

**MINUTES**

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

September 23, 2014

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

MEMBERS PRESENT: Mr. Kenneth Kaneshiro, Chairperson  
Mr. Rick Robinson, Vice-Chairperson  
Mr. Russell Arikawa  
Mr. David Greenwell  
Ms. Susan Lee Loy  
Mr. Craig Takamine  
Mr. Quirino Antonio, Jr., Manager-Chief Engineer, Department of Water Supply (ex-officio member)

ABSENT:

Mr. Jay Uyeda, Water Board Member  
Ms. Brenda Iokepa-Moses, Water Board Member  
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, Deputy Corporation Counsel  
Mr. Jeff Zimpfer, National Parks Service  
Mr. Richard Horn, Site Constructors

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Richard Sumada, Waterworks Controller  
Ms. Kanani Aton, Public Information and Education Specialist  
Mr. Owen Nishioka, Engineering Division (*left at 11:15 a.m.*)

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1) CALL TO ORDER – Chairperson Kaneshiro called the meeting to order at 10:06 a.m.

2) STATEMENTS FROM THE PUBLIC

None.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the August 26, 2014, Water Board meeting.

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

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

None.

5) SOUTH KOHALA:

**A. JOB NO. 2010-972, LĀLĀMILO WIND FARM REPOWERING PROJECT, POWER PURCHASE AGREEMENT:**

The developer has requested a modification to the Power Purchase Agreement (PPA). The original Request for Proposals (RFP) for this project included the Habitat Conservation Plan (HCP) requirement; however, the developer has stated that the HCP is voluntary, and the developer wants to proceed without doing the HCP. Although the HCP and Incidental Take Permit (ITP) requirements are voluntary, DWS feels it is necessary to proceed with the project.

The Manager-Chief Engineer said that DWS had received a letter from the developer, who submitted figures for doing the HCP. He said that DWS has not stated a Recommendation regarding those additional costs. He said that Mr. Richard Horn, the developer, was on hand to explain their submittal to DWS.

Mr. Horn said that the HCP/ITP is a voluntary program; it is not mandatory. He said that up to now, there has never been an HCP/ITP on the Big Island. Mr. Horn noted that he is the owner and operator of the Hāwī Windfarm, which does not have an HCP/ITP. His company, Lālāmilo Wind Company, LLC, is not required to get an HCP. The costs of getting an HCP are phenomenal; the only HCPs/ITPs that exist in the state involve very large windfarm turbine installations, which are on Maui and Oahu. Lālāmilo Wind Company, LLC has gone back and explored the absolutely cheapest route it could find to get an HCP/ITP formulated and put into place, Mr. Horn said. They have compiled the numbers, and the bare bones cost of doing that is an average additional cost of two cents for the 20-year contract; all of the justification for that is in the handout that he was about to distribute to the Board, Mr. Horn said.

Chairperson Kaneshiro asked if the handout had been submitted to the Department.

Mr. Horn said no, this was a compilation of the information that is in the letter. He said he had brought nine copies for the Board, which justifies the additional two cents.

Mr. Horn distributed to the Board another document, which he said is the justification of the proposed two-cent increase in the Power Purchase Agreement.

Mr. Robinson noted that Mr. Horn's attorney is referred to as a "solicitor." That term is British English, he said.

Mr. Horn said he did not know why the attorney was referred to that way.

Ms. Lee Loy asked Mr. Horn to explain how his Hāwī windfarm got up and running. She noted that Mr. Horn had said that the HCP and the ITP were voluntary, or optional.

Mr. Horn said that it was voluntary.

Ms. Lee Loy said that the information from the Department of Fish and Wildlife does not come out and say that the permits are optional.

Mr. Horn said that it is a voluntary program; the Fish and Wildlife people try to browbeat people into getting an HCP/ITP, but they cannot force people to do it.

Ms. Lee Loy said she was failing to understand; when Fish and Wildlife cite the various sections of the Endangered Species Act, these pieces of legislation clearly call for going through the HCP process, which in turn allows one to go on to get an Incidental Take Permit.

Mr. Horn said no, while one needs to have an HCP in place before getting an ITP, the HCP is a voluntary plan.

Mr. Robinson said that he never understood all of this; Fish and Wildlife kind of throws these things out there, and it is all over the place. He said he has attended meetings at the Fish and Wildlife offices in Honolulu, and it was like swimming in molasses.

Mr. Horn said exactly.

Mr. Robinson said that no one can ever really explain with any clarity how it all works, but lately he had occasion to be in discussions with Fish and Wildlife regarding Safe Harbor Agreements. He asked whether a Safe Harbor Agreement would apply to the situation in Lālāmilo.

Mr. Horn asked Mr. Robinson to explain a bit more about the Safe Harbor Agreement.

Mr. Robinson said he was no expert, and would be the worst person to ask to explain it. However, his understanding is that one can submit a property to a Safe Harbor Agreement, but he did not know much more about it, he said. Fish and Wildlife have tried to explain it to Mr. Robinson, but it never really was understandable, he added.

Mr. Horn said he had not been involved in a Safe Harbor Agreement.

Mr. Robinson suggested that Mr. Horn ask his attorney about the Safe Harbor Agreement; it might be worth exploring. He noted that there are people who make their living understanding this kind of thing far better than Mr. Robinson.

Mr. Horn said his company had engaged two different environmental companies that are fully involved in this kind of work; they are expensive. His company has already spent about \$400,000.00 going through the Environmental Assessment (EA), etc. It would cost well over \$1 million to do an HCP/ITP – for something that may never happen, Mr. Horn said.

Mr. Greenwell asked about Exhibits A-2 and A-3, which is a letter written by the Fish and Wildlife Service. Following a site visit to Lālāmilo on December 10, 2013, “the Service is certain that a HCP is necessary for this project,” the letter said. Mr. Greenwell said he could not understand how Fish and Wildlife could write a letter saying that the HCP was certainly necessary, and yet it is “voluntary.”

