will not stop development. Four people on the CWRM Board are going to start determining land use in the Keauhou area, he said. Four Commissioners are what is necessary to designate or not designate, he said. He said that the Kona CDP, which was years in the making, has the precautionary principle written throughout the document; the first principle is to protect the natural and cultural resources. The Kona CDP framers designated the area from Kailua town to the Kona Airport as where the growth should be, and that growth will all be new user permits after designation. The framers of the Kona CDP said they wanted growth to take place here, believing that growth is not going to impact the natural and cultural resources, Mr. Young said. Everyone in the area will have to apply for permits after designation, and there is no guarantee that projects will get the water they ask for. That is the reality, Mr. Young said; this is not just another permit. He cited Maui's Water Department, which has been waiting for 11 years for permits on 2.3 mgd out of 18 mgd since designation of the 'Iao Aquifer.

The Deputy asked to respond to Ms. Lee Loy's question regarding how long it would take to incorporate the new information into the County's WUDP. DWS is directly responsible for the WUDP, and if there is new information regarding sustainable yield, DWS stands ready to update that. This is very important to the WUDP and the process that is going on right now, he said. DWS can update the WUDP by components; it does not have to redo the whole document. He acknowledged that the study is not going to be done that fast, but DWS stands ready to update it as soon as new information gets formally adopted, especially if it is related to sustainable yield.

C. **DISCUSSION BY THE WATER BOARD REGARDING THE FORMULATION OF A RESPONSE TO THE COMMISSION ON WATER RESOURCE MANAGEMENT'S REQUEST FOR CONSULTATION ON THE KALOKO-HONOKŌHAU NATIONAL PARK SERVICE PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA (NORTH KONA), HAWAII AS A GROUND WATER MANAGEMENT AREA.**

The Manager-Chief Engineer noted that if the NPS petition goes forward, the law requires that CWRM consult with DWS, the Water Board, the Mayor's Office, the County Council and the Planning Department. During that consultation period, DWS, the Water Board and the County present their case to CWRM, he said. The petition was filed in October of last year, and CWRM voted to defer action on the petition until December 2014, pending several studies that will hopefully be completed by September this year, the Manager-Chief Engineer said. Right now, there is a lot of discussion of the issue out in the community, with NPS, private individuals and land owners all making presentations at various forums. The latest was a talk-story session with Rep. Nicole Lowen in Kona last week. The issue is generating a lot of discussion and a lot of emotional and passionate feelings, he said. However, the bottom line is that CWRM will be making the decision regarding designation. DWS is against this petition, and DWS's target audience is CWRM, where DWS must present its case.

Ms. Lee Loy asked for confirmation about the 12 wells in the Keauhou Aquifer: six basal wells and six high-level wells.

The Manager-Chief Engineer confirmed this.

Ms. Lee Loy asked how many development agreements DWS has that are tied to these wells.

The Manager-Chief Engineer said he thought maybe three to five agreements have been entered into by DWS. He said that regardless of the number of agreements, it may be better to refer to how many million gallons per day are involved.

Mr. Inaba said that with all of the agreements, it comes to an approximate average 5.5 mgds.

Ms. Lee Loy asked if these were committed, but not necessarily used.

Mr. Inaba confirmed that these were not existing use.

The Deputy said they were not currently in use.

The Manager-Chief Engineer said he would not use the word “committed” at this point, because there are certain other conditions that developers would have to go through to get the developments done. These would include possibly going through a land use change process, a boundary amendment on the General Plan, or a rezoning process. Unless and until the developers comply or satisfactorily complete these conditions, they will not get their commitments.

Mr. Uyeda noted that Mr. Young said that if the Keauhou Aquifer is designated, existing uses will have to re-apply for permits.

The Manager-Chief Engineer confirmed this.

Mr. Uyeda asked what DWS’s exposure would be if DWS cannot fulfill its commitments, (i.e., the existing ones, as well as ones on the books.)

Ms. Lee Loy intervened to make a Motion to go into Executive Session to discuss with Corporation Counsel what DWS’s liabilities and exposures are.

Chairperson Kaneshiro said before taking up the Motion, he wanted to ask the Manager-Chief Engineer whether DWS had ever received a request from CWRM for a response to the petition.

