

**MINUTES**

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

October 28, 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. David Greenwell  
Ms. Brenda Iokepa-Moses  
Ms. Susan Lee Loy  
Mr. Craig Takamine  
Mr. Jay Uyeda  
Mr. Quirino Antonio, Jr., Manager-Chief Engineer, Department of Water Supply (ex-officio member)

ABSENT:

Mr. Russell Arikawa, 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. Jonathan Scheuer, National Parks Service  
Mr. Richard Horn, Site Constructors  
Ms. Yvonne Y. Izu, Esq.  
Mr. Jay Blake, Orchid Isle Auto Center  
Mr. Riley Smith, Lanihau Properties  
Mr. Peter Young  
Ms. Liza Osorio, Carlsmith Ball LLP

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Daryl Ikeda, Chief of Operations  
Mr. Richard Sumada, Waterworks Controller  
Ms. Kanani Aton, Public Information and Education Specialist  
Ms. Anne Higaki, Customer Service  
Mr. Owen Nishioka, Engineering Division  
Mr. Clyde Young, Operations  
Mr. Eric Takamoto, Operations

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- 1) CALL TO ORDER – Chairperson Kaneshiro called the meeting to order at 10:03 a.m.
  - 2) STATEMENTS FROM THE PUBLIC

*Mr. Riley Smith of Lanihau Properties testified regarding the Keauhou Aquifer.*

The following statements are verbatim.

MR. SMITH: Good morning, Chair Kaneshiro, Vice-Chair and Water Board. I was intending to testify on the Keauhou Aquifer issue. I think you should all have copies of the testimony, including the attachments in front of you. So if you want me to go through it, I'll let you follow along...that's...whatever.

MS. LEE LOY: Mr. Chairman?

CHAIRPERSON KANESHIRO: Susan?

MS. LEE LOY: Yeah, actually what I'd like is to have Mr. Smith kind of read his testimony into the record, but also have an opportunity... 'cos the Item is a little further down on our Agenda...to be able to call him back up and ask any questions at that time...? Just to keep it all in context and succinct with the Item on the Agenda.

CHAIRPERSON KANESHIRO: Okay, that's fine. Go ahead.

MR. SMITH: Okay. Good morning. My name is Riley Smith. I'm the President of Lanihau Properties. I'm a lifelong resident of Hawai'i, born and raised on Oahu, and have resided on the Big Island since 1993. I am testifying to the Department and the Water Board in opposition to the National Park Service petition. I am urging both the Department and the Water Board to take prompt and affirmative action against the National Park's effort to designate the Keauhou Aquifer. As you know, the Water Board sets policy for the Department, and has an obligation to provide safe drinking water to its current and future customers in North Kona. It has written water agreements with many land owners, including Lanihau Properties, that obligate the Department and the Water Board. Many of the current Water Board members were appointed when these various water agreements were signed. My concerns are four, and they're listed in the attachment that you have. The first one concerns violations of the Sunshine Law. As a result of the improper notice and violations to the Sunshine Law, the Hawai'i Leeward Planning Conference – and Lanihau Properties is a member – submitted a complaint on October 17<sup>th</sup> to the Office of Information Practice (OIP) on violations by CWRM in their notifications and conduct during the site visits of September 17<sup>th</sup> and October 9<sup>th</sup>. You have copies of this complaint, and a copy of OIP's follow-up to CWRM, dated October 24<sup>th</sup>. This OIP letter requires CWRM to respond, and address the improprieties identified in the complaint. DWS and the Water Board should send out a similar complaint letter to OIP.

The second item: A Request for Additional Meeting and Time for DWS to present to CWRM. HLPC presented a request to CWRM dated October 21<sup>st</sup>, noting that DWS was not afforded equal time on October 9, 2014 of the site visit, to present to the Commission, as the National Park Service was allowed on September 17<sup>th</sup>. The request asked for an additional meeting to be scheduled in Kona, with more time allotted to the Department of Water Supply and its consultants, to present...and for the lineal descendants, including Elizabeth Lee and her son Reggie and their 'ohana, to present to CWRM, in Kona, prior to the scheduled vote on December 10<sup>th</sup>. At the conclusion of the meeting on October 9<sup>th</sup>, there was a request to allow...to allow Water Supply and the lineal descendants to give more testimony, and if you remember, Roy Hardy stated: "Why don't you come on December 10<sup>th</sup>, and testify to us before the vote is taken?" And I think, as we all know, when there are staff recommendations that need to be written in advance... When you get your Board packets, you get a lot of information... All of that needs to be written up; they need to consider all the testimony, and not get something in a packet, and then, by the way, think about what was just told to you five minutes previously. So, you know, this information needs to be included in the staff background report, and the recommendations need to be provided to the Commissioners before the vote – not on that date.

Third item: The Department of Water Supply letter to CWRM. The Department sent a letter last week Friday...um...and although it was well-intentioned...in reading it, to me, it fails to clearly identify the request for additional time. If you look at the subject line of that letter, it just talks about the Keauhou Aquifer. If I had written the letter, I would say: "This is a request for additional time, from the Department, regarding the Keauhou Aquifer." Also, it does not clearly request that the additional meeting that is being requested occur in **Kona**, and prior to the December 10<sup>th</sup> CWRM vote. Again, getting back to...you need opportunity for the staff to understand all this information, and include it in their recommendation. Third, it does not cc the Governor or the CWRM Commissioners. My impression, in observing a lot of the meetings, is that the Chair of CWRM and his Deputy Director do not consistently share all the information that is provided to them...with the Commissioners. So, unless you cc them on the letter, it's unlikely that the Chair or his Deputy will take it upon himself to share all this information that's provided, so I think the letter needs to be, maybe... To resend...maybe re-clarify it, and consider some of these comments. And, you know, if CWRM were to get back to you and say, hey, why don't you come to the November 19<sup>th</sup> meeting, and testify there...I think that's unfair, because the National Park Service was afforded an opportunity to testify in Kona with their employees, with their supporters, and for CWRM to say, well, come to Honolulu on the 19<sup>th</sup>, and for the nine Board members not to be given a chance to be there to listen...to present your side of the point of view... I think it's unfair. And then, for them to say, well, the lineal descendants can catch a plane and go to Honolulu, too... Again, I think it's just unequal treatment, between how the National Park Service was treated, and how the Department and stakeholders in North Kona were treated.

My fourth item is just the Mayor's Office sent a letter dated yesterday. And this letter clearly asks for an additional meeting in Kona, and for more time for the County, Water Supply, its consultants...to provide testimony prior to the December 10<sup>th</sup> vote. Also, it clearly requested Elizabeth Lee and her 'ohana be given time to testify before the Commission, so that their input can be considered as part of the CWRM staff report. The DWS and Water Board letter should similarly articulate the request and proposed remedies. I ask that both the Water Department and the Water Board take immediate and clear action on putting CWRM on notice of the improper actions, and the specific remedies that would be appropriate. Okay?

CHAIRPERSON KANESHIRO: Thank you very much. Okay, next I wanna call Peter Young...on the NPS petition.

MR. PETER YOUNG: Thank you. I had an opportunity to review Riley's testimony, and agree with it. Just...being a former Chair of the Commission...it's very helpful to get the information into the submittal. Not in the three-minute Public Testimony. So, I would encourage you to get information to the Commission, as well as seek that additional meeting. You're an entity that the Commission is gonna interact with in the process, as it moves forward. It would be helpful to get your statements to them in a clear way...and, in the interest of fairness. It's clear from the site inspections, that not only was the National Park given the full three hours, um, on the September meeting, but at each of the stops, there was more discussion, more information relating to it, so it was *well* over three hours. And then, the amount of time allocated to the Department was 45 minutes...and it was rushed. And um, there are some critical parts of the petition that need to be clarified, and one of those is the Water Use and Development Plan, and having Jon be able to *not* be rushed through a two-minute presentation...but have him...have him be able to make the kind of presentation that he made at the Kona Water Roundtable...which was a thoughtful discussion...an explanation of what that really meant. And it didn't mean that the County was planning to use 600 percent of the sustainable yield in the future. Mathematically, you can't get there. But...that is a critical part that in repetition...so that needs clarification. And he wasn't able to give a clear explanation. He was obviously rushed, and was not able to do it. So...it's more than just asking for another meeting; it's also making some clear statements to them... 'cos essentially, that petition is

asking this Board...asking the *Water Commission* to take jurisdiction away from this Board. And I think the Board has an opportunity to give a thoughtful explanation of how it makes its decisions...what it does... It really does care about the resource...um, and *that* kind of information ought to be given to the Commission.

MS. LEE LOY: Chairman? Um, I'd also like to ask if you could stick around to...when we get to that Item?

CHAIRPERSON KANESHIRO: Yeah.

MR. YOUNG: Okay.

CHAIRPERSON KANESHIRO: Okay, thank you, Peter.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the September 23, 2014, Water Board meeting.

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

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

None.

5) HĀMĀKUA:

**A. JOB NO. 2014-1015, ĀHUALOA DEEPWELL REPAIR:**

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

Bids for this project were opened on October 16, 2014, at 1:30 p.m., and the following are the bid results:

Bidder	Bid Amount
Derrick's Well Drilling and Pump Services, LLC	\$124,000.00
Beylik Drilling and Pump Service, Inc.	\$131,000.00

Project Costs:

1) Low Bidder (Derrick's Well Drilling and Pump Services, LLC.)	\$124,000.00
2) Contingency (10%)	<u>\$ 12,400.00</u>
<b>Total Cost:</b>	<b><u>\$136,400.00</u></b>

Funding for this project will be from DWS's CIP Budget under Deepwell Pump Replacement. The contractor will have 360 calendar days to complete this project. The Engineering estimate for this project was \$125,300.00.

The Manager-Chief Engineer recommended that the Board award the contract for JOB NO. 2014-1015, ĀHUALOA DEEPWELL REPAIR, to the lowest responsible bidder, Derrick's Well Drilling and Pump Services, LLC, for their bid amount of \$124,000.00 plus \$12,400.00 for contingencies, for a total contract amount of **\$136,400.00**. 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. Iokepa-Moses moved to approve; seconded by Mr. Uyeda.

The Manager-Chief Engineer said that DWS was in the process of repairing its Haina Well, and in the process, DWS was supplementing its system with the Āhualoa Well. However, DWS discovered that something might be happening with Āhualoa Well's pump motor; something was causing air to get into the system, he said. DWS could not figure out what the problem was, so the Department now needs to get into the well to see what is happening in the hole. That is the reason that DWS has gone out to bid here, the Manager-Chief Engineer said. This well was just put online sometime in the past three years, but due to this problem involving air in the system, DWS needs to fix it.

Mr. Greenwell noted that it sounds like a pump problem. He asked whether the 360 days allotted for the project was a bit excessive.

The Manager-Chief Engineer asked Mr. Young or Mr. Takamoto the reason that 360 days were allotted.

Mr. Young noted that DWS is not completely sure that the pump is the problem. If it turns out to be the problem, the pump will probably need to be shipped back to the Mainland for repairs and re-testing; it will then need to be shipped back. Each way is going to take several months, he said. Therefore the 360 days is not unrealistic, because the pump would have to be shipped back and forth, Mr. Young said. He said that the source of the air could stem from a leak in the pipe, or the air could be coming from the well itself.

Mr. Greenwell said his concern was that the pump would be out of action for a year; he asked if that were reasonable.

Mr. Young said that DWS has the Honoka'a Well and the Haina Well, and can also bring in water from the Waimea Treatment Plant to supplement the water supply, if needed.

Ms. Lee Loy asked whether this was a new project.

Mr. Young said it was relatively new.

Ms. Lee Loy asked whether the winning bidder, Derrick's, understood the scope of work.

Mr. Young said yes.

Ms. Lee Loy asked if the contractor understood the boundaries of the 360 days.

Mr. Young said yes.

Ms. Lee Loy said, amid general laughter, that everybody knew where she was going with this line of questions.

Mr. Uyeda asked if the manufacturer of this pump was the same one that was involved in the previous contract that Derrick's entered into, where delivery was long-delayed.

Mr. Young said the manufacturer for this pump is Byron-Jackson; the manufacturer in the previous instance was National (Pump), which underwent a change in ownership.

Mr. Uyeda asked if then, this was a different company.

Mr. Young confirmed this.

The Manager-Chief Engineer, referring to Mr. Greenwell's concern regarding a steady water supply in the area, said that DWS has procedures in place whereby DWS can require the contractor to go into emergency mode to do the project. He noted that at this point, DWS still does not know the exact cause of the air problem. If the cause of the problem is pinpointed, a pump motor can be taken care of almost immediately. DWS will try to get it done as fast as it can; everybody understands the 360 days. When DWS knows exactly what is causing the problem, the repair can be done in less than a month.