Mr. Horn said that is exactly the way it is. He said he had many meetings with Fish and Wildlife, and with the State Department of Forestry and Wildlife (DOFAW), both in the field and in Honolulu, where he has explained the mitigation efforts that his company is going through. There is no lighting outside; the towers are completely enclosed so that there is no roosting; the cells are completely enclosed so that there is no roosting. There is no way that birds can get in there, Mr. Horn said. There are no flashing lights to attract any birds, and the turbines do not turn on until after the wind reaches five meters per second; bats do not like to fly in that wind speed, he said. There are a myriad of things that his company has done, and Fish and Wildlife will sit and listen, and agree with Mr. Horn that there is nothing out there. However, Fish and Wildlife will go on to tell Mr. Horn that Washington, D.C. says that Mr. Horn must do the HCP, and that any windfarm must do it. They say this even though the feds have no teeth to make one do it, Mr. Horn said. They try to browbeat one into complying with their suggestions.

Mr. Robinson asked Mr. Horn whether Fish and Wildlife will sue Mr. Horn if he does not do an HCP/ITP.

Mr. Horn said Fish and Wildlife cannot do anything to him until Fish and Wildlife proves that the Windfarm killed a bird.

Mr. Robinson asked whether a bird had ever been killed at Mr. Horn's Hāwī windfarm.

Mr. Horn said no. He said that birds are seen there on occasion, but not very often. He said that bird concentration maps of that area of North Kohala, as well as the Lālāmilo Windfarm area, show an extremely low passage rate for birds. This fact has been published in all sorts of documents, Mr. Horn said. He said that he had just finished a multi-day meeting with Fish and Wildlife and DOFAW in Honolulu last week, where Mr. Horn presented a Bird and Bat Conservation Plan. Because those agencies cannot force anyone to get an HCP/ITP, which would cost millions of dollars, Fish and Wildlife and DOFAW are finally being more accommodating, he said. Before this, the agencies refused to talk to anyone who did not get an HCP/ITP.

Ms. Lee Loy noted that Mr. Horn said the HCP/ITP costs a lot of money. She asked Mr. Horn to explain the status of the financing for the project right now. She said she knew that Mr. Horn's company had invested a lot of money in the environmental studies, including the EA. She asked him to give an overview of his company's finances amid these expensive outlays.

Mr. Horn acknowledged that the studies have been expensive; his company has spent just under \$1 million, in total, so far on the project. He said his company is prepared to go forward with the project, and his company has the financing for the balance of the project.

Ms. Lee Loy asked if the financing includes the HCP and the ITP.

Mr. Horn said no, if his company is forced to do those studies, his company will not have the financing.

Ms. Lee Loy noted that Mr. Horn's company did a bat study. She said that the impetus for doing the HCP was because of the pupping season of the bats during certain periods of time in the Lālāmilo area. She said she was concerned because the EA outlined the HCP, which is a connector to the lease with DLNR. She said that by not doing the HCP/ITP, the project would not be in compliance with scientific or conservation-related programs regarding endangered species; this would mean running the risk of a domino effect with the lease, she said.

Ms. Lee Loy asked what Mr. Horn's understanding was of the EA, and what his understanding was of the studies done regarding endangered species.

Mr. Horn said that DWS actually did the bat study; it was not a very successful bat study because only one of the six recorders actually worked. However, the study yielded enough information to formulate a conclusion. There are several areas that Mr. Horn's company will concentrate on during the pupping season; there will be no trees cut during pupping season and no unnecessary lights will be used during pupping season. A number of precautionary measures will be taken, he said, such as having a biologist on site when there is activity involving cranes, to ensure that no birds or bats are harmed. He said that his company is paying strict attention to environmental restrictions such as these.

Ms. Lee Loy asked what fines or fees would be levied if these endangered species are harmed or taken.

Mr. Horn drew Ms. Lee Loy's attention to the entry labeled "ITP Mitigation Costs" on the one-page handout he had just distributed; those are the costs for a bird or bat.

Ms. Lee Loy asked if those were the costs for one bird or bat.

Mr. Horn said no, the costs are for six bats; that is the suggested number that his company purchases.

Looking at the handout, Mr. Robinson asked whether it was true that for six bats, the company will have to pay \$300,000.00.

Mr. Horn said yes; it comes to \$50,000.00 per bat, but that is over the 20-year lifespan of the project.

Mr. Robinson asked if it was \$30,000.00 per nene, and \$80,000.00 per Hawaiian petrel.

Mr. Horn said yes.

Mr. Robinson asked if Newell's shearwaters went for \$80,000.00 each.

Mr. Horn confirmed this. He said he just wanted to point out that there has never been a Hawaiian petrel killed in Hawai'i; these costs were insurance policies against an eventuality that has not happened to anyone yet.

Mr. Robinson noted that shearwaters seem to get killed by dogs and cats.

Mr. Horn said they also get killed by light poles.

Mr. Takamine asked what this monitoring system is for.

Referring to the one-page handout, Mr. Horn pointed to the column titled "Annual HCP/ITP Maintenance Costs," and asked the Board to look at the columns called PPA 1, PPA 2, and PPA 3. The annual costs for those three years are higher because in those first three years, SWCA Environmental Consultants closely monitors the project; the consultant will do weekly or twice-weekly inspections in search of downed birds. Each turbine will have a grid installed underneath, and SWCA will walk the grid looking for downed birds. SWCA will also conduct "Searcher Efficiency Trials," whereby they actually plant a dead bird somewhere, and the searchers will hunt for the bird. If the searchers do not find the bird, it will show that the searchers are either incompetent, or an animal such as a mongoose has already taken the bird. The handout also had a listing called FMP, which Mr. Horn explained was the frequency that SWCA will put a dead bird out; SWCA will monitor it to see how long it takes a mongoose, cat or other animal to take off with the dead bird. Besides these two monitoring programs, there are a multitude of tasks that must be done to administer the HCP/ITP, he said.