The Manager-Chief Engineer said that CWRM sent a request for comments on the petition when the petition was filed in October. At that time, DWS responded by recommending denial of the petition. That is why they took their vote to extend the time period to December 2014; the clock stopped then.

Chairperson Kaneshiro asked if this means that in December of this year, CWRM will start or restart the process; he asked if CWRM would make a decision in December.

The Manager-Chief Engineer said that based on the presentation last month by Mr. Roy Hardy of CWRM, the process may or may not start. Based on the information that DWS has gotten from the outside, CWRM may begin the process as early as December 2014, but if not, the process may drag on. According to Mr. Hardy, if the petition goes ahead in December 2014, there is a process that CWRM will have to go through, including the consultation period with DWS, the Water Board, the Mayor’s Office and the County Council. It may be that CWRM makes a decision within 60 days of that start date in December; if there are objections that CWRM recognizes, the period may extend to another up to 90 days. The clock starts in December 2014, for the review of whether or not to designate.

The Manager-Chief Engineer asked Ms. Iokepa-Moses to invite Mr. Bowles to make some comments.

Ms. Iokepa-Moses said she has known Mr. Bowles for many years; he is an expert on water and an invaluable resource. She said it is a wonder that NPS has never talked to him, nor has anyone called on him to testify at any of the forums. She invited Mr. Bowles to speak.

Mr. Bowles said that when the petition was filed, he objected and said it was premature and uncalled-for. Without going into a lot of detail, he said he wanted the Board to understand that the Keauhou Aquifer is not a single unit; it is a system of aquifers. That means that there are complexities around the entire region, up and down the coast, that make different areas respond differently to the actions of pumping or flow, etc. Mr. Bowles said it was very important to remember that the Keauhou Aquifer is a system. NPS has oversimplified the statement on the groundwater hydrology, he said, noting that he has 54 years of work in the field of groundwater hydrology. Mr. Bowles wanted to emphasize that CWRM has consulted with many of the area's hydrologists on the details of what is in the field. He said that he had two people going out into the field today with DWS staff. CWRM recognizes that there are only a handful of people who work full-time with the groundwater resources in Hawai'i. Therefore, CWRM has consulted with Mr. Bowles and his colleagues, calling them into meetings to work on the issue of sustainable yield. Mr. Bowles said there was such a meeting in December, to go through the sustainable yields, as a run-up to CWRM's Water Resource Protection Plan update. The meeting was made up of public and private hydrologists, he said. He wanted to make the point that this is not a singular government activity that is involved here. He asked the Board to remember two things: that a lot of experts are heavily involved all around, from all sides; and that Keauhou Aquifer is an aquifer system which relates to its neighbors. It is not a matter of just being a boundary on a piece of paper – that would not matter very much, he said. He said that studies have been going on, including the (USGS) update on the recharge estimate. These studies and activities are all taken into account as the petition issue goes on. Unfortunately, there are not enough experts around to consult with, but some people like Mr. Bowles do this work all of the time. Mr. Bowles said that he believed that the sustainable yield issues that will be in CWRM's updated Water Resource Protection Plan will probably be in ranges, as Mr. Young indicated. That is because some of the experts had resisted the idea of having an absolute number, believing that there is a wider range of issues to look at in the recharge.

Ms. Lee Loy asked for confirmation that she heard Mr. Bowles say plain and simple that this designation is premature.

Mr. Bowles said absolutely. He said he wrote the first letter objecting to the designation.

Ms. Lee Loy said that she would like to renew her Motion for an Executive Session.

Mr. Perry seconded.

Chairperson Kaneshiro said before making the Motion, he wanted to state for the record that the Board had received written testimony from Mr. Riley Smith, Ms. Nancy Burns, and Mr. David Ross.

MOTION: Ms. Lee Loy moved to go into Executive Session; seconded by Mr. Perry.

Ms. Garson asked what the purpose of the Executive Session was.

Ms. Lee Loy said that it was to discuss the Board's potential exposure and liabilities related to the designation of the Keauhou Aquifer.

Ms. Garson said: "According to HRS **92-5(a)4**."

Ms. Lee Loy confirmed this.

ACTION: Motion carried unanimously by voice vote.

(Executive Session began at 12:01 p.m., and ended at 12:24 p.m.)