The Deputy, referring to Ms. Lee Loy's question regarding the time frame, said that DWS works to keep its contractors on schedule. Contractors will be reminded of that again, on this project and another project coming up later in the Agenda, he said. DWS will remind the contractors that they need to abide by the General Requirements and Covenants, and the contractors will be told again what qualifies for a justifiable time extension, etc.

Mr. Uyeda asked what the cause was of previous instances of air getting into the system.

The Manager-Chief Engineer said he did not recall this kind of problem before. He said it could be a cavitation problem with the pump, but he did not know for sure. DWS has not seen this kind of problem before, he added.

Mr. Young agreed; this problem is very unusual. He said in his 23 years with DWS, this may be the second time he has seen something like this. The first time it happened, it more or less went away, he said. This time, the problem is more sustained; DWS is talking to the contractors to try to get ideas on what could be causing it, Mr. Young said. Because the problem is located somewhere down in the hole, DWS has to pull the pump to find out, he said.

ACTION: Motion carried unanimously by voice vote.

**B. JOB NO. 2008-945, CONSTRUCTION OF THE ĀHUALOA-HONOKA‘A TRANSMISSION WATERLINE – PHASE 2:**

The project consists of furnishing and paying for all labor, materials, tools and equipment necessary, including all incidentals and all appurtenant work necessary, in place complete, all in accordance with the plans and specifications, and ready for operation, to construct the following: approximately 9,900 linear feet of 12-inch waterline, two pressure-reducing valve (PRV) stations, fire hydrant assemblies, and various concrete support structures at stream crossings.

Bids were opened on October 16, 2014, at 2:30 p.m.; and the following are the bid results:

<b>Bidder</b>	<b>Amount</b>
<b>Isemoto Contracting Co., Ltd.</b>	<b>\$2,817,371.00</b>
Goodfellow Bros., Inc.	\$2,872,565.00
Yamada Paint Contracting, Inc. dba GW Construction	\$2,952,370.00
Nan, Inc.	\$3,908,378.17
Koga Engineering & Construction, Inc.	\$4,237,320.00
MIRA Image Construction, Inc.	\$4,336,175.00
Drayko Construction, Inc.	\$4,975,000.00
Hawaiian Dredging Construction, Inc.	\$5,092,000.00

Project Costs:

1) Low Bidder (Isemoto Contracting Co., Ltd.)                      \$2,817,371.00

2) Contingency (8%)	<u>225,629.00</u>
Total Cost:	<u><b>\$3,043,000.00</b></u>

Funding for this project will be from a Drinking Water State Revolving Fund (DWSRF) loan. The contractor will have 360 calendar days to complete this project. The Engineering estimate for this project was \$2,500,000.00.

The Manager-Chief Engineer recommended that the Board award the contract for JOB NO. 2008-945, CONSTRUCTION OF THE ĀHUĀLOA-HONOKA‘A TRANSMISSION WATERLINE – PHASE 2, to the lowest responsible bidder, Isemoto Contracting Co., Ltd., for their bid amount of \$2,817,371.00, plus \$225,629.00 for construction contingency, for a total contract amount of **\$3,043,000.00**. It is further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

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

The Manager-Chief Engineer said that part of this project involves bringing water down past the highway to provide water to Honoka‘a Town.

Mr. Greenwell asked why the contingency on this project is only eight percent, whereas most other projects have a 10 percent contingency.

Mr. Inaba explained that this project is a waterline project, and so it is pretty straightforward; the eight percent contingency should be adequate to cover any unforeseen things that may come up.

The Manager-Chief Engineer said that he has seen contingency fees as low as five percent; the range on construction projects can be between five and 15 percent.

Mr. Robinson asked about the wide disparity of bids for this project.

Mr. Inaba said it was kind of comforting to see the three lowest bids bunched together at the bottom; these bidders are three of the more consistent bidders that DWS gets on its projects. The other (higher) bidders may appear once in a while, while some of them are bidding for the first time. He said he was not sure what those bidders were building into their respective bids, but overall, their prices for each line item were a lot higher.

Ms. Lee Loy asked for reassurance from the Deputy that he had talked to the bidders.

The Deputy said yes, the Department continues to explain the contract requirements with the contractors at both the pre-bid and pre-con (construction) meetings. The Deputy said that he personally sits in on the pre-con meetings, to advise the contractors on the requirements, and on what schedules need to be met, etc.

Ms. Lee Loy noted that for this particular project, there were a number of bids. At times, projects fail to get any bids at all, or just one or two bids. There was obviously a lot of interest in this particular project; the margin between the two lowest bids was really close, she said.

Ms. Lee Loy said she just wanted to make sure that everybody was really clear on the contract, and understood that requests for future time extensions are justified. She said she did not want to see a challenge by the second-lowest bidder for any reason other than those outlined in the contract.

The Manager-Chief Engineer said that he shared that concern; DWS does scrutinize the bids that come through, and makes sure that contractors are aware of the contract’s bid specs and requirements for construction.

ACTION: Motion carried unanimously by voice vote.

6) SOUTH HILO:

A. JOB NO. 2012-983, KA‘IE‘IE MAUKA FACILITY IMPROVEMENTS:

This project consists of the design and construction of a new influent station and appurtenances; new booster station to replace the existing Wagatsuma Booster Station; and related site improvement work at the Ka‘ie‘ie Mauka Deepwell and Reservoir, and supporting facilities.

Funding for this project will be from DWS’s CIP Budget and seeks to reallocate funding earmarked for the Ka‘ie‘ie Booster Renovation (Job No. 2005-859) and Haina MCC Replacement projects. The Engineering estimate for this project was \$1,000,000.00.

The Manager-Chief Engineer recommended that the Board approve JOB NO. 2012-983, KA‘IE‘IE MAUKA FACILITY IMPROVEMENTS, and reallocate funding.

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

The Manager-Chief Engineer said that this request is to get this project on the CIP list; it is a new project that has not been listed up to now. This project is not slated for construction at this time; DWS is in the process of doing the design. He said he was not sure if a consultant was on board yet; he called on Mr. Clyde Young of Operations to give details on the project.

Ms. Lee Loy said that would be great; the Board wanted to know what DWS was getting for \$1 million.

Mr. Young said that DWS is re-prioritizing some of its Operations projects. The bulk of the funding that DWS is looking to get here is from the Haina Deepwell project, where DWS was planning to put in a new MCC building. The existing facility is falling apart, although fortunately it still has a roof, he said. DWS also has the Wagatsuma Booster Station, and that is the one DWS is looking at replacing for approximately \$75,000.00. DWS felt it was more important to replace the Wagatsuma facility, which is a smaller station. That facility is out in the open, on a small property. The electrical panels are starting to rust away pretty badly; it is an electrical safety hazard – even parking next to it poses somewhat of a hazard, located on a sloping road. DWS wants to move the Wagatsuma Booster Station back to the new deepwell station.

Mr. Young explained the big jump in the cost (i.e., from \$75,000.00 to \$1 million). This is because DWS will do other, additional improvements; one of the improvements is to shut down DWS’s surface water up there, and bring the surface water back into the station. This gives DWS the advantage of possibly using the surface water again, thus running the well less, and saving on electrical costs. To do this, DWS needs to do the infrastructure improvements, including installing waterline, moving the booster station over there, and installing some controls.

Mr. Greenwell asked whether there was a treatment plant there. He asked how DWS uses surface water.

Mr. Young said that basically it would be to do corrosion control, pH adjustment, etc.

The Manager-Chief Engineer said that that the surface water that Mr. Young is referring to is a spring with a surface water *influence*, where the treatment that DWS needs to do involves meeting corrosion control requirements.

The Deputy said that just to clarify, it is actually classified as “ground water;” it is a spring source. It appears on the ground, and is still classified as a ground water source. There is no

influence as far as surface influence to the source. Therefore, all that DWS needs to do is disinfect it with chlorine, and the corrosion control is to comply with the Lead and Copper Rule, he said.

Mr. Robinson asked whether it was correct that the term “influence station” means that the water comes from a source other than a well. In this case, the water source is a spring; it is not exposed to the air, and the water goes from a spring into a tank.

The Deputy said that was correct; the water goes via pipelines.

Mr. Robinson said that was interesting.

Mr. Uyeda asked for confirmation of what he heard earlier: originally, the project was going to be \$75,000.00.

Mr. Young said yes, the original Wagatsuma Booster Station project just involved some improvements at the station.

Mr. Uyeda asked how the price jumped from \$75,000.00 to \$1 million.

Mr. Young said that DWS was basically moving the whole Booster Station, which is a relatively small station. This entails changing all of the pumps, motors and controls, he said. It means basically putting in a brand-new booster station, albeit a relatively small one, in DWS’s deepwell site. There will be new electrical controls, but DWS will be using part of the existing facility, and take the surface water, and put some of the controls and monitoring for the water quality there, too.

Mr. Uyeda said the Board was relying on Mr. Young and the staff to get what DWS is paying for here; he assumed this was probably an upgrade of what the system is doing right now.

Mr. Young confirmed this. He said that DWS will have to come back to the Haina project, but the priority is on doing this project due to safety concerns.

ACTION: Motion carried unanimously by voice vote.

**B. VEHICLE BID NO. 2013-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, PARTS “A,” “B” AND “C”:**

The vendor, Inter-Pacific Motors dba Orchid Isle Auto Center, is requesting to address the Board to appeal the Department’s decision to deny a time extension for Parts “A,” “B” and “C” of VEHICLE BID NO. 2013-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, PARTS “A”, “B,” AND “C”.

The Manager-Chief Engineer said that the vendor, Orchid Isle, was requesting a time extension amid a number of issues involving the delivery of the vehicles. Based on the contract requirements, DWS did not see sufficient justification for the time extension, but he said that Mr. Jay Blake of Orchid Isle was on hand to explain what is happening on the Mainland regarding issues with the factory, shipping, etc.

Mr. Blake that there were six vehicles on the contract with DWS; three of the six vehicles have already been delivered. Of the remaining three vehicles, two units involve similar specialized equipment which went to a vendor. Orchid Isle chose a third, different, vendor to avoid what happened the past two years (i.e., delays), but the same thing happened. The two vehicles, which are service body trucks with gates, have been completed; Mr. Blake was told last week that the vehicles were shipped, and are en route to Orchid Isle. The biggest concern right now involves

shipping backlogs; for the past 30 years, Ford has used Matson for overseas transport, but that contract expired earlier this year. Ford now ships via Pasha, which has only one vessel currently going between the West Coast and Hawai'i. Matson has three vessels. As of today, Orchid Isle is backlogged six weeks in shipping vehicles from the Mainland. These two vehicles, listed on the contract as Parts B and C, are not even on the West Coast yet. It is not clear when they will arrive; Mr. Blake said his best guess is mid-January. He said the other problem involves Part A, which is a brand-new model of van that Ford is producing, to replace the "E" Series. Order banks on the model were opened in January, and Orchid Isle managed to place orders in January. Orchid Isle placed dozens of orders, but Ford did not actually start building the vehicles until June, he said. The van in question is a low-roof van, which has gone to another vendor for specialized equipment in its interior, including bulkheads, racks, etc. That vehicle was released from the plant last week, and shipped to the up-fitter, Liggett and Platt, who will be installing the bulkheads, etc. Mr. Blake said that all that he has to substantiate everything is the *schedule*, from the time that Orchid Isle ordered the vehicles, i.e., the day after Orchid Isle received the Notice to Proceed. Aside from following that schedule, there is not much that Orchid Isle can do besides nag the vendor; it is all based on scheduling, Mr. Blake said. Therefore, Orchid Isle is asking for additional time to allow the vehicles to come in; it will only be a couple of more months, he said.

Mr. Greenwell said that DWS needs the vehicles.

Mr. Ikeda confirmed this.

The Manager-Chief Engineer said that DWS needs the vehicles. He was not sure what condition the existing vehicles slated for replacement are in.

Mr. Ikeda said that all of the old vehicles have high mileage. The van that is being built, Part A, will be used by the electrical technicians, whose old vehicle was recently in an accident. That accident was not the staff member's fault; the vehicle was considered totaled, and it was taken away by the insurance company. The technician is using one of DWS's spare trucks, but DWS does need the vehicles.

Mr. Greenwell said that DWS does not have much choice here. If the Board were to decide to renew the contract, DWS might have to wait even longer to get the vehicles. If Pasha is the only vessel that is shipping these Ford vehicles, then DWS is at their mercy. If DWS misses one month, or one boat, it will be set back even further, he said. Mr. Greenwell said he understands where Mr. Blake is coming from: he has no control over the situation. Since DWS needs the vehicles, there is not much choice regarding giving a time extension. He asked how the rest of the Board felt.