Mr. Robinson asked where the dead birds come from.

Mr. Horn said that the windfarm would buy from Fish and Wildlife.

Mr. Robinson asked if Fish and Wildlife just kills the birds and then sells them.

Mr. Horn said that there are various places where the birds have been killed; Fish and Wildlife puts the dead birds in the freezer, and then sells them. This is an art form unto itself, Mr. Horn said, adding that he should have been a biologist.

Ms. Lee Loy, noting that the financing does not include the HCP/ITP, asked where the money would come from.

Mr. Horn said that if DWS requires the windfarm to do the HCP/ITP, and if the two parties agree on an average cost increase for the electricity sold, Lā'āmilō Windfarm will finance it themselves.

This is the cost that he was talking about here, he said; this cost has no interest on it, and Lālāmilo Windfarm would accept that.

Ms. Lee Loy asked the Manager-Chief Engineer whether the DLNR lease has been executed already.

The Manager-Chief Engineer said no, DWS has signed a lease-in-concept. DWS is still waiting for an appraisal that a DLNR contractor has done; DWS has not seen that appraisal yet. The lease is contingent on that appraisal, he said.

Ms. Lee Loy, noting that she had dealt with a few such leases herself, asked whether DLNR will condition that lease on doing the HCP/ITP.

The Manager-Chief Engineer said he thought that DLNR would condition the lease on performance of the HCP/ITP, but DWS will not know until they see the appraisal. In previous such lease agreements that DWS had, DLNR did come back with conditions, which DWS had to work out. At this point, DWS does not know what those conditions will be for the Lālāmilo lease.

The Deputy said that Mr. Horn's company has done a great job thus far, and everybody concerned realizes that this is a terrific project for DWS's customers, the community, and the fulfillment of the long-term goals of the State regarding reducing reliance on fossil fuels. Everyone wants this project to go forward and be successful. DWS asked Mr. Horn to come before the Board today to explain the things that DWS could not explain, regarding Mr. Horn's proposal of the additional two cents per kilowatt-hour (kWh). DWS also wanted Mr. Horn to explain to the Board what his company has been doing in planning for the windfarm so far, with regard to built-in mitigation efforts. DWS also wanted Mr. Horn to explain his understanding of Fish and Wildlife, DOFAW, the HCP and the ITP permit process. The Deputy pointed out that all of these things are beyond DWS's normal scope of expertise and experience; these things normally do not come into play with typical DWS projects. Therefore, DWS was concerned when the letters from Fish and Wildlife came in saying that the HCP/ITP was necessary. DWS is concerned over several things, including the fact that DWS and Lālāmilo Windfarm have an executed Power Purchase Agreement (PPA); DWS needed to come before the Board on this. The other concern is that the RFP for this project and the PPA make reference to DWS's lease-in-concept with DLNR. The RFP says that an HCP needs to be done, as well as an Environmental Assessment (EA) and an Environmental Impact Statement (EIS). The Deputy said that DWS does not want to jeopardize the lease from DLNR; without the HCP, DWS may not get the lease. This property does not belong to DWS; DWS is asking for permission to use DLNR's property, and DWS has to do the right thing, the Deputy said. Because there is language in the lease-in-concept regarding the need for the HCP, DWS felt it was necessary to have Mr. Horn come to explain his proposal. The Deputy said that DWS does not want to jeopardize its lease with the State; without rights to the land, the project will not go through.

Ms. Lee Loy and Mr. Robinson both said agreed that without the lease, there would be no project.

The Deputy said right, that is why Mr. Horn is here. The Deputy did some computations regarding the contract energy, which is 7,600 megawatt-hours per year. For every penny per kWh, it translates into \$76,000.00. The existing PPA amount of 24 cents per kWh means saving DWS customers approximately \$1 million a year. By adding an extra penny, the PPA amount would be 25 cents per kWh, which is \$990,000.00 in savings to DWS's customers. The Deputy said that it would be good for the Board to have that perspective regarding the project. Unfortunately, DWS did not have a chance to review the one-page worksheet (i.e., the one-page handout from Mr. Horn). That is part of the reason that DWS could not provide a

Recommendation; DWS did not have a chance to see what was behind Mr. Horn's proposal of the additional two cents per kWh.

Mr. Robinson asked about the two other windfarm facilities that Mr. Horn mentioned earlier that had done the HCP/ITP; he assumed that the facilities were owned by Hawai'i Electric (HECO).

Mr. Horn said no, the facility on Maui is owned by Eurus (actually 50 percent owned by Tokyo Electric and 50 percent owned by Toyota). He said their HCP/ITP cost \$3-4 million. That facility was for 21 megawatt-hours per year, and has 14 turbines.

Mr. Robinson asked if that facility was the one on the ridgeline on Maui.

Mr. Horn said no, that is the Kaheawa Windfarm, which Mr. Horn himself used to own. There were so many environmental problems that Mr. Horn got rid of it. That facility is owned by First Wind, and First Wind has an HCP/ITP on that facility, to the tune of around \$10 million.

Ms. Lee Loy asked for confirmation that the RFP noted the need for an HCP; she asked for confirmation that that language was part of the RFP, which DWS sent out.

The Deputy confirmed this; the RFP did recognize that there would be the need for environmental studies, listed under Section C: Permits and Licenses. The RFP said: "The Offeror shall procure the federal, State, County agency utility permits, including preparation of an Environmental Assessment, a Habitat Conservation Plan or Environmental Impact Statement."