Chairperson Kaneshiro said that the Board was discussing the formulation of a response to CWRM regarding the NPS petition. He called for a Motion.

MOTION: Mr. Arikawa moved that the Board begin formulating a response to CWRM regarding the NPS petition for designating Keauhou Aquifer; seconded by Mr. Perry.

Ms. Iokepa-Moses asked who was going to formulate the response.

Ms. Garson asked whether the Board is directing the Department to begin formulating the response.

Mr. Arikawa suggested as an amendment, that the Board form a Committee to start formulating the response.

Ms. Iokepa-Moses said she had another suggestion.

Ms. Garson said there were a Motion and a Second to respond; Mr. Arikawa is just suggesting a Committee.

Chairperson Kaneshiro said there were a Motion by Mr. Arikawa and a second by Mr. Perry. He called for any discussion.

Mr. Greenwell asked what kind of time frame is involved for formulating the response. If the deadline to get the response to CWRM is May, the Board will be working on a tight time frame. He wondered if a Committee would be allowed to formulate the response.

Ms. Garson said that if the Board forms a Committee, under Sunshine Law the Committee can have three to five members. The Committee would formulate a response and then present the response to the Board, and then have another meeting where the Board adopts the response. It would be a three-meeting process, she said. It is March now, so there are meetings in April and May; it may mean holding Special Meetings.

Ms. Lee Loy said that is an option. She said she supported having some kind of deadline for submission, and then work back from there.

Ms. Iokepa-Moses asked whether the response was something that the Board could have Ms. Garson draft for the Board.

Ms. Garson said she could do that, but she was not sure how “legal” in nature the response would be, as opposed to “factual.” She suggested having the Department prepare a draft; she said of course she would help the Department with it. She also suggested that instead of forming a Committee, the Board could have a Special Meeting to look at the draft, make suggestions and have the Department go back and do the response. She said alternatively, the Board could have the Department report to the Board on its draft response in April, and if need be, hold a Special Meeting in May.

Chairperson Kaneshiro asked when CWRM was meeting in May.

Mr. Uyeda said it was pretty much the same time as the Board’s meeting in May.

The Secretary said CWRM was meeting on May 21.

Mr. Perry said that the Board should rely on the Department to draft the response letter. He said the Board had had enough discussion on this issue; he thought that everybody here had an idea about what would need to be included in the response. That would give the Board a more timely document, he said.

Ms. Garson asked for confirmation that the Board was directing the Department to draft a response for discussion purposes for the next meeting.

Mr. Perry said yes.

Chairperson Kaneshiro asked whether the Motion on the table should be withdrawn, and start all over again.

Ms. Garson said no, because the Motion on the table simply was to formulate a response; she assumed that there would be a written response.

Chairperson Kaneshiro asked if there would be a Committee.

Mr. Perry said that the Motion was not about having a Committee.

Ms. Garson agreed, saying that was not the Motion; Mr. Arikawa just suggested a Committee.

Mr. Takamine asked if one month is enough time for the Department to draft a response.

The Manager-Chief Engineer said if the Board tells him what the Board wants to see in the draft response, the Department can come up with something for discussion by next meeting. Working closely with Corporation Counsel, the Department will do its best to come up with a draft response by the April meeting, keeping in mind that the response needs to be ready in time for the CWRM meeting in May. He noted that DWS planned to do its presentation to CWRM in May, and wondered whether the response letter from the Board would be in concert with DWS's presentation. The question is whether additional things will be added to the DWS presentation. Obviously, the response letter will not include everything that DWS has in its presentation to CWRM, but the response letter will include point by point exactly what the reasons are for recommending denial of the petition, the Manager-Chief Engineer said. He noted that sustainable yield stands at only 32 percent, whereas the law states that designation is called for at 90 percent. That kind of point will be included in the response. He stated that DWS can draft something by the next meeting.

Chairperson Kaneshiro said he wanted to have the Department include the draft response in the Board packets sent out before the next meeting, so that the Board can review the response prior to the meeting.

The Manager-Chief Engineer confirmed that the intent is to send the response out with the packets.

Ms. Garson said she would work with the Department; she noted that the response would be a draft or working document (i.e., something that was being worked on). She said that in any case, the response would get to the Board in a way that the Board can then make a decision.

Chairperson Kaneshiro asked an amendment to the Motion on the floor was needed.