Mr. Blake added that Pasha has purchased a second vessel, which is coming on line this month. However, it is not clear how that would affect the flow of shipping. Orchid Isle is not the only dealer using Pasha; Dodge and Chevy are among a number of dealers who are using Pasha, so the situation is really difficult. One positive factor is that Pasha ships the vehicle below decks, so the vehicles arrive in better condition than they ever have. However, that does not help Orchid Isle with its deadlines, he added.

The Manager-Chief Engineer started to say that Orchid Isle was shifting from Matson to Pasha.

Mr. Blake said it was definitely not Orchid Isle's call; Orchid Isle would have liked to stay with Matson.

The Manager-Chief Engineer said he understood that the vendors on the Mainland made that call, and he understood that it was beyond Mr. Blake's control. He agreed that cancelling this bid

would mean losing even more time in getting the vehicles. He noted that the contract stipulated liquidated damages, but he did not know whether the Board wanted to enforce that. If the delay is beyond Orchid Isle's control, then it is not the dealer's fault. He wondered why the van was only now being built; he asked when the contract was awarded.

Mr. Blake said he got the Notice to Proceed in March.

The Manager-Chief Engineer said he does not see Orchid Isle's sub-contracts with the factories on the Mainland, so he does not know that side of it.

Mr. Greenwell reiterated that DWS needs the vehicle, and it is on its way. If Orchid Isle wants to make amends regarding liquidated damages, that would be okay, but in any case, the vehicle needs to be brought in, he said.

The Manager-Chief Engineer suggested that Orchid Isle needs to eventually establish the exact dates of delivery, beyond which Orchid Isle will need to pay liquidated damages. He acknowledged that right now, Orchid Isle is unable to give exact dates of delivery. He suggested that Orchid Isle may want to come back to the Board next month to establish those dates.

Mr. Robinson asked where the vehicles are. He said that Orchid Isle had given Ford the deadline for delivery of the vehicles, but Ford has hung Mr. Blake out to dry. He asked whether Orchid Isle had any legal recourse against Ford.

Mr. Blake said that Orchid Isle had tried that before.

Mr. Robinson asked whether Ford basically says to Orchid Isle that the dealer is on his own as far as Ford is concerned, when delays mean that Orchid Isle cannot fulfill its contract.

Mr. Blake said yes.

Mr. Ikeda noted that this contract expires on November 3, 2014, adding that it is for the three vehicles.

Mr. Blake confirmed this. He said that Orchid Isle submits its bids on the premise that it is a competitive bid process; therefore, there is not a lot of profit involved. Any kind of liquidated damages would hurt Orchid Isle, and nobody else, he said.

Mr. Robinson asked whether, in situations like this, Ford just tells Orchid Isle tough luck.

Mr. Blake confirmed this. He noted that since he started dealing with government agencies in 2004, this kind of situation had only occurred twice; in both cases, Orchid Isle was left hanging out to dry. Luckily, those agencies were lenient, he said, and Orchid Isle so far has not been hit with liquidated damages. Mr. Blake said that for the life of him, he could not understand why the situation always arises with DWS.

Ms. Lee Loy asked Mr. Ikeda whether DWS puts together these vehicle contracts solely based on what DWS needs right now.

Mr. Ikeda confirmed this.

Ms. Lee Loy asked whether DWS had ever explored ordering vehicles in tandem with other government agencies, so that the order is for a larger lot of cars. She asked whether DWS had ever explored this option.

Mr. Ikeda said that DWS has only gone to bid for what DWS needs as a department, with whatever money is budgeted for the fiscal year.

Ms. Lee Loy asked whether DWS ever looked into timing their bids along with other agencies.

Mr. Ikeda said no.

The Manager-Chief Engineer said that maybe one of the reasons that DWS does not do that is because DWS vehicles are a bit different from the vehicles used by other departments.

Ms. Lee Loy said she understood that, but her point was that by ordering 20 cars as a County rather than six cars as a department, the vendor might have a bigger incentive to fill that order in a timely manner. She said that it is a little frustrating; DWS needs to start looking outside the box, rather than doing the same thing over and over again – with Mr. Blake coming to ask the Board for more time. DWS should be a little smarter about things, she said.

The Manager-Chief Engineer said he was not sure whether Orchid Isle was the only bidder on these vehicles; some dealers may not be willing to contend with the kind of things on the Mainland that Mr. Blake is dealing with. It may be something that DWS needs to look into.

Ms. Lee Loy said that DWS can be more creative; DWS has smart staff, and the whole County and State has lots of people looking for vehicles. She said that DWS needs to collaborate a little better, ask good, hard questions, and think outside of the box going forward.

Mr. Takamine said that he is concerned that Orchid Isle keeps getting burned; it has been three times that this has happened to them. It may raise doubts with them as to whether they even want to bid on DWS contracts. He said that DWS might find that vendors who do bid will mark their bids up by 15 percent more than they have been bidding. He agreed that thinking outside of the box is a good idea.

Mr. Robinson asked Mr. Blake how much more time he needed.

Mr. Blake said he believed the vehicles would arrive around mid-January. He said all three vehicles should arrive by that time.

The Manager-Chief Engineer asked whether the first two vehicles might arrive earlier.

Mr. Blake said that anything is possible.

Mr. Robinson said that in essence, Orchid Isle is looking at three months to take delivery.

Mr. Blake said that was the worst-case scenario.

Chairperson Kaneshiro said that DWS should look into Ms. Lee Loy's suggestion about collaborating with other departments on vehicle procurement. He said that there are four water departments in the State of Hawai'i; DWS may be able to get a better deal if it gets together with the other departments to procure vehicles.

Mr. Blake said that he participates in vehicle bids with the Board of Water Supply (BWS) on Oahu, as well as Kaua'i Water Supply. The last vehicle bid for Kaua'i went unawarded because their budget for vehicles was a bit short. Kaua'i's vehicles are very specific, with very specialized equipment; Kaua'i is going back out to bid, Mr. Blake said. He said that Orchid Isle missed the last bid with BWS, and last year, Orchid Isle was 20 days late on one of BWS's vehicles, a valve-turner truck. The bids are usually fairly small for both Oahu and Kaua'i, he said; Kaua'i may put one or two vehicles to bid, while BWS might put five vehicles to bid.

The Manager-Chief Engineer said Mr. Ikeda can work on this with the other water departments.

Chairperson Kaneshiro said that DWS can put in a bulk bid, with all of the water departments participating.

Mr. Blake said it would be interesting from a logistics standpoint, but it would make sense.

The Manager-Chief Engineer in the meantime asked Mr. Ikeda if he had any problem with granting a time extension to mid-January.

Mr. Ikeda said he had no objection.

Ms. Lee Loy said that she wanted to make a Motion, looking ahead to the January 27, 2015, Water Board meeting. She said she wanted to move to allow a time extension to January 15, which would give Mr. Blake some time to push the vendor and to give the Board a more comprehensive status report – if the vehicles have not yet arrived. It would allow Mr. Blake to come up with much firmer delivery dates, and would allow DWS staff time to put this Item back on the Agenda.

ACTION: Ms. Lee Loy moved to grant a time extension to January 15, 2015; seconded by Mr. Robinson, and carried unanimously by voice vote.

The Manager-Chief Engineer asked Mr. Blake to keep in close contact with Mr. Ikeda, regarding the delivery schedule.

7) SOUTH KOHALA:

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

The contractor, Lālāmilo Wind, LLC, has requested a modification to the Power Purchase Agreement (PPA). Although the original Request for Proposals (RFP) for this project included the Habitat Conservation Plan (HCP), the contractor has stated that the HCP is voluntary, and the contractor intends to proceed without doing the HCP. Although the HCP and Incidental Take Permit (ITP) are voluntary, after meeting with U.S. Fish and Wildlife Services (USFWS), DWS feels the HCP and the ITP are necessary in order to proceed with the project. The anticipated additional work is provided, and is in accordance with the USFWS requirements.

Staff has reviewed the contractor's proposal, and also negotiated revised rates that address the anticipated costs of the HCP/ITP. The staff recommends acceptance of the revised rate schedule, with the following conditions:

“The proposed rate schedule is based on estimates for the energy generation and HCP/ITP costs. DWS and Lālāmilo Wind, LLC, shall recompute an actual rate for the HCP/ITP costs every three years, based on actual energy generation and actual HCP/ITP costs incurred. Any difference between the scheduled rate and rate computed using actual results, shall result in a proportionate adjustment of the rate for the next three-year period, so that at contract termination, the net effect of rates assessed would be equal to the actual HCP/ITP costs incurred. Lālāmilo Wind, LLC, shall provide DWS access to actual production records, invoices, statements, and any other documentation, in order to verify computation of energy generation and costs incurred.”

The Manager-Chief Engineer recommended that the Water Board approve the revised rate schedule from the PPA, along with the stated conditions, and require Lālāmilo Wind, LLC to complete an HCP and an ITP prior to operation of the Windfarm.

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

The Manager-Chief Engineer noted that there was some discussion at last month's meeting about the additional cost involving in doing the necessary plans and studies. The staff re-did the schedule, and forwarded it to Lālāmilo Wind, LLC, who had no objections.

Mr. Robinson said that the only thing missing from the revised schedule was the discounted net present value of the differential in the income stream of the prior rate (i.e., the "Original Power Purchase Agreement rate, compared to the new revised PPA cost over the 20-year contract, which would equal the new amount. Mr. Robinson said he just wanted to know what the differential was, and the discounted present net value, using a pretty standard discount rate of eight percent or thereabouts. He wanted to know what the differential is, so when the Board authorizes a new rate, the Board knows what it means in present value dollars.

The Manager-Chief Engineer asked Mr. Sumada to respond to Mr. Robinson's question.

Mr. Sumada said that he did not do any present-value calculations when looking at the schedule. He had worked on language that tried to get at a rate that would equal what the costs were going to be; that is what the Board is looking at today, he said. Mr. Sumada said he would need to go back and do more calculations and research to get the net present value.

Mr. Robinson said that it seemed to him to be a fairly standard calculation; it would be pretty easy to do because it was just the 20-year cash flow discount standard rate. This is what it means in present dollars, with the new rate; the differential is what the Board would know that it is giving Lālāmilo Wind, LLC, he said.

Mr. Inaba said that the recommended language is aimed at making adjustments every three years (i.e., either raising or lowering the rate), based on Lālāmilo's actual costs. For the first three years, the rate would be the fixed 27 cents, and after that the adjustments would be made, so that DWS is compensating Lālāmilo for their actual costs to deal with the specific items listed on the rate schedule.

Mr. Robinson agreed.

Mr. Inaba said that he was not entirely sure what it really would equate to in present value, but DWS would be paying three cents for the first three years; Lālāmilo is anticipating that they will be spending more than that. One concern was that there were all of these up-front costs, so DWS shifted the adjustment up-front in the first five-year period, returning to a two-cent average, while reducing the last five years to one cent. That is basically the proposed rate schedule, but because DWS was not sure whether Lālāmilo would be adequately compensated, DWS suggested the language in there.

Mr. Richard Horn of Lālāmilo Wind, LLC, noted that his company would be spending the better part of one million dollars before the company generates any power. When considering the present value, it is not going up in the first three years – it is going down because of the nature of the studies and programs that will be implemented.

Mr. Robinson said that that was on Mr. Horn's side.

Mr. Horn confirmed this.

Mr. Robinson said he was looking at it from Water Supply's side.

Mr. Horn said he understood.

Ms. Lee Loy noted that at the last Board meeting, Lālāmilo was accepting agency comments in the Environmental Assessment (EA)/Environmental Impact Statement (EIS) process, and had gotten through the comment period. She believed that the final EA was still pending re-publication in the Office of Environmental Quality Control (OEQC).

Mr. Horn said it had already been published.

Ms. Lee Loy asked when the 30-day comment period ends for the final EA.

Mr. Owen Nishioka of DWS's Engineering Division said that the publication date by the OEQC was October 23, 2014, and the 30-day challenge period would end on November 23, 2014.

Ms. Lee Loy said that after the challenge period was over, the Findings of No Significant Impact (FONSI) letter would be issued. She asked when the FONSI letter was expected to be issued.

Mr. Nishioka said that the FONSI letter has already been issued, once the final EA was published on October 23.

Ms. Lee Loy asked Mr. Horn for confirmation that after this challenge period, staff can go back to the Department of Land and Natural Resources (DLNR).

Mr. Horn confirmed this.

Ms. Lee Loy said she had waited for two months to get on the DLNR agenda.

Mr. Horn noted that it was a big problem for his company, because one of the conditions for the Windfarm to move forward is to get the lease from DLNR. Now that the EA has been published and the FONSI letter has been issued, the biggest hurdle is waiting for the lease period, he said.