Ms. Lee Loy asked what the timeline was for the execution of the lease. She said she was aware that DWS had a lease-in-concept; she asked when DWS was coming back to the Board with the lease.

Mr. Inaba said that DWS is waiting for the appraisal and the Finding of No Significant Impact (FONSI).

Ms. Lee Loy asked for confirmation that the FONSI has not yet been issued.

Mr. Inaba confirmed that the FONSI has not yet been issued.

The Deputy said that meanwhile, there are some things in progress; the Final Environmental Assessment (FEA) will soon be submitted for Office of Environmental Quality Control (OEQC) publication. The State required DWS to do an appraisal, and the findings of that appraisal have not yet been released. That will need to be done before DWS appears before the Board of Land and Natural Resources (BLNR) for consideration of the lease.

Ms. Lee Loy asked if the publication process would come next.

The Deputy said yes.

Mr. Robinson said he has a problem with the 20-year payback. He acknowledged that there are going to be costs associated with this, on an annual basis. Instead of spreading it out over 20 years, Mr. Robinson proposed an initial five-year cost recovery. He figured that the up-front costs would be the most, and after that, the costs on an annual basis would be cranked back into the cost of power.

Mr. Horn said that is definitely possible; he agreed that the initial six years are the most expensive years, and then after that, the cost per kWh drops significantly to 9/10ths of one cent in the seventh year. It goes up to 1.4 cents per kWh in the eighth year, because the windfarm has to do

another full-blown study with SWCA, because there is a requirement to do so every five years after the initial five years. In years 9 and 10, the cost per kWh drops back down.

Chairperson Kaneshiro asked Mr. Horn whether this Lālāmilo property hosted a windfarm before.

Mr. Horn said yes, it had been a windfarm for 25 years.

Chairperson Kaneshiro asked if, during those 25 years, any birds or bats had been killed.

Mr. Horn said that the plant operator at the time reported that he had never seen a bird or bat killed out there. Mr. Horn said that his own windfarm in Hāwī has been in operation for nearly eight years, and there have not been any bird or bat fatalities. That is not to say that there will never be any bird or bat fatalities. He added that the exposure is what DLNR is going to require the windfarm to have.

ACTION: Mr. Robinson moved to go into Executive Session; seconded by Ms. Lee Loy and carried unanimously by voice vote.

**B. EXECUTIVE SESSION RE: JOB NO. 2011-972, LĀLĀMILO WIND FARM REPOWERING PROJECT, POWER PURCHASE AGREEMENT:**

The Water Board convened an executive meeting, closed to the public, pursuant to Hawai‘i Revised Statutes, Sections 92-4, 92-5(a)(4), for the purpose of consulting with the Water Board’s attorney on questions and issues pertaining to the Water Board’s powers, duties, privileges, immunities and liabilities.

*(Executive Session began at 10:39 a.m. and ended at 11:06 a.m. The Board then recessed, and the regular session resumed at 11:11 a.m.)*

Ms. Lee Loy said that there are a lot of smart people in the room, and that she had heard what the staff had to say. This is a good project; there are some savings to be had, but the Board has a lot of options to explore. She wanted to make a Motion to defer this Item until the next Board meeting, to give the staff a chance to meet with Mr. Horn to work out the options. The Board went into this Item today with no Recommendation, with additional information being presented at this meeting. Ms. Lee Loy said that everybody can put their heads together on this Item; she said she wanted the Board to continue to follow the rules and the guidelines, etc., including what was outlined in the RFP and what has been made part of the lease-in-concept related to the requirement to do the HCP. She wanted to follow the rules; that is the process.

MOTION: Ms. Lee Loy moved to defer this Item to the October Board meeting; seconded by Mr. Robinson.

Mr. Robinson said that he was disappointed that the HCP financing was not included in the original RFP from Mr. Horn, given Mr. Horn’s past experience. Mr. Horn would have known that the HCP is something that would have to be complied with, especially since this project involves the use of State land. The Board indeed does want to comply with all of the rules and regulations, particularly ones involving the Fish and Wildlife Service. It would become a real problem if there were an incidental take or something of that nature, he said. The Board wants to see this windfarm up and functioning and operating -- and in compliance with all of the Rules, Mr. Robinson said. The Board needs time to look at this Item carefully; there is too much here, all of a sudden. He said he understood the additional cost, but it should have been included in the original RFP, Mr. Robinson said.

Mr. Horn said that he had given the Manager-Chief Engineer an additional document (i.e., a three-page document called the Justification for PPA Rate Increase at Lālāmilo for Costs of Voluntary HCP/ITP). This document shows the optimization of the wind turbines, and how it will actually provide more energy, at a lower cost, Mr. Horn said. This is actually giving a better benefit than the 28 cent adjusted rate that his company had come up with in its Best and Final Offer. He apologized for not getting the document to the Board earlier. He said that the Board will see how the rate to compensate for the HCP/ITP is more-than-adjusted-for in the additional kilowatt-hours that will be given forth by the windfarm, instead of having to be purchased from HELCO.

Mr. Robinson said that the Board relies on DWS staff to advise the Board; the Board looks to the staff as the experts.

Mr. Horn said right, he had given the document to the staff as well.

The Secretary said that she would make copies of the document for the Board and staff.

ACTION: Motion carried unanimously by voice vote.