Ms. Lee Loy said that what she was hearing everybody saying is that the Board will have some kind of working document that the Department will make available to the Board at the next meeting, which will address the petition dated September 20, 2013, and articulate the Board's response.

ACTION: Motion carried unanimously by voice vote.

9) MISCELLANEOUS:

A. DEPARTMENT'S OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEAR 2015:

The Department's FY2015 Operating and CIP Budgets totaling \$52,188,000.00 and \$32,155,000.00, respectively, have been distributed for the Board's review. Operating revenues include a 2.7% rate increase provided for by the 2010 RW Beck rate study. Consumption is not expected to change from estimates for the current year. Power costs are estimated at \$23,000,000.00, and salaries include increases based on negotiated bargaining unit contracts.

The Manager-Chief Engineer recommended that the Water Board approve the Department's FY 2015 Operating budget and 5-year C.I.P. budgets for Fiscal Years 2015-2019 on this first of two readings. A public hearing on the proposed Operating Budget for FY 2015 and 5-Year Capital Improvement Budget for Fiscal Years 2015-2019 will have been held just prior to this regular Water Board meeting.

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

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

Brantley Center, Inc., presently has a Maintenance Agreement for site maintenance for the Department's South Kohala, Hāmākua, and Laupāhoehoe tank and pump sites. They are requesting to renew the Agreement from July 1, 2014 to June 30, 2015. The rates would be as follows:

South Kohala --	\$3,993.04/month x 12 months = \$47,916.48
Hāmākua --	\$2,676.51/month x 12 months = \$32,118.12
Laupāhoehoe --	\$671.35/month x 12 months = \$8,056.20
Total:	<u>\$88,090.80</u>

The Department has the right to award the contract to Brantley Center, Inc., without advertising or calling for bids, according to Hawai'i Revised Statutes Section 103D-1010. Brantley Center, Inc., has submitted the necessary documents to meet the requirements as a qualified rehabilitation facility.

There is no increase from their last contract for FY2013-2014.

Brantley Center's performance has been satisfactory, and the costs are reasonable. A total of 41 sites are covered by this agreement.

The Manager-Chief Engineer recommended that the Board award the contract for the RENEWAL OF CONTRACT FOR MAINTENANCE AGREEMENT – SOUTH KOHALA, HĀMĀKUA, AND LAUPĀHOEHOE SITES (BRANTLEY CENTER, INC.) to Brantley Center, Inc., for a period from July 1, 2014 to June 30, 2015 at a total cost of \$88,090.80, and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval by Corporation Counsel.

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

C. AD HOC COMMITTEE REPORT ON STATUS OF SB 3094 REGARDING THE PLACEMENT OF AUTOMATIC LIENS ON PROPERTY FOR WATER AND WASTEWATER DELINQUENCIES:

The Manager-Chief Engineer reported that he, the Deputy and Ms. Lee Loy had attended the House Committee hearing on the HB 3094, and the Committee approved it with their draft of SB 3094.

Ms. Lee Loy said that she, the Manager-Chief Engineer and the Deputy spoke before the Committee. The Hawai'i Realtors Association had suggested some edits of the bill, to add language to allow for property owners to be notified of a potential lien. The draft of the Senate Bill, drawn up in consultation with Corporation Counsel, had allowed for that notification, but the Realtors Association felt more comfortable ensuring that the language was inserted into this new State Statute. Therefore, the bill is now a new House Draft 1 (HD 1), which maintains all of the language that DWS submitted, and includes supplemental language related to notification of property owners. Ms. Lee Loy said that again, those provisions are very much in place in DWS's own Rules, and with the due process accorded to property owners. She said she did not know about the other counties' Rules, etc. Mr. Rick Robinson, who is also on the Ad Hoc Committee, has been in discussion with the Realtors Association, and Ms. Lee Loy said she expected that in the next week or so, there will be a support letter from the Realtors Association, which would amend the effective date. Right now, there is a placeholder date of 2112.

The Manager-Chief Engineer said the effective date rose from 2050 to 2112.

Ms. Lee Loy explained that having such a distant date of 2112 is to force the parties to talk story and come to a resolution. DWS is moving forward with the Realtors Association, and is moving toward collaborative support for the bill from Hawai'i County, other counties and the Realtors Association, because the bill addresses their concerns.