Ms. Lee Loy asked whether the Metes and Bounds description of the land area had been done.

The Manager-Chief Engineer said that the Metes and Bounds should be no problem, because it is an existing site; the biggest concern is the *appraisal*, which he has not seen yet.

Mr. Robinson said his question regarding the present net value had not been answered.

Ms. Lee Loy said that Mr. Robinson had some valid concerns, so she wanted to move to defer this Item. She said that the Board wants to see what the cost really is; there are other moving pieces that should also be ironed out.

The Manager-Chief Engineer asked Messrs. Inaba and Sumada to help him out with the financial question. Mr. Robinson was asking if the numbers could be cranked out to show exactly what is being requested here, he said. He said it sounded very simple, and could be figured out quickly.

Mr. Robinson said he himself could do the calculations in 10 minutes; it is pretty standard. He said he just wanted to know what the difference is in the cost, over time, moving forward.

MOTION: Ms. Lee Loy said that she wanted to reiterate her Motion to Defer until the next Board meeting, and asked for a second.

The Manager-Chief Engineer asked Mr. Horn to work with Messrs. Sumada and Inaba on the numbers.

ACTION: Ms. Iokepa-Moses seconded the Motion to defer to the next Board meeting. Motion carried unanimously by voice vote.

Mr. Horn told Mr. Sumada that he could get those numbers; he would make a couple of phone calls.

Mr. Robinson asked if the present value was from Mr. Horn's side (i.e., his construction costs, etc.)

Mr. Horn said that he was talking secure revenue.

Mr. Robinson said okay.

Mr. Horn asked if that was what Mr. Robinson was looking for.

Mr. Robinson said yes.

Mr. Horn said yes, he had those numbers.

Ms. Garson said to Ms. Lee Loy that she might want to withdraw her Motion.

Mr. Robinson said he wanted to know what the differential is; he said that was important.

Chairperson Kaneshiro asked if the Board needed to go into Executive Session.

Ms. Garson said no.

Ms. Lee Loy apologized for holding a side discussion with Ms. Garson.

Ms. Garson said that one option was to withdraw the Motion to Defer, and just defer this Item to the end of today's Agenda. There is a presentation coming up, along with a number of other substantive Items.

Mr. Robinson said it would be really helpful if somebody could get the present value number.

Ms. Garson said it was up to the Board; she asked Ms. Lee Loy if she wanted to withdraw the Motion and defer the Item to later in today's Agenda. She then noted that the Board had already voted on the Motion to Defer to next month's meeting. She suggested a Motion to Reconsider the Vote.

Ms. Lee Loy said it would be her making the Motion, and Ms. Iokepa-Moses seconding.

Ms. Garson said to just withdraw the Motion, and then postpone the Item to the end of today's Agenda.

ACTION: Ms. Lee Loy withdrew her Motion to Defer to next month's meeting; seconded by Ms. Iokepa-Moses. Ms. Lee Loy then moved to defer the Item to the end of today's Agenda, for further discussion; seconded by Ms. Iokepa-Moses, 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 had anticipated convening 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.

*(The Board went into Executive Session later in the meeting).*

8) 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.

**1. GRANT OF EASEMENT**

Subdivision Application 2003-027  
Grantors: Gaylord Larry Stewart and Melinda Willits Stewart  
Tax Map Key: (3) 7-8-007: 015

**2. GRANT OF EASEMENT**

Subdivision Application No. 2003-027  
Grantor: Makuakane, LLC  
Tax Map Key: (3) 7-8-007: 070 and 072

**3. GRANT OF EASEMENT**

(For Water Meter Purposes)  
Grantor: Kona Hospitality, LLC  
Tax Map Key: (3) 7-5-007: 009

**4. BILL OF SALE**

(Off-site Water System)  
Seller: Kona Hospitality, LLC  
Tax Map Key: (3) 7-5-007: 009  
Facilities Charge: \$ 111,190.00                      Date Paid: 9/18/2014  
Final Inspection Date: 8/12/2014  
Water System Cost: \$36,000.00

**5. DEDICATION DEED**

(Water Tank – South Makai)  
Grantor: Waiaha System, LLC  
Tax Map Key: (3) 7-5-017: 030

**6. GRANT OF EASEMENT AND BILL OF SALE**

Grantor/Seller: Waiaha System, LLC  
Tax Map Keys: (3) 7-5-017: 40 (Lot B); 7-5-017: 041 (Lot C); 7-5-017: 042 (Lot D)  
and 7-5-017: 043 (Lot E)

**7. ASSIGNMENT OF GRANT OF EASEMENT**

(Waiaha Systems, LLC, South Makai Leg)  
Assignor: Waiaha System, LLC  
Tax Map Key: (3) 7-5-017: 040; 7-5-017: 042; 7-5-017: 043

**8. DEDICATION DEED**

(Water Tank)  
Grantor: Waiaha System, LLC  
Tax Map Key: (3) 7-5-016: 089 (Lot 5-B)

**9. GRANT OF EASEMENT AND BILL OF SALE**

Grantor/Seller: Waiaha System, LLC  
Tax Map Keys: (3) 7-5-016:015; 7-5-016:016; 7-5-016:017; 7-5-016:029; 7-5-016:088;  
7-5-016:089; 7-5-016:090; 7-5-016:091; 7-5-016:092; 7-5-016:093; 7-5-016:094; and  
7-5-016:095

**10. GRANT OF EASEMENT AND BILL OF SALE**

Grantor/Seller: Fred Arnold Bolton and Barbara Frances Bolton  
Tax Map Key: (3) 7-5-016: 087  
Final Inspection Date: *TBA*  
Water System Cost: \$ *TBA*

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

Ms. Garson said that the Department wanted to request deferral of Items 5 through 10 to the next Board meeting.

Mr. Inaba explained that the contractor was close to getting everything done, but the Items are still not quite ready for acceptance.

Mr. Greenwell asked if the Items were being deferred to a specific meeting, or were being taken off the Agenda entirely.

Mr. Inaba said the Items are being deferred to next month's Board meeting.

ACTION: Ms. Iokepa-Moses moved to defer Items 5 through 10 to the November meeting; seconded by Mr. Robinson, and carried unanimously by voice vote.

Chairperson Kaneshiro asked for confirmation that the Board still needs to cover Items 1 through 5.

Ms. Garson said it was Items 1 through 4.

MOTION: Ms. Lee Loy moved to approve Items 1 through 4; seconded by Mr. Uyeda.

Mr. Robinson asked whether the Board would be able to approve such Bills of Sale, Grants of Easement and water allocations for subdivisions in the event of designation as a Water Management Area.

The Manager-Chief Engineer said that was a good question. Board actions to approve Grants of Easement, Bills of Sale, etc., might be contingent on CWRM if designation takes place, and such actions may be deferred until such time as DWS can answer the question. He said he did not know; it was good to have such an eventuality in mind.

The Deputy cited the example of the Hōkūli'a subdivision, which was built out, its infrastructure constructed, inspected and approved, and dedicated to the Water Board, only to sit idle for a while. That proved to be a challenge for DWS; a similar challenge could loom if designation does occur.

Mr. Robinson said that in other words, there could be an expenditure of funds and investment in the ground, which the developer would not be able to use.

The Deputy said yes. DWS is not in control of what developers plan to do, but if developers have certain projects already in motion, they might want to proceed with those projects, so that they can get some form of land use approval. However, if DWS is still stuck with possibly not issuing water meters at that point, then there could be some challenges with having infrastructure – without having the ability to drop meters in, he said.

Mr. Robinson that there would be liability issues if developers expend money to put in all kinds of infrastructure, only to find that they cannot get a meter.

Ms. Lee Loy said that is a great question for today's presenter (Ms. Yvonne Izu).

The Manager-Chief Engineer said that one issue that will come to the fore is *authorized planned use*, whereby there is a subdivision that has already been dedicated to DWS, but which is not using water yet. The question will be what happens to lots like this; this is a discussion that DWS has had with CWRM on an ongoing basis, he said.

ACTION: Motion carried unanimously by voice vote.

**B. PRESENTATION BY YVONNE Y. IZU ON THE PROCESS FOR DESIGNATION OF GROUND WATER MANAGEMENT AREA, AND WATER LAW:**

Ms. Yvonne Y. Izu, currently of counsel with the firm of Morihara Lau & Fong, will give a presentation to the Water Board on the process for the designation of a Ground Water Management Area, and water law in the State of Hawai'i, and respond to questions posed by the Water Board.

Ms. Izu is a highly-respected land and water use practitioner in Hawai'i. Her practice encompasses natural resources, public lands, ocean, shoreline, environmental impacts, Native Hawaiian rights, and endangered species. She has been at the forefront of precedent-setting water rights cases.

Ms. Izu's extensive experience includes serving as a State of Hawai'i Deputy Attorney General, and as Deputy Director for the Commission on Water Resource Management (CWRM), within the Department of Land and Natural Resources (DLNR).

Ms. Izu disclosed at the outset of her presentation that she currently represents a couple of clients who have interests in the whole designation issue, but she did not think that there was a conflict here. However, there is one issue that Ms. Izu said she planned to step lightly on because these clients may be in a position that is not entirely aligned with the Water Board.

Ms. Izu said her presentation is about the designation of Ground Water Management Areas (GWMAs), the designation process, the law, etc. She noted that people say that CWRM is taking jurisdiction away from the Water Board; this is only partially true. CWRM regulates well construction permits and pump installation permits, even involving the counties themselves; when someone wants to drill a well and put in a pump, they have to go to CWRM for approval.

The one add-on, Ms. Izu said, is when someone is in a GWMA, one has to go to CWRM to get a Water Use Permit, in order to withdraw water from the wells. The Water Use Permit looks at what the applicant is using the water for. She said she would cover the criteria for designation later.

There are GWMA's in just a few areas of the state, she said. Most of central Oahu is a GWMA, as is a lot of South Oahu; these were automatically designated when the Water Code was adopted in 1987. After that, Windward Oahu was designated in 1992; this triggered the infamous Waiahole Ditch Case, which Ms. Izu litigated for 17 years. The entire island of Moloka'i was designated in 1992. The I'ao Aquifer on Maui was designated in 2003, and then a surface water management area, the Na Wai Eha in central Maui, was designated. *(Ms. Izu said that she would not talk much about the latter, because there are different criteria governing surface water management areas.)*

Ms. Izu gave the following criteria for designation of a GWMA:

- When the **authorized planned use** approaches or equals 90 percent of the sustainable yield. Ms. Izu said this issue of authorized planned use has become a huge issue on the Big Island, arising after a misunderstanding about how the County's Water Use and Development Plan had indicated what the high line of potential water use was. She distinguished between the sustainable yield line and the high line of potential water use; people interpreted that high line of potential use as authorized planned use, and jumped to the conclusion that it was going to be *six times* the sustainable yield. Ms. Izu said that authorized planned use is one of the designation criteria.
- When there is actual or threatened water quality degradation. The Department of Health (DOH) makes that determination, rather than CWRM.
- When there are excessively declining ground water levels.
- When there is upconing or saltwater intrusion in the aquifer.
- When there is an increase in chloride content in the aquifer.
- When there is excessive waste of water.
- When there are serious disputes about water.
- When the approved projects would result in any of the above conditions.

Ms. Izu said that having one of the above conditions does not mean that CWRM needs to designate; CWRM has a lot of discretion to determine whether to designate or not. At least one of the criteria needs to be there in order to designate; CWRM cannot designate if none of the criteria are met.

Ms. Izu cited the Windward Oahu designated area, where there is a lot of water available. She noted that this was where the Waiahole Ditch Case arose. The area that was designated had a lot of water; the authorized planned use did not approach 90 percent of sustainable yield, nor was there upconing, etc. It was really political, Ms. Izu said, coming amid a move to get more stream restoration in hopes of slowing down development. There was a lot of politics involved, and people used water as a means to dispute a lot of issues, Ms. Izu said. There was not much scientific investigation, she said. The same thing happened on Moloka'i, where there is abundant water in many places and very little water use. There was one aquifer that everybody wanted to use because it has good water, and it is the closest to where the water need is, but on the entire island of Moloka'i, there is a lot of water, she noted. If CWRM were really going on a resource-type of reason for designation, CWRM should have just designated that one aquifer – not the entire island of Moloka'i. It was really political, she said, and that is why the whole island was designated as a GWMA.

After these two designations, which took place in 1992, CWRM staff realized that there is a lot of work involved once an area becomes designated. As a result, people have been a little more cautious about designating; there was less willingness to designate based on a serious dispute, she said. Since that upsurge of designation in 1992, there has been a lot of reticence regarding designation, Ms. Izu said.