*(Mr. Horn left the meeting at 11:16 a.m.)*

6) MISCELLANEOUS:

A. DEDICATION OF WATER SYSTEMS:

The Department has received the following documents for action by the Water Board. The water systems have been constructed in accordance with the Department's standards and are in acceptable condition for dedication.

a. **BILL OF SALE**

Off-site Water System  
Seller: The Arc of Hilo  
Tax Map Key: (3) 2-3-032: 007 & 008

b. **GRANT OF EASEMENT**

For Water Meter Purposes  
Grantor: Millicent Towata Grand  
Tax Map Key: (3) 7-6-004: 018

c. **BILL OF SALE**

Subdivision Application No. 2003-027  
Seller: Makuakane, LLC  
Tax Map Key: (3) 7-8-007: 015  
No. of Lots: 4                      Zoning: A-1a  
Final Inspection Date: 8/11/2014  
Water System Cost: \$47,500.00

The Manager-Chief Engineer recommended that the Water Board accept these documents subject to the approval of Corporation Counsel and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents.

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

**B. DISCUSSION OF AMENDING RULES AND REGULATIONS REGARDING PLACING RESPONSIBILITY WITH PROPERTY OWNERS FOR TENANTS' DELINQUENT BILLS:**

Mr. Greenwell suggested that Mr. Robinson and Ms. Lee Loy should be on the sub-committee to draft an amended Rule, since they have experience with such matters.

Mr. Robinson said that he and Ms. Lee Loy could work together on it. He said that the way it is now, the land owner is not stuck with the water bill if a tenant absconds; it is a matter of personal liability and is not attributable to the land itself. In the case of a failure to pay real property taxes or the electric bill, the land owner is held liable. The sub-committee just needs to re-write the Rules to provide for having the owner held responsible for the water bill. He said that the sub-committee could work with Ms. Garson on the language of the amended Rule.

Ms. Garson said sure, noting that she was absent from last month's Board meeting, but she had provided the Board with a draft Rule. The sub-committee can start with that draft if it wants to.

Mr. Robinson said that the amended Rule would have the land owner co-sign for the water meter, so that in the event that the tenant absconds, the owner will be responsible for the bill.

Ms. Garson said that the Rule could be done that way; she noted that Maui Water Supply has the owner as the guarantor.

Chairperson Kaneshiro asked if this amended Rule would be for Hawai'i County only.

Ms. Garson said yes.

Chairperson Kaneshiro asked if the Board was still going to pursue the statewide effort (on the lien legislation).

Ms. Garson said yes, but the Board is just talking now about the DWS Rules and Regulations.

The Manager-Chief Engineer asked if the Chairperson was just referring to the lien bill.

Chairperson Kaneshiro said yes.

The Manager-Chief Engineer said that the Board and DWS will pursue the lien bill separately from what they are going to do with the DWS Rules and Regulations.

Ms. Garson said that the lien bill should be discussed by the Board, and said that it could be put on the October Agenda.

Mr. Robinson said that the DWS Rules and Regulations were just referring to the personal liability issue, whereas the lien legislation would refer to a lien against real property; it would be collateralized by real property.

Chairperson Kaneshiro said okay, so it is not the same thing.

The Manager-Chief Engineer said that he wanted to ask that the sub-committee work really closely with Mr. Sumada and the Finance Division in framing the amended Rule.

Mr. Robinson asked whether Mr. Sumada would review the language as well.

The Manager-Chief Engineer confirmed this.

Ms. Lee Loy said she asked whether this amended Rule relates only to property owners and tenant delinquencies – and not to any other Rule amendments. She asked if the sub-committee was being tasked with cleaning up all of the Rules and Regulations.

Ms. Garson said that for the purposes of the two sub-committee members, it would be whatever needs to be adjusted in order to amend this Rule. She noted that the County Council recently passed the legislation regarding water shutoffs in the event of sewer bill delinquencies. She said that the Department needs to go back and look at DWS's Rules to make sure that the new legislation is implemented under the current framework. She said that while that legislation might touch on the Rule amendment in question here, she thought that the sub-committee should just focus on the Rule amendment alone.

Mr. Robinson noted that in the case of apartment buildings, there is one master meter, which the landlords pay the bill for. What this Rule amendment is intended to address is for smaller, individual properties with individual water meters.

C. **DEPARTMENT OF WATER SUPPLY RESPONSE TO NATIONAL PARK SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:**

The Manager-Chief Engineer said that the Department will be presenting its response to the Commission on Water Resource Management (CWRM) at the Commission's October 9 meeting in Kona. He said that DWS does not yet have a draft of what it will be presenting at that meeting. That meeting will include site visits to a DWS well and a DWS reservoir site in Kona. DWS will send out the CWRM meeting agenda to the Board and other interested parties, when the agenda is ready. Following the October 9 meeting, CWRM will meet in December, when it is expected to decide whether to approve or deny the National Park Service (NPS) petition.

Mr. Robinson said he was really disappointed in the September 17 CWRM meeting in Kona. He said he wanted to attend, and kept trying to find out when and where the meeting would take place. He said he had made a doctor's appointment for that day, and told the doctor that he might have to cancel. However, by the time the CWRM meeting information was released, at the last minute, it was too late to cancel the appointment, Mr. Robinson said. The Board was not given effective notice of the CWRM meeting, Mr. Robinson said, adding that he wondered if Sunshine Law notice requirements were met.

The Manager-Chief Engineer said he believed that the Sunshine Law notice requirements were met, albeit at the last minute. If, in fact, the Sunshine Law notice requirement were not met, the CWRM meeting would have been cancelled, he said.

Mr. Greenwell asked Mr. Robinson if he was aware of a Kona Water Roundtable meeting slated for October 8.

Mr. Robinson said yes, he had it on his calendar, adding that the venue was the Hāpuna Prince Hotel. He also had the October 9 CWRM meeting on his calendar.

Mr. Greenwell said that was correct. He said that he had attended the September 17 CWRM meeting. Mr. Greenwell said he had first heard about the CWRM meeting and the Kona Water Roundtable meeting from somebody outside of the Department.

The Manager-Chief Engineer said he thought that Ms. Jacqui Hoover was coordinating the Kona Water Roundtable meeting.

