

MINUTES

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

December 15, 2015

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

MEMBERS PRESENT: Mr. Rick Robinson, Chairperson
Mr. Craig Takamine, Vice-Chairperson
Mr. Russell Arikawa
Mr. Bryant Balog
Mr. Leningrad Elarionoff
Ms. Susan Lee Loy
Ms. Kanoë Wilson

ABSENT:

Ms. Brenda Iokepa-Moses, Water Board Member
Mr. Jay Uyeda, 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. Amy Self, Deputy Corporation Counsel
Mr. Steven Lim, Carlsmith Ball LLP
Mr. Jason Knable, Carlsmith Ball LLP
Mr. Ken Melrose
Mr. A. D. Ackerman
Ms. Noel Ackerman
Ms. Nancy Cook Lauer, West Hawai'i Today

Department of Water Supply Staff

Mr. Keith Okamoto, Manager-Chief Engineer
Mr. Kawika Uyehara, Deputy
Mr. Kurt Inaba, Engineering Division Head
Mr. Richard Sumada, Waterworks Controller
Mr. Daryl Ikeda, Operations Chief
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Judy Hayducsko, Operations
Mr. Eric Takamoto, Operations

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

2) STATEMENTS FROM THE PUBLIC

None.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the November 24, 2015, Water Board meeting.

ACTION: Mr. Elarionoff moved to approve; seconded by Mr. Balog; and carried unanimously by voice vote.

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

None.

5) SOUTH HILO:

A. VEHICLE AND EQUIPMENT BID NO. 2015-10, FURNISHING AND DELIVERING VEHICLES AND EQUIPMENT TO THE DEPARTMENT OF WATER SUPPLY:

Bids were opened on December 3, 2015, 2015 at 2:00 p.m., and the following are the bid results:

	Inter Pacific Motors, Inc., dba Orchid Isle Auto Center	Bacon-Universal Company, Inc.	David S. Deluz, Sr. Enterprises dba Big Island Toyota, Inc.
Part "A"			
One (1) only 2015 or later, 1-ton crew cab, with service body pickup 4-wheel drive			
Total delivery price	\$49,124.12	No Bid	No Bid
Delivery time (calendar days)	240		
Part "B"			
One (1) only 2015 or later, full-size pickup with Regular cab, service body and lift gate, 4-wheel drive			
Total delivery price	\$44,244.93	No Bid	No Bid
Delivery time (calendar days)	240		
Part "C"			
One (1) only 2015 or later, mid-size extended cab Pickup, 4-wheel drive			
Total delivery price	\$29,331.34	No Bid	No Bid
Delivery time (calendar days)	180		
Part "D"			
One (1) only 2015, or later, mid-size extended cab Pickup with lift gate			

4-wheel drive			
Total delivery price	\$32,175.10	No Bid	No Bid
Delivery time (calendar days)	210		
Part "E"			
One (1) only 2015 or later, mid-size extended cab Pickup, 4-wheel drive, manual transmission			
Total delivery price	\$28,714.68	No Bid	\$31,925.84
Delivery time (calendar days)	180		120
Part "F"			
One (1) only 2015 or later, 7-passenger mini-van, Front wheel drive			
Total delivery price	No Bid	No Bid	No Bid
Delivery time (calendar days)			
Part "G"			
One (1) only 2015 or later, 3-ton capacity Forklift			
Total delivery price	No Bid	\$33,333.12	No Bid
Delivery time (calendar days)		60	
Part "H"			
One (1) only 2015 or later, 1-ton dump truck, 4-wheel drive			
Total delivery price	\$49,911.62	No Bid	No Bid
Delivery time (calendar days)	240		

The Manager-Chief Engineer recommended that the Board award VEHICLE AND EQUIPMENT BID NO. 2015-10, FURNISHING AND DELIVERING VEHICLES AND EQUIPMENT TO THE DEPARTMENT OF WATER SUPPLY, to:

- Inter Pacific Motors, Inc., dba Orchid Isle Auto Center, for Parts A, B, C, D, E, and H at a total cost of \$233,501.79; and
 - Bacon-Universal Company, Inc., for Part G at a total cost of \$33,333.12,
- and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract subject to approval of the contracts as to form and legality by Corporation Counsel.