The I'ao Aquifer designation was actually the fault of the Maui County Department of Water Supply, Ms. Izu said. The department has almost all of the pumping in the Aquifer, and there were indications that there should be designation, because in some places, Maui DWS was over-pumping. CWRM gave Maui DWS a lot of chances, and warned them that they would designate the Aquifer if they kept doing what they were doing. CWRM set benchmarks, and told Maui DWS that so long as DWS stayed below the benchmarks, CWRM would not designate. Maui DWS proceeded to go over the benchmarks, Ms. Izu said. It was really ironic because they exceeded the benchmarks, either because their meters were malfunctioning or because somebody was misreading the meters. The truth was that Maui DWS did not really go over the benchmarks, but they reported to CWRM that they had – and the I'ao Aquifer got designated, she said.

Ms. Izu said that she mentioned the I'ao Aquifer designation because she wanted to discuss the Keauhou Aquifer, and how the proposal to designate it is taking a very different path.

Ms. Izu showed a slide of the designation process, which in the Keauhou Aquifer's case was initiated by the National Park Service (NPS). There is consultation with the County, and some scientific investigations. Public hearings may be held, and site visits whose exact definition is rather vague, Ms. Izu said. The current stage regarding the proposed designation of Keauhou Aquifer has seen some gathering of information, to see whether there is a *prima facie* case, i.e., whether there are enough facts to move forward in the process. Ms. Izu said this does not constitute enough facts to say guilty or not guilty, but if there is a *prima facie* case, then things can keep moving forward. That is the stage where things stand now, she said. She reiterated that the Windward Oahu and Moloka'i designations were political; in those cases there was not a lot of investigation activity. In those cases, people went straight to the CWRM staff to get the staff to make a recommendation, and then CWRM made a decision. In the Keauhou case, there is an unusually high level of investigative activity going on. In the I'ao Aquifer case, the investigation stage took a long time, but that was basically because CWRM was giving Maui DWS chances, Ms. Izu said. What is going on with the Keauhou Aquifer is different from what has occurred in the past with other designations, she said. Ms. Izu said that she has seen a lot of letters, testimony, etc., going in to CWRM. With other designations, the U.S. Geological Survey (USGS) or the County does some sort of scientific study. However, with the Keauhou Aquifer, there are *private people* doing scientific studies, and there is a lot of investigative activity going on at this investigative stage.

Ms. Izu noted that at the site visits to Kona (in September and October), CWRM staff basically told people to give their testimony at the December 10, 2014, CWRM meeting on Oahu. In the past designation processes, that was where people had their say, she said. What is different this time is that there are a lot of people having their say *before* the December 10 CWRM meeting, she said. Ms. Izu agrees with a testifier earlier today that because *everybody else* is having their say before December 10, the CWRM staff will be using a lot of this advance information to come up with a staff report that will be put before CWRM commissioners on December 10. **It behooves anybody who is interested, to have their say before December 10**, Ms. Izu said. It would not be advantageous to wait until December 10 to have one's say (in the allowed three minutes per speaker), when everybody else is getting their views in to the CWRM staff report *ahead of* that key meeting. The Commissioners will have read that report ahead of the December 10 meeting, and one does not want to have one's views left out of the report.

Ms. Iokepa-Moses said that it was kind of scary that up to now that the protocol was to make a decision regarding such an important matter as designation *on the day* of the CWRM hearing.

Ms. Izu said she wanted to clarify that CWRM will not decide whether or not to designate on December 10; CWRM will only decide whether to continue to move forward, or shut it down.

She likened the December 10 meeting to a grand jury proceeding, where a decision is made whether or not to go forward with a case. In the past, nobody really paid attention to this particular point in the process; the investigative stage was more behind-the-scenes, Ms. Izu said. That is not to say that there was collusion involved; it was more like just looking at the scientific evidence, etc. However, this time, things are really different, because there is a lot of outside input coming in, she said. She reiterated that on December 10, the only question is whether CWRM should move forward on the proposed designation; the only decision that day will be to determine whether there is enough to keep moving forward. Ms. Izu said she did not want to make it seem like the decision on December 10 is immaterial. A lot of time and effort has gone into getting one's position set forth before CWRM; if one feels strongly one way or another regarding designation, then the December 10 decision will be very important. If one thinks that designation should not happen at all, Ms. Izu urged people to by all means try to get the process shut down at the December 10 meeting.

Ms. Izu said that if CWRM decides to move forward, there will be public meetings, etc., which will lead to a final decision. It is not clear when that final decision might be, but CWRM by statute has 90 days from the December 10 meeting to come up with a decision. Although there is a deadline for a decision, there are no penalties for failing to meet the deadline – so a final decision could be prolonged, she said. Assuming that on December 10, CWRM decides to move forward, the final decision should come sometime in mid-March.

One of the questions that arose was whether DWS or the Water Board should ask for a Contested Case on the designation issue. Ms. Izu said that her answer was no, based on a 1996 case before the Hawai'i Supreme Court in which the court ruled that nobody has a right to a contested case. This case involved the Windward Oahu GWMA. CWRM designated Windward Oahu as a GWMA, but Ko'olau Agricultural Company opposed the designation. Ko'olau Ag went to court to appeal the designation, and the Hawai'i Supreme Court ruled that there was no right to a Contested Case. If there is no right to a Contested Case, there is no right to an appeal, according to the court. Ms. Izu said that based on that Ko'olau Ag case, there is not going to be a Contested Case if Keauhou Aquifer is designated.

Ms. Lee Loy asked what the definition of an aggrieved party was, and asked who could file a Contested Case under these criteria. She asked who would be a party; she asked if *nobody* would be a party.

Ms. Izu said that if one does not have a Contested Case, then there is no party. She said it is very complicated, but in order to get an appeal from an agency decision to the court, one has to have a right to a Contested Case. To have a right to a Contested Case, either the Statute says that these certain things can have Contested Cases on them, or if the rights, duties and privileges of an individual are being decided by the agency. In such a case, there would be a right to have a Contested Case, Ms. Izu said. If, under these circumstances, a person is denied a Contested Case, then the court will tell the agency that the agency should not have denied the Contested Case. The third thing is if there is a constitutional due-process right, which is usually a property right. Ms. Izu said that what the Hawai'i Supreme Court said in the Ko'olau Ag case was that the Statute does not say that one has to have a Contested Case, so that is out. The court also said that in designation of a Water Management Area, no individual's rights, duties and privileges are being decided. The decision on an individual's rights, duties and privileges comes in the Water Use Permit processing stage, she said. By CWRM's decision to regulate such-and-such an area, it does not decide anybody's rights at all, Ms. Izu said. No one's property rights are being decided when CWRM imposes designation, either, she said. There is no entitlement to a Contested Case, and therefore, there is no appeal to a designation, she said.

Ms. Lee Loy asked whether DWS's rights, duties and privileges are at risk during the December 10 CWRM meeting.

Ms. Izu said no, because DWS will be just like any other individual. If Keauhou Aquifer is not designated, it will be business as usual. If the Aquifer is designated, DWS will be treated like any other individual. If DWS wants to withdraw water, DWS would have to apply to CWRM for a Water Use Permit. If, at that point, CWRM denies DWS a Water Use Permit, DWS can appeal because those were the Department's rights, duties and privileges, and DWS will have become an aggrieved party at that time, and DWS can appeal. That is what the Ko'olau Ag ruling said; Ms. Izu said it is pretty clear to her. She then pointed out a case that had nothing to do with designation of a Water Management Area: the Na Wai Eha Interim In-stream Flow Standards case. This case was totally different, but one of the issues was whether the court even had jurisdiction to hear the appeal; some of the parties had argued that setting the Interim In-stream Flow Standards was just like designating a Water Management Area, Ms. Izu said. No individual's rights, duties and privileges were being determined at this point, and therefore the court had no jurisdiction, according to those parties. However, the court ruled that that was not right; the Interim In-stream Flow Standard process is different from designation; there *were* some rights that were being affected. Ms. Izu said that what worries her about this ruling was that the court went on to distinguish the Ko'olau Ag case from what was happening in the Na Wai Eha case. Ms. Izu said she was concerned that the Supreme Court, in the Na Wai Eha case, ruled that there was little necessity for judicial review of designation, because the permitting process would adequately protect individual rights. She reminded the Board that in the Ko'olau Ag case, the court decided that there was no harm in designation, because any rights or complaints one may have will be taken up in the Water Use Permit process. She said what worries her is that if CWRM does *not* designate, someone who *wants* designation might say that their rights are not being protected. She said that if DWS or the Water Board ask for a Contested Case, CWRM will say that nobody is entitled to a Contested Case, based on the Ko'olau Ag ruling. She said that if CWRM decides *not* to designate, somebody may go to court to claim a right to appeal, based on the Na Wai Eha ruling. There is a chance of that happening, Ms. Izu said. She reiterated that if DWS or the Water Board ask for a Contested Case, CWRM will say that nobody is entitled to a Contested Case, based on the Ko'olau Ag ruling.

Ms. Izu said that if CWRM's final decision, sometime in the spring, is not to designate, or if CWRM decides on December 10 not to go any further, things will revert to business as usual.

Ms. Lee Loy asked whether NPS could appeal a CWRM decision not to designate. She asked whether, because NPS is the party who petitioned for designation, they would be the aggrieved party, and thus have a right to appeal.

Ms. Izu said that looking again at the Ko'olau Ag ruling, on the face of it, if NPS takes an appeal, the Supreme Court or the Intermediate Court of Appeals would say that nobody is entitled to a Contested Case, and therefore, NPS does not have an appeal. On the face of it, that would be the answer, Ms. Izu said. She said that she could see NPS citing the Na Wai Eha ruling, which said that people's rights are protected in the Water Use Permit process. Ms. Izu could see NPS arguing that because CWRM did not designate, NPS's rights are not being protected. She could not say whether that argument would be successful.

Mr. Robinson noted that both the Water Board and CWRM are an open book, with open meetings where people can take notes, etc. NPS by contrast is just like a wall; Mr. Robinson asked who is making the decisions for NPS. There is no NPS board to listen or speak to the public, or to take appeals whenever NPS files, he said. Mr. Robinson said it is something that he has wondered

about for some time; people can go to the Water Board, BWS or CWRM, but NPS is just like a wall.

Ms. Izu said she did not know who makes the decisions for NPS; she wished she knew.

Ms. Izu turned to what happens if CWRM decides to designate Keauhou Aquifer as a GWMA. Before defining the term "Existing Uses," Ms. Izu said that existing users have one year to file an application for Existing Use Permits. Just because DWS is an existing user, it does not mean, after designation, that DWS can automatically continue to use the water that it has been using. Existing users can continue to draw water while their applications for Existing Use are pending; DWS can continue to use the water while its application is being processed, and until a decision by CWRM is made.

New Use applications can be filed any time, but they will not be processed until all of the Existing Use applications have been processed. She gave the caveat that there may be some instances in which, even though some Existing Use application are still being processed, that CWRM might process a New Use application in the meantime. However, the general rule is that people applying for a New Use Permit will just have to wait until all of those Existing Use applications are resolved, Ms. Izu said. No New Uses can commence with a permit, she said. While Existing Uses can continue while the Existing Use Permit is being processed, no new users can start pumping water while their New Use Permits are pending. New users must wait until they actually have a New Use Permit, Ms. Izu said.

Mr. Greenwell asked whether an Existing Use whose permit application is pending can be stopped from pumping in the event that a Contested Case Hearing is brought by, for example, NPS.

Ms. Izu said that generally speaking, the Contested Case Hearing could not stop the use while the Existing Use Permit is pending. She said that a Contested Case could take years to be resolved, and if a party such as NPS says that all those years, the pumping has affected its anchialine ponds. NPS could file for a restraining order, claiming that the pumping is causing such harm that DWS has to stop – whether Keauhou Aquifer is a GWMA or not. A restraining order has nothing to do with whether it is a GWMA or not, and has no bearing on whether DWS's permit is being processed or not. Unless NPS were to get a restraining order, the general rule is that DWS can keep pumping the same way it was before designation; it cannot increase its pumping.

Ms. Lee Loy asked what happens to DWS's obligations under Water Development Agreements, when this process occurs. She asked if the new developments in the area would fall into the New Use category.

Ms. Izu confirmed this.

Ms. Lee Loy asked what happens then.

Ms. Izu said that she would get into that later, but first she wanted to talk about Existing Use Permits. Once CWRM votes to designate, CWRM is required to have a 30-day Public Notice period, and at the end of those 30 days is the official date of designation, she said. CWRM will send out notices to everybody that they know is pumping water from the Aquifer, and notify them that they have one year in which to file their application for an Existing Use Permit. DWS would have to put in its application for Existing Uses within that one-year period; CWRM does not have any discretion to extend that period. Ms. Izu noted that when CWRM designated the I'ao Aquifer, Maui County missed the one-year deadline for applying for an Existing Use Permit, amid a dispute with a private owner who owned the property where a County well was located.