Mr. Robinson asked who was coordinating the CWRM meetings.

The Manager-Chief Engineer said he thought that the CWRM meetings were coordinated by CWRM staff. DWS was trying to get some of the September 17 meeting notes on discussions that took place; the Department will provide the meeting Minutes to the Board as soon as they become available. DWS has just written a letter to CWRM to get a hold of some of the Items in that meeting, so that the Department can provide them to the Board.

Mr. Robinson said it just did not seem right to him; the Water Board is the most important body in this instance, and it would have been expected that the Board would have gotten some kind of notification ahead of time. It was so last-minute that it took away any meaning to the September 17 meeting; Mr. Robinson said that the Board should note that to CWRM.

Ms. Lee Loy asked the Deputy, who attended the September 17 meeting, what had happened.

The Deputy said the Department had felt the same frustration as Mr. Robinson just expressed. DWS had asked CWRM staff to tell the Department as soon as the meeting agenda came out. It was the Secretary or the Private Secretary who actually found out.

The Secretary said she had watched the CWRM website like a hawk, and the meeting agenda only appeared a couple of days before the meeting.

The Deputy said it came out on the Friday morning, and the meeting/site visit was to be on the following Wednesday. He said that the next CWRM meeting is on the books for October 9; DWS has asked CWRM staff what kind of time frame the Department has to provide its presentation material. DWS will be part of the October 9 meeting, not the whole thing, the Deputy said. DWS will provide what they intend to present, and are shooting for October 1 to do so, he said. It is still not clear when the agenda itself will be publicly released, but DWS will be trying to get CWRM to release the agenda as soon as possible. As soon as DWS gets the agenda, the Secretary will send it out to the Board. The September 17 meeting included a series of site visits, and DWS wrote a letter to CWRM Chairperson William Aila to request the presentation materials. The Department will send the Board a copy of that letter, he said. CWRM staff video-recorded the September 17 meeting, and DWS is requesting a copy of that video as well. The Deputy asked the Board to let the Department know if there are any items that the Board would like to be expressed to the CWRM Chairperson or the Commission, and if so, DWS will draft something.

Mr. Robinson said this was a clear case of lack of inherent goodwill; inherent goodwill is called for, and one would think that CWRM would have made a courtesy call to DWS staff regarding the September 17 meeting agenda. It seemed like it was an attempt to keep the Board uninformed, he said. The Board is the most important body in this instance, because the Board represents all of the people who are paying for their water meters and getting their water. The Board also represents the people who will *not* be able to get water meters in the event of designation, because DWS will not be able to issue meters.

Mr. Arikawa agreed, saying that one would think CWRM would keep the Water Board in the loop.

Ms. Lee Loy said she was having a bit of heartburn, after reviewing the official notice of the September 17 meeting. Ms. Lee Loy was very concerned that CWRM cited Section 92-6 in conducting its investigation and site visit "pursuant to the Commission's investigatory authority and responsibility..." The specific citation, Section 92-6(a) (2) Hawaii Revised Statutes as amended involves decision making on a contested case proceeding, she said. This Section 92 is a contested case citation, and Ms. Lee Loy said she was concerned if this means going through the

process of a contested case. The parties to a contested case need to know what the process is, and when the parties (in this case, the Board and DWS) would be able to **engage** in the contested case. Ms. Lee Loy said, here comes this published Notice that cites a Section related to a contested case. Ms. Lee Loy said she wanted to be able to preserve any future claims, going down the road. Ms. Lee Loy said that she did not want to miss an opportunity to engage, or be present through this designation process, by letting the clock run out or having the sun set on a future claim that the Board might have in a contested case. Ms. Lee Loy said that was her biggest heartburn right now; it is September already, and there are CWRM meetings in October and November. The December CWRM meeting may see designation happening. Ms. Lee Loy said she really wanted to look at what the Board's strategies might be, so that the Board is not missing an opportunity to preserve its rights. The Department is a party to this designation process, along with the County Council and the Mayor's Office, she said. The Board of the Water Department needs to figure out what its strategy should be. This may be a good time to request an Executive Session to consult with the Board's attorney on what the Board's powers, duties and responsibilities are to preserve its future claims as the process goes through the next four months, Ms. Lee Loy said.

ACTION: Ms. Lee Loy moved to go into Executive Session; seconded by Mr. Robinson, and carried unanimously by voice vote.

*(Executive Session began at 11:33 a.m. and ended at 12:01 p.m. The Board then recessed, and the regular session resumed at 12:04 p.m.)*

**D. MONTHLY PROGRESS REPORT:**

The Manager-Chief Engineer noted that at the last Board meeting, Mr. Greenwell had recommended that the Department submit a more streamlined CIP report, which omitted already-completed projects from the list.

Mr. Inaba distributed to the Board a revised Monthly Progress Report that eliminated or erased the projects that have been completed already, but which were awaiting final payment. He noted that some of the projects were only design projects.

Mr. Greenwell asked about the Puakō Waterline project.

Mr. Inaba said it was still on the list. It is 90 percent complete as far as design, done in-house. DWS needs to get a National Pollutant Discharge Elimination System (NPDES) permit for the project, which the Department is going to tie in with its budgeting request for SRF funds.

Mr. Inaba said that he would double-check the latest CIP list to see if DWS had applied for SRF funding for the project; DWS wants to qualify the project for SRF funding.

Mr. Greenwell asked if this project was on a 2015 start list.

Mr. Inaba said he was sorry, he would have to check.

The Manager-Chief Engineer said that this project is intended to replace a portion of the waterline that has been underwater in brackish salt water; the waterline has been affected by the salt water. This project will re-do that portion of the waterline, so that DWS will not face further salt water intrusion into the pipeline.