Ms. Garson said it was never the intention to place a lien on a property owner's property without giving the owner notice.

Ms. Lee Loy agreed.

Ms. Garson said the language just made that clear.

Ms. Lee Loy said the bill has allowances for other departments.

Mr. Greenwell asked whether the other counties were in strong support of the bill. He asked whether the other counties were just riding on DWS's coattails.

The Manager-Chief Engineer said that when the bill came out, Kaua'i County did provide testimony in support. Oahu also supported the bill; the only concern that Oahu had was regarding the dedication of a State water system to the Department. However, Oahu was generally in support. Maui County did not provide testimony in support of the bill. At this point, Kaua'i and Oahu are in support of this bill, he said.

Ms. Lee Loy said that the Waste Water Divisions of Kaua'i, Oahu and Hawai'i County also support the bill. The only minor pushback that DWS got was from the Realtors Association regarding prior notification of property owners.

D. **MOTION TO RESCIND OR AMEND SALARY ADJUSTMENTS FOR MANAGER-CHIEF ENGINEER AND DEPUTY MANAGER:**

A Water Board member indicated that the member intended to bring a motion to rescind or amend the salary adjustments for the Manager-Chief Engineer and Deputy Manager that were voted upon and passed at the February 25, 2014, Water Board meeting.

At the February 25, 2014, Water Board meeting the following actions were taken:

Motion to give the Manager-Chief Engineer a 5 percent raise, effective January 1, 2014, passed with nine (9) Ayes: (Messrs. Arikawa, Greenwell, Perry, Robinson, Takamine and Uyeda; Ms. Lee Loy, Ms. Iokepa-Moses and Chairperson Kaneshiro).

Motion to raise the Deputy's salary to \$105,000.00, effective January 1, 2014, passed with five (5) Ayes: (Ms. Lee Loy, and Messrs. Arikawa, Robinson, Takamine and Uyeda) and four (4) Nays: (Ms. Iokepa-Moses, Messrs. Perry and Greenwell, and Chairperson Kaneshiro.)

MOTION: Ms. Lee Loy moved to rescind the Deputy's salary increase; seconded by Mr. Arikawa.

Ms. Lee Loy said at last month's meeting she stepped out of the room, and realized that she had missed some of the discussion on the salary increase for the Deputy. She said that she wanted an opportunity to reopen the subject for discussion. She said she had a bit of heartburn over what she said was a big jump in the Deputy's salary; she said she did not realize that it was a big jump when she voted on it last month. She had been out of the room (for part of the discussion), and wanted an opportunity to reconsider the increase.

Mr. Arikawa asked if there were a current Job Performance Review (JPR) on the Deputy.

The Manager-Chief Engineer said that normally JPRs are not done for this position.

Mr. Arikawa asked who does the evaluation of the Deputy.

The Manager-Chief Engineer said that he does the Deputy's evaluation.

Mr. Arikawa asked if the Manager-Chief Engineer did an evaluation of the Deputy.

The Manager-Chief Engineer said he did not do a formal JPR, but he has watched the Deputy's performance for the past two years.

Ms. Garson intervened to stop the Manager-Chief Engineer; she said that any discussion about a person's job performance should be done in Executive Session, unless the person in question waives his right to Executive Session.

The Deputy said he waived; he had no problem with the discussion taking place in open session.

The Manager-Chief Engineer said that he had observed the Deputy for the past two years. The Board had had some concerns when the Manager-Chief Engineer recommended Mr. Okamoto as Deputy, and it was the Manager-Chief Engineer's responsibility to see how Mr. Okamoto performed. The Manager-Chief Engineer said that as far as he was concerned, Mr. Okamoto has performed exceptionally. The Deputy has protected the Manager-Chief Engineer and the Water Board; he has responded to the concerns of customers, the Mayor and the Managing Director. He has done presentations well, and has done a really good job, the Manager-Chief Engineer said.

Ms. Iokepa-Moses said the Board all knows that Mr. Okamoto is skilled and efficient. She said the only question she had is what percentage of an increase is \$105,000.00, compared with the current salary.

Mr. Arikawa said he thought it was a 15 percent increase.

Ms. Iokepa-Moses said she thought it was more than that.

The Deputy said it was a 16 percent increase, from the current salary of \$90,000.00.