Ms. Izu said that the private owner's signature was required for Maui County's Existing Use Permit application, and the owner refused to sign; Maui missed the one-year deadline. Ms. Izu said this was part of the Waiahole Ditch Case that she litigated, and ultimately CWRM told Maui that they had to stand in the New Use Permit line. As she mentioned earlier, New Use Permits are not processed until after all of the Existing Use Permits are processed, so Maui had to wait until that happened. She noted that in Maui's case it was not too dire, because Maui County had 90 percent of the wells in the I'ao Aquifer anyway. The moral of the story is not to miss that one-year deadline for applying for the Existing Use Permit, Ms. Izu said.

Ms. Izu gave examples of what happened in the Waiahole Ditch Case. The Windward Oahu GWMA, where the Waiahole Ditch gets its water, was designated in 1992. At that time, Makakilo Golf Course was under construction developed, but had not yet been fully developed. It was only using something like 250,000 gallons of water per day at the time of designation (i.e., while the golf course was still not fully developed), but ultimately it would need one million gallons a day. CWRM ruled that the golf course would only get an Existing Use Permit for 250,000 gallons per day, and told the golf course that they would need to file a New Use Permit for the remaining 750,000 gallons, Ms. Izu said.

Turning to the Keauhou Aquifer, Ms. Izu said that ongoing developments will face the same thing. She gave as an example a development whose full build-out would be 500 homes, but in which only 100 homes had been built and were using water. Upon designation, the developer can only apply for an Existing Use Permit for the 100 homes; the remaining 400 homes will not be covered by the Existing Use Permit. The developer would not be able to get water for those 400 homes until he obtained a New Use Permit for them, Ms. Izu said.

Existing Use Permits require the water to be used in the same original location at time of designation. Ms. Izu cited the Waiahole Ditch, where the successors to the defunct Oahu Sugar wanted to use water on different fields than the original location (i.e., Oahu Sugar used the water on its makai fields, and the successors wanted to use water on the mauka fields). This became a big issue; under the definition of Existing Use, the water has to be used in the *same location*.

*(Ms. Iokepa-Moses left the meeting at 12:00 Noon.)*

Under Existing Use, the water must be used for the *same use* as at the time of designation. It also has to be the actual amount and actual use of water as at the time of designation.

Ms. Izu said the Existing Use Permit applications need to prove that the water use is reasonable and beneficial, that the user is using a reasonable amount of water, that the water is used in an efficient and economical way, and the water use must be consistent with the applicant's land use plans and policies. In addition, the applicant has to do an analysis of whether there is an alternative source of water that could be used instead.

Ms. Lee Loy asked about DWS's plans to shift from the Kahalu'u Shaft to a high-level source; she asked if this would be allowed under the Existing Use Permit. It would be the same aquifer, same use, but it would be in a different location.

Ms. Izu said that it would be a different well location; water use permits are tied to the well. If for example, the designation date is April 1, 2015, DWS will still be using the Kahalu'u Shaft, and DWS will not have developed the alternate well yet. DWS could apply for the Existing Use Permit for the Kahalu'u Shaft. When DWS gets the alternate well up and running, DWS could make the argument that it is still an Existing Use, so DWS can apply to basically transfer. However, somebody could say no, the alternate well would be a New Use and would therefore require a New Use Permit. DWS could go through the criteria and argue that the alternate well is

the same thing (as Kahalu‘u Shaft). It is not just because it is in the same Aquifer; it is also because where DWS locates its wells does matter, Ms. Izu said. She said that DWS does not have the same problem as the situation on Moloka‘i, where there were two DHHL wells and one County well located really close to each other; there were upcoming issues, she said. Somebody could say that DWS needs to get a New Use Permit, because by changing the location of the well, DWS needs to prove that it is not interfering with anyone else’s water use. DWS could make the argument that DWS is just changing wells – it is not changing anything else. DWS is making the same uses, same amount, etc.; DWS can make that argument, Ms. Izu said.

The Deputy said that Ms. Lee Loy was not speaking of drilling new wells; DWS has existing sources which DWS is just not pumping to their maximum capacity. DWS’s understanding is that CWRM will be using the 12-month moving annual average.

Ms. Izu confirmed that they always use that average.

The Deputy said that DWS has some wells that have been out of commission for quite a while, so their 12-month moving annual average is something like zero. DWS is going to file an Existing Use Permit on that anyway. DWS has six wells in the high level and six sources in the basal, he said. DWS can shift things around for maintenance purposes, providing the same amount of water to the same end users, which should not be too much of a problem. The Deputy asked if that sounded correct.

Ms. Izu said that Honolulu BWS does that; they have a number of water use permits, but each of their wells has an allocation. As long as they do not exceed that allocation, BWS can switch it around; BWS does switch it around, she said. Ms. Izu said she was concerned that DWS’s 12-month moving annual average on some of its wells might be super-low, and *that* is the allocation that DWS will get on its Existing Use Permit.

The Deputy said that that would be a big problem. Wells do go down and some of the wells have been down for quite a while, which is why their average right now is close to zero. DWS’s plea to CWRM is going to be to look at DWS’s wells cumulatively. Mechanical devices (such as pumps, etc.) are going to fail at some point in time, so DWS needs the flexibility to move, or utilize, other sources when DWS needs to, to supply water to its customers, he said. He worried about what happens if one well such as Honokōhau, with its one million gallons a day pumpage during the past 12 months, were to go down, while nearby Hualālai has zero pumpage. He wondered if DWS would wind up being stuck with a zero allocation if Honokōhau goes down, but Hualālai gets back up.

Ms. Izu said that CWRM staff is very understanding about emergencies. She cited the example of Moloka‘i Ranch coming to the rescue of DHHL, when one of its wells went down. They reported the circumstances to CWRM; that situation lasted at most a couple of months. She did not know what CWRM’s reaction would be if a situation dragged on for years.

Mr. Greenwell asked if CWRM might grant a lower allocation than the one requested.

Ms. Izu said yes, CWRM has different standards on permits, just like the County does.

Mr. Greenwell said his question was, if somebody came up with a Contested Case, complaining that DWS’s well is above them, would CWRM staff grant a lower allocation than DWS requests or grant the request.

Ms. Izu said that if it is a Contested Case, the decision would be out of the staff’s hands; CWRM itself would become like a court. CWRM usually appoints a Hearings Officer, and it becomes a

battle of experts. Both sides will bring in their respective experts. Ms. Izu noted that Contested Cases are lengthy and expensive, and they involve a lot of experts.

Mr. Greenwell, returning to the first slide of Ms. Izu's Power Point presentation, asked whether she could see a *serious dispute* in Kona.

Ms. Izu cited the Waiahole Ditch Case and the Moloka'i designation. She said that the basic reason why CWRM designated in those cases was because there was a serious dispute. In the aftermath of those designations, the CWRM staff's point of view may be that a serious dispute cannot just involve a party's unwillingness to let the other party use water. It has to be something more than that, she said. Ms. Izu said that people seriously dispute water all the time, and if that is to be the criteria to designate, then any place can be designated. Speaking from the CWRM staff's point of view, there has to be something more than people fighting over water, she said. She said that if it gets to be like the Wild West where people actually go out and cause harm to other people, CWRM might feel the need to step in. However, just saying that one disagrees about water should not be enough reason to designate, she said.

When DWS applies for a well drilling permit or a pump installation permit in a non-designated area, CWRM staff will require a pump test. One of the reasons is to establish what can be pumped safely out of the Aquifer. If DWS wants to withdraw water from this well, while someone a half-mile away has a well, CWRM staff will be looking at the draw-down, and will be looking at whether DWS is affecting the nearby well. If it is affecting the nearby well, CWRM will tell DWS that it cannot put in as big of a pump, or will tell DWS to move its well someplace else, Ms. Izu said. A Water Management Area does not have to be in place for there to be that kind of regulation, she said. Conversely, just because a well is causing harm to another well does not mean that designation is necessary, Ms. Izu said. There are ways that CWRM can prevent these kinds of problems, and they do.

Mr. Robinson asked whether it was normal that people just go and submit an application for a designation area. He asked whether there was any kind of mediation or discussion, or meaningful agreement with interested parties. He asked if, failing such mediation, etc., designation is then filed.

Ms. Izu said it all depends on attitude. She noted that the Waimea Water Roundtable has for years staved off designation, thanks to numerous parties who are willing to come to the table to work things out. CWRM staff is involved in those roundtables, and to date Waimea has avoided designation, thanks to the willingness to sit down and reach some understandings and agreements. She said there was one instance in Hāwī, where a woman petitioned for designation out of the blue. The woman did not bother to talk to anybody, and CWRM staff said there was no basis for designation. The matter ended pretty quickly, Ms. Izu said.

Ms. Izu moved on to New Use Permits. The criteria for these are:

- Is there water available? Ms. Izu said this is a mathematical matter, based on sustainable yield; the question is what the sustainable yield is in the Aquifer as a whole, and whether there is enough remaining in the sustainable yield.
- Is the use reasonable/beneficial? The question is what the purpose of the use is, and whether the use is economical and efficient. In the Keauhou Aquifer, the problem may arise that some residential users may use more than the standard 600 gallons per day per unit.
- Not interfering with existing uses. A new use permit may be denied if a well interferes with another well (i.e., there is upconing, etc.)

- Is the use consistent with the public interest? Ms. Izu said that there are lots of things in the public interest; establishing this public interest is not hard to do.
- Is the use consistent with State and County land use designations, and with State and County land use plans and policies? Ms. Izu said that CWRM basically looks at zoning here.
- Not interfering with DHHL rights. Ms. Izu debunked the notion that DHHL can take over someone else's well. She also debunked the notion that DHHL can jump to the head of the line for permits. She noted that with Existing Use Permits, the applicant does not need to prove that it is not interfering with DHHL rights; with New Use Permits, applicants need to prove that they are not interfering with DHHL rights. Under Section 221 of the Hawaiian Homes Commission Act, DHHL has the right to sufficient water to make its lands productive. There has not been a definitive case to define that. She said that Existing Use Permit applications go ahead of all New Use Permit applications, even those of DHHL.
- Not abridging traditional and customary Native Hawaiian Rights. Ms. Izu said this will probably be a big issue with the NPS petition.
- Is it consistent with the Public Trust Doctrine? There is a lot of litigation about what this constitutes, or what it provides for, Ms. Izu said. This matter must be addressed, she said.
- Is there an Alternative Source of water?

Mr. Robinson asked about Public Trust Doctrine. He had originally thought it was all about water, but it is about natural resources in total, of which NPS is a natural resource which NPS, in his opinion, has not been maintaining well. He said that Public Trust Doctrine needs to be viewed in its entirety: water, anchialine ponds, maintenance of offshore fishing, removal of non-native species, etc. Public Trust Doctrine is a multitude of natural resources; it is not just water, he said.

Ms. Izu noted that the Public Trust Doctrine comes from the Hawai'i Constitution, and it does talk about how natural resources are a public trust. She agreed completely with Mr. Robinson, but noted that the cases which have raised the most discussion of Public Trust Doctrine have been water cases.

Mr. Robinson asked if the care of natural resources in their entirety can apply to the violation of Public Trust Doctrine.

Ms. Izu said that nationwide Public Trust Doctrine has been applied to air, to trees, everything. She said that applying Public Trust Doctrine to too many things devalues the Doctrine.

Ms. Izu turned to Contested Cases, saying that all water use permit applications, Existing Use or New Use, are subject to Contested Case. Regarding who can be a party to a Contested Case, a person has to have standing. Standing is extremely liberal in Hawai'i, she said; if somebody owns property somewhere in the Aquifer, that person has standing, and is entitled to a Contested Case. As to the burden of proof, Ms. Izu said that the **applicant for the permit** has the burden of proof. When someone objects to an application, the applicant must go through all of the above criteria to prove that they are entitled to a water use permit.

Ms. Izu said that Contested Cases take a long time, citing her 17 years litigating the Waiahole Ditch Case. Another water use permit case on Moloka'i took two or three years. Contested Cases take a long time, especially when the parties have resources, like DWS and NPS, she said. The Na Wai Eha case involved some 40 days of hearings, involving a hearings officer. Contested Case Hearings are generally held on the island in question. She noted that the entire CWRM board sat for 60 days of actual hearings as the hearing body for the Waiahole Ditch Case; CWRM

swore never again to go through such an ordeal, so they always hire a hearings officer now. She noted that ideally, the hearings officer has some expertise in water issues, noting that Dr. Larry Miike often officiates as hearings officer.

Ms. Lee Loy asked who prepares the Findings of Fact, etc.