For Part "F," for which no bids were received, staff will seek alternate methods of procurement, in accordance with Procurement Rules.

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

The Manager-Chief Engineer explained that this is DWS's standard, once-a-year vehicle replacement bid for the Department's service trucks, inspector vehicles, a van that was intended for Information Technology staff, and a forklift. He noted that the Department tried some new things with this year's bid. The Department specified that the vehicles be made in *2015 or later* (instead of 2016), and DWS put an ad in the Honolulu Star-Advertiser in hopes of generating more interested bidders. Mr. Ikeda of Operations also tried to get other County Departments and other Water Supply Departments to work with DWS on a vehicle bid. However, that did not pan out, and DWS did its bid on its own. The bid results show that there was primarily only one bidder, although there were six people who picked up plans, he said. DWS is entertaining ways of getting more competition on vehicle bids, the Manager-Chief Engineer said.

Mr. Elarionoff noted that there was a "xx" and a "xxx" for Total Delivery Times for two companies that did not bid, but the notation appeared nowhere else in the bid results.

The Manager-Chief Engineer said that must have been a typo.

Ms. Wilson asked whether there were a prescribed number of years after which DWS replaces its vehicles.

The Manager-Chief Engineer said that it was not a hard-and-fast guideline, but DWS looks at the mileage and the age of the vehicle. The informal rule of thumb is to replace a vehicle if it has 150,000 miles on it, or if it is 10 years old. DWS also looks at the history of repairs; if DWS needs to do major repairs that exceed the value of the vehicle, such as a transmission replacement, Mr. Ikeda and his team will recommend replacement of the vehicle.

Mr. Takamine asked if DWS specifies extended warranties as part of the bid.

The Manager-Chief Engineer said no, DWS specifies standard warranties. DWS does not qualify for Lemon Law protection, etc., he noted.

Ms. Lee Loy thanked the Department for trying to take steps to avoid the kind of snags that have been encountered in past vehicle bids. She appreciated that DWS tried to get other departments to go in on a bid, although it did not pan out. DWS can always try again, and there may be some really good partnerships that could happen.

The Manager-Chief Engineer said that DWS was going to continue to try.

Mr. Ikeda said that when he talked to the County, they said that their next bid opening would be in March. That was too late for DWS, so that is why the Department did not go in with them.

The Manager-Chief Engineer noted that DWS specified a different utility bed manufacturer, based on problems that DWS had had in previous vehicle bids involving another utility bed company.

Ms. Lee Loy thanked the Department for making the attempt to go in with other Departments, and for listening to the Board.

Mr. Arikawa asked what alternate methods the Department planned to take on Part F, which got no bids.

The Manager-Chief Engineer said that DWS would use the same specifications; Procurement Law allows DWS to go with alternate procurement, DWS will reach out and seek quotes from

various vendors. With alternate procurement, DWS can also go to Maui, Oahu, or Kaua'i to seek quotes.

Mr. Balog asked how DWS arrived at its rule of thumb regarding replacement, i.e., 10 years old, or 150,000 miles on the odometer.

Mr. Ikeda explained that DWS is in catch-up mode, following several years of a shaky economy during which DWS could not afford to replace vehicles. DWS now is trying to catch up, after years without buying vehicles. In the meantime, vehicles put on 20,000 miles or more a year, so DWS is in catch-up mode now.

The Manager-Chief Engineer said that there were quite a few DWS vehicles riding around in excess of 150,000 miles that should be replaced. Now that DWS is in a better financial situation, DWS needs to get its staff the resources they need – so that they are not stranded by the side of the road, when they should be fixing pipes.

Mr. Balog asked if DWS specifies blue vehicles in the bid.

The Manager-Chief Engineer said that DWS has just begun specifying *white* vehicles; this was an internal decision because white is cooler and more uniform. He noted that DWS's vehicles come in a variety of shades of blue.