Ms. Lee Loy thanked Ms. Iokepa-Moses for her question; that was the cause of Ms. Lee Loy's heartburn. She said she did not realize that it was such an enormous increase. She said that

Mr. Okamoto does a phenomenal job; there is no question about it. Her only problem is with the percentage of increase.

The Manager-Chief Engineer suggested that the Board not focus too much on the percentage of increase; the Board should instead look at the reason why he had recommended that the Deputy's salary be \$105,000.00; the reason is that the Deputy's salary is way below the salary of the highest-paid subordinate that the Deputy supervises. The Manager-Chief Engineer said that it was totally unfair that the Deputy has to supervise someone who has higher pay. He noted that the County Salary Commission provided salary increases of about 10 to 17 or 18 percent for Cabinet members. One of the primary reasons was because subordinates were making more than the Cabinet members. He noted that when he and Mr. Okamoto took their respective positions as Manager-Chief Engineer and Deputy in 2012, it would have been inaccurate to call their new salaries a "raise," because the salaries were what the positions paid.

Ms. Iokepa-Moses said the Motion on the floor is for a raise; it says that in black and white.

The Manager-Chief Engineer said that yes, for now this is a raise.

Ms. Iokepa-Moses said that the Board was considering a raise; she said that last meeting the question that the Board had was because a 16 percent increase was such a huge step. She said she suggested a lower percentage of increase, such as 10 percent. She said the Board can always give the Deputy another 10 percent or so increase in salary next year. She said that the Board is not setting a precedent of giving one person a 16 percent pay increase, when the normal scale is for 2, 3, 5 or 6 percent raises. She asked whether the Board could just make a Motion for a 10 percent increase.

Ms. Garson said that the Motion on the table now is to rescind the \$105,000.00 pay increase. Afterwards, the Board can make another Motion for something else.

Ms. Lee Loy said that she was glad that there was some interest in putting this Motion to rescind forward. She said everyone here is human and everyone makes mistakes; last month's meeting was very long, and everyone was exhausted, hungry, and rushed. She suggested taking the first step, by seeing if there is enough support to rescind the \$105,000.00 salary increase, in which case the Board can consider another amount.

Mr. Arikawa said he was a union steward for the Hawai'i Government Employees Association (HGEA) for 18 years, and was involved in collective bargaining. He was a supervisor in his department, and supervised people who were making more than he was, due to collective bargaining. He said he understands what the Manager-Chief Engineer is trying to do to help the Deputy out. Mr. Arikawa asked who set the \$90,000.00 that the Deputy is making.

The Manager-Chief Engineer and Ms. Garson both said that the Board sets the salary.

The Manager-Chief Engineer said that at the time when the initial salary of \$90,000.00 was set, his own recommendation was for an amount much higher than \$90,000.00.

Mr. Arikawa said that based on what the Board is discussing, he wanted to back Ms. Lee Loy up and rescind the salary recommendation of \$105,000.00.

Ms. Iokepa-Moses said she would second it.

Ms. Garson said there is a Motion already on the table; she asked whether the Board was ready to call for the question, or whether the Board wanted to continue discussion. She said she had information on what the other people in the County make, if the Board wanted to discuss that before they voted.

ACTION: Motion carried with seven (7) Ayes in favor of rescinding the \$105,000.00 salary for the Deputy: (Ms. Lee Loy; Ms. Iokepa-Moses; Messrs. Arikawa, Greenwell, Uyeda, Takamine; and Chairperson Kaneshiro; and one (1) Nay (Mr. Perry).

MOTION: Ms. Iokepa-Moses moved that the Deputy receive a 10 percent salary increase; seconded by Ms. Lee Loy.

Ms. Lee Loy said she was seconding for discussion purposes; she was not sure if she was set on the 10 percent increase.

Mr. Greenwell said that the salary information Ms. Garson mentioned should be circulated.

Chairperson Kaneshiro asked whether Ms. Garson had sent anything out to the Board.

Ms. Garson said she sent the salary, but said she could not comment further. She said the Motion was for a 10 percent increase on \$90,000.00, which comes to \$99,000.00 if her math is correct. **The increase would be effective January 1, 2014**, she said.

Mr. Takamine asked how often the review for salary increases comes up; he asked if it was yearly or every two years, etc.