Ms. Izu said that after the hearing, the hearings officer usually asks the parties to file their own proposed Findings of Fact, and when Dr. Miike is the hearings officer, he files his own. Other hearings officers might rely on the Deputy Attorney General to help them write the Findings of Fact. Those proposed Findings of Fact are then sent to CWRM, and CWRM either adopts those Findings, or not – or come up with their own Findings, she said. Usually, the hearings officer will come up with his own Findings of Fact, which will be denominated as “Recommendations” to CWRM. CWRM will invite all of the parties to file exceptions to the hearings officer’s proposal, and then there will usually be oral arguments before CWRM itself, Ms. Izu said. CWRM can adopt, reject, or modify what the hearings officer proposed. That could translate into a bit of time, she said.

Ms. Lee Loy asked if, when the whole process ends, a party can take a Chapter 91 appeal of that decision, and she asked whether all of that can be made the certified record, and appeal that.

Ms. Izu said yes. The appeal would go directly to the Intermediate Court of Appeals if it involves a water use permit. There is no court in between CWRM and the Intermediate Court, she said.

Ms. Lee Loy asked if Ms. Izu had done any cases involving a federal agency filing a petition and a County agency appealing it.

Ms. Izu said this was the first time she has seen a federal agency involved like this. She noted having had a case with the Navy in a minor role; USGS weighs in on scientific matters, but does not take sides in a Contested Case. She did not know whether USGS would accede to DWS calling USGS as a witness, but if CWRM requests their testimony, they will provide testimony. USGS does not usually appear for a party, she said.

Ms. Lee Loy asked if Ms. Izu was familiar with the letter to the Office of Information Practices (OIP) from the Hawai‘i Leeward Planning Council (HLPC).

Ms. Izu said she was.

Ms. Lee Loy asked Ms. Izu to elaborate; CWRM made reference to a Statute related to Contested Cases when CWRM agendaized their investigative meetings in Kona. She said the last time she checked, DWS was not involved in a Contested Case here. Ms. Lee Loy noted that Ms. Izu said earlier that there is no way that DWS/Water Board can petition for a Contested Case, until CWRM designates; even with that decision to designate, DWS/Water Board cannot appeal, because there is no Contested Case. DWS/Water Board cannot appeal until the water permit process (following designation), in which time it would be in a Contested Case. She asked Ms. Izu to elaborate on that.

Ms. Izu noted that the headings of the notices regarding CWRM’s September 17 and October 9 site visits do not say “Agenda.” They say “Schedule.” That, Ms. Izu said, is an indication that CWRM did not consider the site visits to be meetings. In the notice, it also says that it is not a public meeting. However, anytime a public body has more than two Board members or Commissioners get together, it is a **meeting**. This makes the proceedings subject to Sunshine Law, unless there is an exemption. CWRM cited as its exemption HR Section 92-6, which talks about “adjudicatory functions.” The CWRM notice says “Adjudicatory Functions;

Investigations.” However, Section 92-6 does not contain the word “investigations” anywhere, she said. Section 92-6 talks about judicial proceedings; it is really talking about Contested Cases, Ms. Izu said. There is a lot of case law from the Hawai‘i Supreme Court, and a lot of OIP opinions that refer to Contested Cases, she said. The designation of a Water Management Area (WMA) is not a contested case, she said, and nobody has asked for a Contested Case. Furthermore, if one is having a Contested Case, there are notice requirements in Chapter 91 as to what kind of notice needs to be put out, she said. CWRM never did that, and if CWRM really thinks that it was a Contested Case, then CWRM has some Chapter 91 violations, Ms. Izu said. She speculated that CWRM thought that by using the word “investigations,” they would be exempt. One of the issues in HLPC’s letter is whether CWRM’s investigations have to be tied to a Contested Case, she said. She wondered if anything and everything could be called an investigation, but she did not think that that is what Section 92-6 was.

Ms. Lee Loy said that she raised the Contested Case issue at the last Board meeting because she wanted to preserve any future appeals for DWS and the Water Board. She asked if it was worth filing a complaint to OIP, now that HLPC has already done so.

Ms. Izu said she is not a Sunshine Law expert, but she suggested that the Board wait and see CWRM’s response to the OIP complaint; CWRM has only 10 days to respond. CWRM may just say oops, CWRM did the wrong thing; that begs the question of what comes next, Ms. Izu said.

Ms. Lee Loy asked whether that would invalidate the investigative meetings, and therefore would invalidate the investigative process. She reiterated that she wanted to preserve any opportunity for future appeals or a Contested Case, or whatever legal recourse there may be down the road.

Ms. Izu said that is a difficult thing. Sunshine Law was written for simpler situations; Sunshine Law basically says that if there is a Sunshine Law violation, it could invalidate the decision, she said. She said the question is whether, when CWRM makes its decision in December, they may not be able to rely on anything that happened at those site visits. Possibly, she said. Sunshine Law said that if there is a Sunshine Law violation, it could void any decision that was made based on, or related to, that violation.

Ms. Izu turned to reservations of water. This might be something that DWS might be interested in. The Water Code provides for such water reservations, through rule-making; to date, the only reservation has been for DHHL. She cited the case of a municipal reserve on Moloka‘i, with the water to be used for municipal (not private) uses. DWS could say that its County plans already call for this kind of development in this area, and there is water available to meet those plans; therefore DWS wants to reserve a certain amount of water from the Keauhou Aquifer for those plans; Ms. Izu saw no reason why DWS could not do that. If Keauhou is designated, that is something that DWS may want to think about doing.

Ms. Lee Loy asked about Ms. Izu’s use of the term “by policy.”

Ms. Izu said she meant that under the Statute, if DWS wants to do a reserve, it would have to go and adopt a Rule. The example of the municipal reservation did not involve adopting a Rule; it was done in a Contested Case. She noted that the reservation in the DHHL case affected the amount of water that was available for new uses; as soon as the designation of Moloka‘i happened, DHHL put a kapu on the rest of the water in the aquifer. A Rule was passed and CWRM granted DHHL the reservation, and basically it shut out any other new uses within that aquifer. She said that nobody moves to the front of the new use line; all new use applicants come after existing use applicants. Assuming designation takes place -- if DHHL does in Keauhou the same thing it did on Moloka‘i (i.e., get a reservation, impose a kapu, etc.), -- all new use applications would be on hold until CWRM determines water availability in the area.

The Deputy noted that CWRM based it on what water is available as far as the State Water Projects Plan. He asked whether an entity would have to have some justification for reserving.

Ms. Izu said that after Moloka'i, CWRM learned that there should be some kind of justification. CWRM did not put a lot of analysis into that matter, and just granted the reservation in 1993 or 1994. To date, DHHL has not drawn any water from the reservation, she said.

Ms. Lee Loy asked if there was some process for projects with public benefit in the Keauhou Aquifer such as the Kona Judiciary, Palamanui, etc.

Ms. Izu said that the most important thing to do is to **make sure that the projects get into the State Water Projects Plans**. This must not be viewed as just a chore, she stressed. The County's Water Use and Development Plan (WUDP) is also vitally important.

Mr. Robinson, citing the Kona Community Development Plan (CDP), said that the County is poised to do the revision of the General Plan in its five-year review. The Kona CDP, which is incorporated in the General Plan, shows expansion, development, etc. Mr. Robinson asked if all of the hard work to develop the CDP was obviated by the NPS petition. If designation happens, it would make it more difficult to get water. He asked if Ms. Izu was urging that the Kona projects be in the State Water Project Plans, to insure that the projects are part of, and recognized as being the blueprint for growth.

Ms. Izu said that the reason that documents like the County WUDP and the State Water Projects Plans are important is because they act as **guidance for CWRM**. She said repeatedly that water follows land use, so that if the County plan says that this area is a growth area, it carries weight. CWRM, which will make these discretionary decisions, must do a weighing, a balancing, Ms. Izu said. The WUDP shows that the County has determined that Keauhou is going to be the growth area; this is where the County is going to send growth; CWRM will weigh the pros and cons, and will respect the County's decision; that is CWRM's job, Ms. Izu said. Without giving CWRM such guidance through its WUDP, etc., it would be a free-for-all for CWRM, and CWRM can make any decision they want, she said. With the County wielding the WUDP, it will be hard for CWRM to disagree. Ms. Izu said she is not speaking for the Commissioners; it is the job of DWS and the Water Board to convince them.

Looking at the history of the Water Code, Ms. Izu noted that the counties vehemently opposed the creation of CWRM at the 1978 Constitutional Convention; originally, there was going to be permitting throughout the State. The counties prevailed on scotching the statewide permitting, and CWRM only got jurisdiction over those areas where it needed to have it. In the past, designation took place when a County was not doing its job. The counties were very involved in how the Water Code was developed, with a lot of Home Rule read into it. She noted that WUDPs typically are not updated in a timely way, so CWRM has basically used all of the discretion that has been given to them, and has gotten used to exercising a wide degree of discretion.

To wrap up, Ms. Izu talked about the effect of designation on water credit agreements. With designation, the developer who does not have existing uses will need to get a New Use Permit from CWRM. This is an extra step that does not prevail without designation, she said. The question is who is responsible for getting the New Use Permit: DWS or the developer. Ms. Izu left the question at that, because she has clients in the area who would be affected by designation.

Ms. Izu mentioned DWS's plan to use Kahalu'u Shaft as a back-up well, basically shifting production to the mauka wells. She gave an example of a client who applied for a back-up well source, and CWRM ultimately denied the request because it appeared to be a double allocation.

She said that DWS should keep that in mind when it tries to keep Kahalu'u Shaft as a back-up well. Ms. Izu said that she keeps telling CWRM staff to think outside of the box.

Mr. Robinson said that makes it so much more difficult for the County to upgrade its systems, seek new water sources, and provide better water.

Ms. Izu said that maybe if the counties come in and start saying that this is important to them, CWRM staff will start opening their minds a little bit more. This is one of the things that DWS and the Water Board will have to contend with.

Ms. Lee Loy asked at what stage in the triathlon, metaphorically speaking, this process is in.

Ms. Izu said if the water segment is the first stage of the triathlon, then DWS and the Water Board have just jumped in the water.

*(At the end of Ms. Izu's presentation, the Board took a brief recess at 1:23 p.m., and resumed at 1:33 p.m.)*

7) SOUTH KOHALA:

A. JOB NO. 2011-972, LĀLĀMILO WIND FARM REPOWERING PROJECT, POWER PURCHASE AGREEMENT:

Mr. Sumada returned to the meeting with the calculations for net present value regarding the Lālāmilo Wind Farm project, as requested by Mr. Robinson. The Board took up again this Item.

Mr. Sumada explained that he had added two new entries to the rate schedule, found on the bottom half of where the 20 years are scheduled:

- Cumulative HCP/ITP Costs;
- Cumulative Increased Revenue.

Mr. Sumada said that he had gotten the present value annuity figure for the difference between the total of those two amounts, which he wrote down in the lower right-hand column of the schedule. The 20-year difference between the costs and the revenue has a net present value of \$139,316.00. He said he hoped that that number would help the Board in its decision, and hoped it was what Mr. Robinson had asked for.

Ms. Garson said that she wanted to make one clarification about some language in the Agenda. It is based on the actual rate of HCP/ITP costs. She wanted to make sure that those costs are exclusive of any fines. If, during the life of the contract, the wind farm kills one too many bats and a fine is assessed, Ms. Garson wanted to make sure that that was not part of the recomputation in any way.

Mr. Horn said that it is not included in any of the fee schedules. He noted that in the upper right-hand corner, there are the mitigation efforts, which culled out one nene, one petrel, one shearwater, and six bats. Those numbers are based on the biological company's estimates. Mr. Horn said that was all that Mr. Horn could go by, and being frugal with those numbers so as not to overload the cost of the project. If, at some point in the future, there are additional takes, that would be taken into consideration, and would not be considered a fine. It would be considered additional costs for the mitigation. Mr. Horn said his company had operated the Hāwī wind farm for seven years, and had never taken any of those birds. He said that these calculations were made by the best efforts of the biologist.

The Deputy confirmed that this was over the 20-year term of the project.

Mr. Horn said yes, over the 20-year term of the project.

The Deputy confirmed that the one nene, one petrel, one shearwater and six bats were not a yearly take estimate.

Mr. Horn said that was correct (i.e., it is not a yearly take estimate). He said that South Point's wind farm has been in operation for seven years, and they have only killed one bat.

Ms. Lee Loy asked Ms. Garson to allow the Board to go into Executive Session, citing Chapter 92 (4 and 5).

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

*(Executive Session began at 1:40 p.m., and ended at 1:52 p.m.)*

Back in regular session, Ms. Lee Loy said she wanted to make a Motion to Amend the proposed rate schedule language.