Mr. Robinson noted that he had spotted contractor Bolton, Inc.'s equipment down at the Kuakini Extension or the Queen Ka'ahumanu Highway. He asked how Bolton's pipeline project was progressing.

Mr. Inaba said the Wai‘aha Pipeline is very close to completion, with regards to the Wai‘aha Corridor. Both tanks have been constructed, and Bolton is now outfitting some of the control valves in the control stations on the site, as well as the rate-of-flow controller that will limit the amount of flow getting into Queen Ka‘ahumanu Highway, he said. That will allow DWS to blend the water, he said.

Mr. Robinson said that he noticed that the tap water in Kailua Town is getting less and less salty than it used to be. He asked if the Wai‘aha Pipeline water would also get less salty.

Mr. Inaba said yes, it will get less salty, especially near the Palani Road end. DWS is trying to see if it can operate the system south of where the system is going to connect, so that the water penetrates deeper towards the center of Ali‘i Drive, between Palani Road and Keauhou.

Mr. Robinson asked where the tank is.

The Deputy said that it is by the Self Storage, down Kuakini Highway on the makai side.

Mr. Inaba said that the Self-Storage is just south of the connection; DWS will be doing trial-and-error on operating the system.

The Deputy reminded the Board about Mr. Kawika Uyehara’s presentation at the August Board meeting, regarding the reduced chlorides in Kailua Town’s water. He said that the analysis that the Water Quality Branch has done has yielded quantitative data that reflects what Mr. Robinson is experiencing: less salty water.

The Manager-Chief Engineer asked whether completion was expected in the next month or so.

Mr. Inaba said that Bolton is expecting to do a final inspection next week, and October 3 is the date that Mr. Inaba has been hearing. However, he needed to check with the DWS inspector to confirm this. He said the contractor has to finish the system, and they are close to completion. The dedication of the system could appear on the October or November Water Board Agenda.

Mr. Robinson said this was great.

The Deputy said that because this is a sizeable project, DWS will provide a graphic to the Board when the dedication is agendized, to illustrate where the pipeline comes down from the higher level, etc., in this new Corridor.

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

No discussion.

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

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

- 1) Pu‘ukala/Kona Ocean View Properties Subdivision Improvement District Update – Mr. Inaba said that the contractor is requesting several weeks of rain-out days; the way that the contract is written means that USDA is reviewing the request. Therefore, it does not come before the Board, he said.
- 2) Lava Update – The Manager-Chief Engineer said that he, the Deputy, Ms. Aton and staff have been very active with the County’s lava flow information effort; DWS staff have manned the information center at the Pāhoa Community Center daily, Monday through Friday. DWS has also attended several night-time and weekend community meetings.

- 3) Pāhoā Deepwell B Emergency Repair – As part of the lava flow emergency, DWS had to go into emergency procurement for this repair project; DWS is on its way to completing the repairs. The reason that DWS is doing this now is because the DWS water system in the Pāhoā area would be split if lava inundates Highway 130, splitting it between the Pāhoā side and the Keonepoko side. Therefore, DWS needed to get Deepwell B online, and it is close to doing so, the Manager-Chief Engineer said. The Deputy and Ms. Aton displayed a map of the DWS system in Pāhoā. The Deputy said that luckily, Pāhoā is one of DWS's stronger water systems, with redundancy as far as source and storage. The projected path of the lava takes it through Pāhoā Town, and it will come very close to DWS's Pāhoā No. 2 tank. This is the middle tank in the Pāhoā system. However, because DWS has source and storage on either side of the lava's projected path, DWS will be able to isolate, through its valves, shutting off on either side of the flow. DWS should therefore be able to continue service on both the Hilo side, through the Keonepoko Well and Tank, and on the Pāhoā side, through the Kalapana system. If the lava goes through Pāhoā, DWS will still be able to maintain service to Nānāwale, Lani Puna Gardens, Pohoiki and Kapoho. He said there was a rumor going around that DWS was going to shut down the system in Kapoho; that is not true. The Deputy said he was not sure how the rumor got started, but that is the kind of thing that gets said in times like this. The Manager-Chief Engineer said that because DWS staff are present at the Pāhoā Information Center, they can allay rumors like this; the community seems to appreciate that DWS is there. The Deputy said that DWS has back-up generators and fuel either in place or planned for, in case there is an extended HELCO power outage. Mr. Ikeda's staff are preparing for that kind of scenario, he said. The Manager-Chief Engineer said that there is a generator in transit from Kaua'i, through the HIWARN agreement among the counties signed last year. DWS called Kaua'i Water Supply to ask them to lend one of their generators to DWS, for use in either Pāhoā or Kalapana. Mr. Robinson asked what happens if lava inundates a pipeline buried in the ground. The Manager-Chief Engineer said that the lava is extremely hot, at around 2,000 degrees, and would probably melt some of the gaskets holding the pipelines together; DWS will probably have to isolate that portion of the pipeline that is inundated by the lava. Ms. Aton said that when people come to DWS's table at the information center, the staff mainly talks about what is happening in the inundation zone, and what water sources are available, etc. DWS explains to the people who are in the zone where the pipeline is likely to be inundated that water will not be available in that area once the lava flows come. The Deputy said that a lot of the people in the area are on catchment, and they rely on spigots for their drinking water needs. With the current projected lava path, DWS anticipates maintaining all of the spigots that are available, and will install more spigots if needed. Mr. Greenwell asked how DWS will finance emergency repairs if DWS needs to replace lava-inundated pipelines. The Manager-Chief Engineer said that CIP funding might be available for some of these emergency projects. He noted that the Pāhoā Deepwell B Emergency Repair project cost \$60-70,000.00. DWS does have contingency funding available for projects like this. If grants/reimbursements from FEMA or other agency are available, DWS will be sure to apply for them, the Manager-Chief Engineer said. Mr. Inaba said that DWS is keeping track of its costs, in terms of immediate emergency repairs. As FEMA funding becomes available, DWS will be able to get reimbursement on such repairs. As far as infrastructure replacement, DWS would need to explore if the funding would be available for infrastructure in the lava zone itself. Mr. Inaba noted that in the case of the Kalapana Lava Flow, DWS had to relocate a project from that area; FEMA funding in that case needed to be used on another water system, out of the lava zone. DWS might be able to get funding, but DWS may not be able to go back to where the lava damage is

done. Mr. Greenwell, turning to a different subject, asked how the much-delayed Kahalu‘u D Deepwell Repair & Improvements Project was doing. The Manager-Chief Engineer said everything was okay on that.