Chairperson Kaneshiro said it was a yearly process.

The Manager-Chief Engineer said that this Board had tried to do a yearly evaluation.

Ms. Garson said that there is no set time frame; the Board can review the salary whenever it wants. However, the salary review usually corresponds with the annual evaluation.

Mr. Arikawa said he was good with a raise of anywhere between five and 10 percent; 10 percent was acceptable to him.

The Manager-Chief Engineer said he was staying with his recommendation for the salary to be \$105,000.00.

Chairperson Kaneshiro asked if the Board was ready to vote.

Ms. Lee Loy said sorry, she was calculating what the increase would be. After a pause, she said okay, she was ready to vote.

Chairperson Kaneshiro asked the Secretary to restate the Motion.

The Secretary said the Motion was to raise the Deputy's salary by 10 percent, from \$90,000.00, retroactive to January 1, 2014.

ACTION: Motion carried unanimously by voice vote.

The Deputy thanked the Board for its consideration, and thanked the Manager-Chief Engineer for his support. He said he had not intended for the salary issue to cause so much heartburn.

E. **MONTHLY PROGRESS REPORT:**

No discussion.

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

Mr. Uyeda noted that Mr. Sumada had booked two projects as completed: the Ola‘a Well No. 6 project and the Palani Road project, but these two projects are shown as active on Mr. Inaba’s Monthly Progress Report.

Mr. Sumada explained that DWS’s auditors wanted Finance Division to start booking or capitalizing projects as soon as they are placed in service. These two projects, while not technically 100 percent complete, have been placed in service. As of June 30, 2013, Finance Division booked what had been spent and on the books under “Work in Progress.” That is what Finance Division booked and started depreciating at that point, Mr. Sumada said.

Mr. Uyeda asked if the retention payments were also booked.

Mr. Sumada said no.

Mr. Uyeda asked for confirmation that there is still cash going out.

Mr. Sumada confirmed that there are still payments to be made.

Mr. Inaba said that to clarify, Ola‘a No. 6 booked, including the reservoir and the booster pumps; the well is still not included in the booking. On the Palani Road project, everything is basically booked because everything is final and accepted. DWS is just waiting for the contractor to clear his compliance requirement; once that is done, DWS will close out that project.

G. MANAGER-CHIEF ENGINEER’S REPORT:

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

- 1) Pu‘ukala/Kona Ocean View Properties Subdivision Improvement District Update – The Manager-Chief Engineer and the Deputy visited the site recently, and things are moving along well. There are no traffic problems, and the contractor is doing his job properly. The project is expected to be completed within a couple of months.
- 2) Waikoloa Reservoir No. 1 Update – Mr. Inaba said that the consultant is working on the Environmental Assessment (EA), and Mr. Inaba is waiting to hear when the EA will be submitted. It is hoped that the project will go out to bid before summer.
- 3) Kawaihonihi Tank Update – Mr. Inaba said that the contaminated soil that had been under the existing tank needs to be removed and hauled to the West Hawai‘i Landfill. After that is done, the fencing and pavement work will be done; this will complete the project. There will be one more update on this project, at next month’s meeting. Mr. Inaba said the soil removal took a little longer than expected, as far as the analysis of the soil and the protocol that the State determined that DWS had to follow regarding the contaminated soil.
- 4) Energy Management Analyst Update – No report.
- 5) Public Information and Education Specialist Update – DWS issued emergency messaging via email and text regarding the Ka‘auhuhu Reservoir emergency work in North Kohala. DWS put out information regarding a road closure on Kamehameha Avenue through Civil Defense and the Police Department’s Nixle alert system. There were a lot of meetings regarding the NPS petition.
- 6) Recognition of Service Retirement – Mr. Ikeda spoke about Mr. Robert Sugata, who was retiring at the end of the month. Mr. Sugata, based in Kona, was a Meter Reader II with 25 years of service in DWS. The Manager-Chief Engineer praised Mr. Sugata as a great individual as far as his personality and his work, and said Mr. Sugata will really be missed.

Mr. Greenwell asked about what was happening regarding HB1969, which proposed to assess a royalty amount of \$1 per 1,000 gallons of water withdrawn from an aquifer.

Ms. Lee Loy said the bill was dead.