MOTION TO AMEND: Ms. Lee Loy read the entire section, as amended, with the new language in italics:

“The proposed rate schedule is based on estimates for the energy generation and HCP/ITP costs. DWS and Lālāmilo Wind, LLC, shall recompute an actual rate for the HCP/ITP costs every three years, based on actual energy generation and actual HCP/ITP costs incurred, *provided, however, ITP mitigation costs over the three-year period shall not exceed \$73,500.00.* Any difference between the scheduled rate and rate computed using actual results, shall result in a proportionate adjustment of the rate for the next three-year period, so that at contract termination, the net effect of rates assessed would be equal to the actual HCP/ITP costs incurred *with the ITP mitigation costs capped at \$490,000.00.* Lālāmilo Wind, LLC, shall provide DWS access to actual production records, invoices, statements, and other documentation, in order to verify computation of energy generation and costs incurred.”

Ms. Lee Loy said that those were the two amendments.

Mr. Robinson seconded.

Ms. Lee Loy asked Mr. Robinson to explain why the Board made those amendments.

Mr. Robinson explained that the Board wanted to make sure that if there were excessive takes, that DWS will not get stuck with the tab. He noted that Mr. Horn had made representations about the take estimates (i.e., one nene, one petrel, one shearwater and six bats). The Board is willing to work with Mr. Horn on that, Mr. Robinson said. However, the Board does not want to get stuck with the tab for any takes beyond the estimates, and that is why the Board asked for the limitations on the amount. He noted that if the wind farm operates clean and without any problems, Mr. Horn's company will have gotten the benefit of the credits for the takes. Any excessive takes, however, will be on Mr. Horn's dime, Mr. Robinson said. The Board believes that this is a fair compromise, and he wished Mr. Horn success in operating free of any takes.

Mr. Horn said his company certainly endeavors to do that; his company has a good operating system already in Hāwī, and has a good relationship with HELCO. The company has not had any documented takes over the seven years in Hāwī, and has just completed a very extensive search for the past year with no takes in Lālāmilo.

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

*(The Board recessed for lunch at 1:58 p.m., and reconvened at 2:25 p.m.)*

ACTION: Ms. Lee Loy moved to go into Executive Session for Items 8(C), REQUEST TO HIRE SPECIAL COUNSEL FOR THE WATER BOARD IN THE MATTER OF THE NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA, and 8(D), DEPARTMENT OF WATER SUPPLY RESPONSE TO NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA; seconded by Mr. Robinson and carried unanimously by voice vote.

*(Executive Sessions for these two Items began at 2:26 p.m., and ended at 3:09 p.m.)*

C. **REQUEST TO HIRE SPECIAL COUNSEL FOR THE WATER BOARD IN THE MATTER OF THE NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:**

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.

ACTION: Mr. Uyeda moved to approve Corporation Counsel's recommendation to hire Special Counsel; seconded by Mr. Robinson, and carried unanimously by voice vote.

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

MOTION: Ms. Lee Loy moved that the Water Board send a letter to OIP regarding any possible violations by CWRM in their notification and conduct during CWRM's meetings on September 17, 2014, and on October 9, 2014; seconded by Mr. Greenwell.

Ms. Garson said there already is a letter and appeal out there; she did not know what the intent of sending another letter would be. She asked if it were just to support the HLPC letter to OIP; OIP is already looking at HLPC's letter. Ms. Garson asked what the Board wanted.

Ms. Lee Loy said that some of the process is still rather fluid. She just wanted to make sure that the Board was preserving any claims that might be afforded only to DWS, and not to any other stakeholders. It will be DWS's letter – not somebody else's letter, she said. She said she believed it was worth it.

The Manager-Chief Engineer said that the Board could acknowledge that there was a response to that request, and that it was being looked at (by OIP), and that DWS awaits some kind of response.

Ms. Lee Loy said that she would not mind drafting that letter to OIP, with Ms. Garson. She said that the Board has gotten a lot of guidance from stakeholders who have been at all of these meetings regarding the NPS petition.

Mr. Robinson said that he had gotten an amazing number of phone calls from people on the NPS petition.

Chairperson Kaneshiro said he agreed with Ms. Lee Loy that the Board has a responsibility to respond.

Mr. Robinson said absolutely.

Ms. Lee Loy said that the Board should send a letter, which acknowledges these other agencies and stakeholders who are raising the NPS petition issue, and which expresses the Board's shared concern about the NPS petition issue. The letter should say that the Board was awaiting the response.

Ms. Garson said okay.

Mr. Greenwell asked if a Motion was needed that said that Ms. Lee Loy was going to draft the letter.

The Manager-Chief Engineer said that it was not necessary, because the letter would be signed by either the Chairperson or himself. It does not matter who drafts the letter, he said.

Ms. Garson agreed that it does not matter who drafts the letter; the letter should come from the Board, so the Chairperson will be authorized to sign it.

Mr. Robinson asked whether it could be signed by both the Chairperson and the Manager-Chief Engineer.

Ms. Garson said yes, but the Chairperson is already authorized to sign.

ACTION: Motion carried unanimously by voice vote.

Chairperson Kaneshiro stated that Ms. Lee Loy will draft the letter.

Ms. Lee Loy said that she wanted to make another Motion. She said that there are people urging the Board to write to CWRM to ask for more time; DWS and the Mayor's Office have done such letters. However, Ms. Lee Loy felt strongly that the Board should join in with those requests, so that the Board will know that CWRM is responding. This will make certain that CWRM knows that everybody is coming from the same exact place, she said.

ACTION: Ms. Lee Loy moved to do a separate letter, to CWRM, requesting additional time (i.e., a time extension) and to request that CWRM hold another meeting on the Big Island; seconded by Mr. Uyeda. Motion carried unanimously by voice vote.

Ms. Lee Loy noted that there was a working draft comprehensive response to CWRM that the Board had done.

Ms. Garson said yes, that was the one from way back.

Chairperson Kaneshiro asked what they were talking about.

Ms. Lee Loy said that it appears that the Board needs to schedule approval of that comprehensive response letter prior to the November 19, 2014, CWRM meeting.

ACTION: Ms. Lee Loy moved to hold a Special Meeting on November 13, 2014, to finalize the Board's comprehensive response letter to CWRM; seconded by Mr. Robinson, and carried unanimously by voice vote.

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

ACTION: Ms. Lee Loy moved to defer to the November Board meeting; seconded by Mr. Robinson, and carried unanimously by voice vote.

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

ACTION: Mr. Greenwell moved to defer to the November Board meeting; seconded by Mr. Robinson, and carried unanimously by voice vote.

G. **MONTHLY PROGRESS REPORT:**

No discussion.

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

No discussion.

I. **MANAGER-CHIEF ENGINEER'S QUARTERLY UPDATE:**

ACTION: Mr. Greenwell moved to defer to the November Board meeting, seconded by Mr. Robinson, and carried unanimously by voice vote.

J. **REVIEW/APPROVAL OF REVISED DRAFT MANAGER-CHIEF ENGINEER'S EVALUATION FORM AND PROCEDURES FORM FOR CALENDAR 2015:**

Mr. Robinson asked for clarification on how the Evaluation is done; he asked if it was between the Chairperson and the Manager-Chief Engineer.

Chairperson Kaneshiro said that it was between the Board and the Manager-Chief Engineer, and the Chairperson signs the Evaluation.

MOTION: Mr. Greenwell moved to defer to the November Board meeting, seconded by Ms. Lee Loy.

Ms. Lee Loy said there was a great speaker at the recent Kaua'i conference, who did a great presentation on personnel evaluations. Ms. Lee Loy said that she contacted the speaker, who provided further guidance. Ms. Lee Loy said she shared the speaker's input with Chairperson Kaneshiro, regarding how to write better evaluations. Ms. Lee Loy said that she appreciated the deferral, because it gives the Board more time to write better Goals and Objectives, and measurables.

Chairperson Kaneshiro asked for clarification that all of the Items that the Board has deferred today will go on the November 25, 2014, Board Agenda.

Ms. Garson confirmed this.

ACTION: Motion carried unanimously by voice vote.

K. **MANAGER-CHIEF ENGINEER'S REPORT:**

The Manager-Chief Engineer asked to take up the last Item on his report; he called on Mr. Sumada to introduce the Employee of the Quarter.

Mr. Sumada introduced Ms. Anne Higaki, who is an account clerk with the Finance Section. This award is due to her excellence in helping the payroll section, which is always short-staffed, he said.

The Manager-Chief Engineer said that Ms. Higaki will be invited to the Board's year-end luncheon.

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

- 1) Pu'ukala/Kona Ocean View Properties Subdivision Improvement District Update – Mr. Inaba said that DWS is close to doing the last connection on the highway. Once that is done, DWS will begin installation of the new meters, and will give customers time to connect their piping to the meters. After all of the customers are taken care of, DWS can disconnect at the highway; so for a time, there will be two systems running until everybody is hooked up to the system. DWS gives the customer a certain number of days to hook up, and then the Department does a closing reading, Mr. Inaba said.
- 2) Lava Update and 3) Pāhoa Deepwell B Emergency Repair – These two Items are inter-related. The Manager-Chief Engineer said that the lava is close to crossing Pāhoa Village Road. Because of the lava flow event, DWS went into emergency procurement to put the Pāhoa Well B online. The well had been down for the last year or so, but DWS needed to put the well back online in the event that the lava flow disconnects the DWS system through Pāhoa Village, which will probably happen sometime this week, he said. DWS stands ready to isolate the two sides of the flow. DWS staff went out today to install valves to enable the isolation of the system, so that DWS can serve both the south and north sides of the lava flow. North side customers will experience some low-pressure conditions, because now they will be fed off a lower tank on the north side. DWS stands ready to continue water service to customers who *can* have water service. Customers who will be evacuating will probably be shut off, or will have their water services covered by the lava; this is something that DWS saw happening in Kalapana, he said. There have been a lot of things happening, including daily lava updates and weekly community meetings in Pāhoa every Thursday. Meanwhile, the County is manning command centers on-site.
- 3) Public Information and Education Specialist Update – Ms. Aton noted that there had been a lot of prep for the CWRM site visit/meeting, along with messaging and community meetings involving Tropical Storm Ana and the lava flow. She noted that among the news articles this month was a story about NPS doing outreach to the Kona community.
- 4) Employee of the Quarter – *(This Item was handled earlier.)*

Mr. Greenwell mentioned that the recent Kaua'i conference was great, and hopefully, the attendees learned something.

Ms. Garson said that that Mr. Greenwell should wait until the Chairperson's Report to report on who attended the Kaua'i conference, for Sunshine Law purposes.

#### L. **CHAIRPERSON'S REPORT:**

Chairperson Kaneshiro reported that Ms. Lee Loy, Messrs. Robinson and Greenwell, as well as the Chairperson himself, attended the Kaua'i conference. He said the theme was "Knowledge, Collaboration and Learning" for water management. He cited Mr. McElroy, who Ms. Lee Loy

mentioned earlier. Mr. McElroy stressed the importance of communicating the value of water to customers as the most critical job that water authorities will undertake in the coming years. The Chairperson said he agreed that getting the word out and educating the public was very important. He noted that the Manager-Chief Engineer had a staffing plan some time ago, and might want to look at building or maybe increasing the information section. Aging infrastructure is a topic that needs to be talked about, he said. It will be much easier to raise DWS's rates if the public fully understands what DWS does. The Chairperson congratulated DWS for having the lowest cost of water, according to an article last month that the Chairperson cited. DWS needs to keep moving and continuously improving, to do a better job all the time, he said.

Ms. Lee Loy said that Mr. McElroy, who was a very engaging speaker, provided himself as a resource for the Water Board from here on out.

Mr. Robinson said he found the presentation on water audits fascinating, whereby a department controls its costs and figures out where its losses are occurring. He said he did not realize that there was such a high percentage of water pumped that is actually lost. The presenter talked about revenue water, and about water that is lost when it is sold, and water that is lost from where it is produced. The speaker said that the two things were very distinct, Mr. Robinson said.

Mr. Greenwell said that he found Mr. McElroy's talk about the need to take care of customers a real eye-opener. The presenter said that by keeping involved with the customers and the community, a water department weathers problems less stressfully, because the public is on the department's side.

The Manager-Chief Engineer said he would take up the Chairperson's suggestion about beefing up public education.

9) ANNOUNCEMENTS:

Chairperson Kaneshiro reminded the Board about the Special Board Meeting, to be held on Thursday, November 13, 2014, at 10:00 a.m., at the DWS Baseyard conference room.

1. Next Regular Meeting:

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

2. Following Meeting:

The following meeting of the Water Board is scheduled for December 16, 2014, at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

10) ADJOURNMENT

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

The meeting adjourned at 3:38 p.m.

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Secretary

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*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.*