- 4) Public Information and Education Specialist Update – Ms. Aton said that DWS had recently attended a Pāpai‘kou Pipeline project information meeting, attended by some 15 people. Ms. Aton went to Kaua‘i last week for the Project WET “Make a Splash” Festival, where Kaua‘i Water Supply supported conservation education to all of the island’s fifth-graders. She noted that the National Park Service’s petition talks about addressing waste through conservation; this Festival is among those best practices that Kaua‘i Water Supply is upholding. DWS is looking for ways to partner with the Department of Health on the West side of Hawai‘i Island, within the Keauhou Aquifer, for conservation education to lessen waste, she said.

#### **G. CHAIRPERSON’S REPORT:**

Chairperson Kaneshiro noted a recent article in the Star Advertiser entitled “Paying the Water Bill.” The article involved the audit of the Honolulu Board of Water Supply (BWS), and public concerns regarding estimated water bills. He said that Oahu is doing a really good job of reducing the incidence of estimating water bills. He said that DWS on the Big Island should be really proud of its cost of water; the article cited DWS as being the best at keeping its water costs down. The article stressed the importance of communication with customers, to make sure that customers understand what is on their water bills (i.e., the meaning of the standby charge, etc.) It is important to let customers know these things and what the Department does, so that it will be much easier to raise rates when the time comes. The Chairperson noted that DWS is doing its latest water rate study. He said that DWS really needs to look at how much it will cost to fix the Department’s aging infrastructure. The Chairperson noted that there are main breaks practically every day on Oahu, and he expressed hope that DWS will stay ahead of replacing aging infrastructure so that customers are not inconvenienced.

The Manager-Chief Engineer said that all of these points were well taken. Mr. Sumada is working closely with the water rate study consultant, he said. He agreed that communications are key, with regards to DWS’s rate payers.

Chairperson Kaneshiro raised the subject of the Water Infrastructure Finance and Innovation Act (WIFIA) that President Obama signed during the recent AWWA conference in Boston. He urged DWS to contact the Hawai‘i Congressional delegation to make sure that DWS is high on the list for such funding, which is earmarked to replace aging infrastructure.

The Manager-Chief Engineer said yes, DWS is watching that closely.

Chairperson Kaneshiro raised the subject of the year-end Evaluation of the Manager-Chief Engineer. He said that he had asked Ms. Lee Loy to set up a new evaluation, and said that he and Ms. Lee Loy would be working on that either in October or November, so that the evaluation can be completed by December.

The Manager-Chief Engineer said okay.

Chairperson Kaneshiro said that the Board would be awaiting the Manager-Chief Engineer’s Progress Report in November or December for the last year’s progress.

Mr. Greenwell asked Ms. Garson what the status was of the Contested Case Hearing that was put off last month.

Ms. Garson said that she did not know; she had not heard anything from Deputy Corporation Counsel Renee Schoen.

Mr. Robinson asked if this was the Contested Case Hearing involving the Kalmanns.

Ms. Garson said yes.

The Manager-Chief Engineer said the Kalmanns may be coming in after November.

Ms. Garson said the Kalmanns wanted to have the Contested Case Hearing to be at a Kona meeting.

The Manager-Chief Engineer asked Ms. Garson if the Contested Case Hearing should have been agendized continuously.

Ms. Garson said no.

Ms. Lee Loy moved to adjourn.

Ms. Garson asked for 15 seconds; Chairperson Kaneshiro had asked her for an update on the Sunshine Law and travel reports. She said two or more members of the Board, but less than the number of members which constitute a quorum, can go to informational meetings on matters related to official Board business. This is just a reminder to all of the Board, she added. Regarding travel reports, Board members who attend an AWWA conference or a similar meeting need to do a travel report within 30 days. Technically, a group report can be written by one person who attended, with the assent of the other Board members who attended.

Chairperson Kaneshiro said that he had mistakenly thought that an oral report was okay.

Ms. Garson said that she was trying to distinguish between two different things. A report about a conference can be agendized, and Board members can make their report at that time; that is the Hawai'i Revised Statutes side of it, she said. The written travel report is kind of a finance-type thing, because the member in question is spending public funds to travel to a conference. That is a different requirement, Ms. Garson said. She said she had talked with Chairperson Kaneshiro about this earlier, and Chairperson Kaneshiro asked her to explain the policy to all of the Board.

Chairperson Kaneshiro said he had hoped that Board members who travel to conferences could get together with the Board to share what they had learned at the conference; this apparently is a no-no, he said.

Ms. Garson said it was okay; it could be put on the Agenda. It would not be a problem to do that at a Board meeting, she said.

7) ANNOUNCEMENTS:

1. Next Regular Meeting:

The next meeting of the Water Board will be held at 10:00 a.m. on October 28, 2014, 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 November 25, 2014, at the West Hawai'i Civic Center, Community Center, Bldg. G, 74-5044 Ane Keohokalole Hwy, Kailua-Kona, HI.

8) ADJOURNMENT

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

Chairperson Kaneshiro adjourned the meeting at 12:34 p.m.

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Secretary

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