Ms. Garson said she would look up the status of the bill for Mr. Greenwell.

The Manager-Chief Engineer referred to the Ka‘auhuhu Reservoir emergency, explaining that the roof covering the reservoir had collapsed. Operations Division is putting up a temporary storage reservoir so that there is a reservoir that can be pumped into. Due to the emergency, DWS’s booster pump is pumping continuously, so the electric bill for pumping at Ka‘auhuhu is likely to be higher. He said that the Ka‘auhuhu service area is the service area that serves the property that Mr. Takata has been advocating to get water for Mr. Chris Brown. The Manager-Chief Engineer said that this emergency showed that DWS can handle consumption as far as the area’s distribution system; the booster pump is running 24/7. The distribution system in the area is not the problem; the problem is the *source*. DWS’s Engineering Division is working to acquire the property for the Hala‘ula Well site.

H. **CHAIRPERSON’S REPORT:**

Chairperson Kaneshiro said that the Board had received a letter from the Cost of Government Commission dated March 6, 2014, requesting input on limiting expenditures, eliminating duplication or overlapping of services, consolidating services, etc. He called for a discussion of how to formulate a response. He said he was not sure how to respond, because most of the work is done by the Department.

The Manager-Chief Engineer said that DWS has responded the last couple of years, and one of the main concerns involved working closely with the Department of Environmental Management regarding their billings and delinquencies. The lien bill under consideration at the Legislature is addressing this concern. DWS in the past has noted that the Department has an Energy Management Specialist working to reduce the Department’s energy costs, primarily through the Lālāmilo Windfarm.

Ms. Garson said that the Cost of Government Commission sent letters to all of the departments and boards, and the Water Board’s response would be separate from DWS’s response. The Cost of Government Commission must put together its report within 11 months. Because this Item is on the Agenda, the Board can discuss it, take action and send a letter if the Board has any suggestions for the Cost of Government Commission.

The Manager-Chief Engineer noted that Mr. Perry is now serving on the Cost of Government Commission.

Mr. Perry said he was looking forward to the Board’s letter.

Chairperson Kaneshiro asked if DWS was going to send in a response.

Ms. Garson said that DWS will send something in; she noted that the Board got a separate letter from the Cost of Government Commission. She said that the Board would respond independently of the Department, or the Board might just write that the Department was sending in a response.

Ms. Iokepa-Moses said she thought that DWS knows better than the Board does.

Chairperson Kaneshiro said that was what he was going to say.

The Manager-Chief Engineer asked whether there was a deadline for the response.

Ms. Garson said the deadline was April 7, 2014.

The Manager-Chief Engineer said that the Department would send copies of its response to each Board member.

Mr. Perry said he's been telling the Cost of Government Commission how efficient DWS is, and how much money DWS is saving.

The Manager-Chief Engineer thanked Mr. Perry.

Chairperson Kaneshiro asked whether the Board should just report that the Board does not have any suggestions.

Ms. Garson said that if that is what the Board wants to say, she could draft a letter from the Board and have the Chairperson sign it. The letter could thank the Commission for its inquiry, say that at this time the Board has no suggestions; the letter could note that a separate letter has been sent to DWS, which the Manager-Chief Engineer will respond to.

Chairperson Kaneshiro asked for a Motion to that effect.

Mr. Uyeda so moved; seconded by Mr. Arikawa.

Ms. Garson asked them to wait, and restated the Motion, to respond to the Cost of Government Commission saying that the Board does not have any suggestions at this time, and authorizing the Chairperson to sign the letter.

ACTION: Mr. Uyeda so moved; seconded by Mr. Arikawa, and carried unanimously by voice vote.

10) ANNOUNCEMENTS:

1. **Next Regular Meeting**:

The next meeting of the Water Board will be held at 10:00 a.m. on April 22, 2014, at 10:00 a.m. 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 is scheduled for May 27, 2014, at the West Hawai'i Civic Center, **Liquor Control Conference Room, Bldg. B, 2nd Floor**, 74-5044 Ane Keohokalole Hwy, Kailua-Kona, HI.

11) ADJOURNMENT

ACTION: Ms. Lee Loy moved to adjourn; seconded by Ms. Iokepa-Moses, and carried unanimously by voice vote.

Chairperson Kaneshiro adjourned the meeting at 1:17 p.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.