Mr. Balog said that white would also be cheaper.

The Manager-Chief Engineer said that the idea was also to get more competition on bids; white is more available than blue, from various manufacturers.

Mr. Balog asked about the different delivery times in this bid; he asked if it were defined by the vendor.

Mr. Ikeda confirmed that the vendor determined the delivery times. The vendor here has no control on when they can take delivery from the body company on the Mainland. He noted the numerous delays on delivery for vehicles in the past. For that reason, the vendor asks for a little more time in the bid, to make sure the vehicle arrives here in time.

Mr. Balog said that was fair enough.

Chairperson Robinson said it will be nice not to see blue DWS trucks with the paint peeling off. He guessed that the blue color might be more subject to peeling.

The Manager-Chief Engineer said he was no expert on the subject, but it may have something to do with the clear coat on the dark color, combined with exposure to the sun.

ACTION: Motion carried unanimously by voice vote.

B. EQUIPMENT BID NO. 2015-11, FURNISHING AND DELIVERING SURVEYING EQUIPMENT TO THE DEPARTMENT OF WATER SUPPLY:

This procurement consists of surveying equipment, including a total station and data collector, as well as necessary accessories to replace the equipment that was deemed irreparable.

Bids were opened on December 3, 2015, 2015 at 2:30 p.m., and the following are the bid results.

Description	Bidder	Delivery Time (calendar days)	Amount
Surveying Equipment, including total station, data collector, and accessories	Hubs Hawai‘i, Inc.	60 days	\$29,900.00

Staff has reviewed the bid, and finds it acceptable. The estimate was \$30,000.00.

The Manager-Chief Engineer recommended that the Water Board approve the bid and Award the contract for EQUIPMENT BID NO. 2015-11, FURNISHING AND DELIVERING SURVEYING EQUIPMENT TO THE DEPARTMENT OF WATER SUPPLY, to Hubs Hawai‘i, Inc. for \$29,900.00, and to authorize the Chairperson or Vice-Chairperson to execute the contract documents subject to review and approval of Corporation Counsel.

MOTION: Mr. Takamine moved to approve; seconded by Ms. Wilson.

The Manager-Chief Engineer said this bid was for the total station for DWS’s survey crew. He asked how old the equipment was that was being replaced.

Mr. Inaba said that the equipment was 15 years old, and was deemed irreparable. Right now, DWS is without survey equipment.

Chairperson Robinson asked if this upgraded equipment with GPS could locate boundary lines.

Mr. Inaba said yes, although there is a total station that is a lot more expensive. DWS specified what the survey team needed, and what was adequate to do the job. This total station has some GPS capabilities on it, and the specifications that DWS did for the bid were typical specs, he said. Four people picked up plans, but three of them did not submit bids. Nobody submitted a Request for Substitution, etc.

Chairperson Robinson asked if this equipment could enable the surveyor to determine a boundary line pretty easily; he asked if the equipment would help DWS put its meters outside the boundary line.

Mr. Inaba confirmed this.

The Manager-Chief Engineer said that it would enable DWS to stake out property lines, such as when DWS needs to do its own subdivisions for acquiring property. DWS does all of that in-house, including even the subdivision application.

Mr. Inaba said that typically, DWS goes out and stakes out boundaries for the Operations Division in cases of complaints that a meter is on somebody’s private property.

Chairperson Robinson asked if DWS has a licensed surveyor on the staff.

Mr. Inaba confirmed this.

ACTION: Motion carried unanimously by voice vote.

6) NORTH HILO:

A. JOB NO. 2015-1038, LAUPĀHOEHOE DEEPWELL A REPAIR:

This project generally consists of the replacement of the existing well vertical hollow shaft motor, pump, column pipe, combination couplings, lineshaft, lineshaft bearings and all appurtenant equipment, such as strapping and cable guards, and chlorination of the well and pumping assembly, in accordance with the plans and specifications.

Bids for this project were opened on December 3, 2015, at 1:00 p.m., and the following are the bid results:

Bidder	Bid Amount
Beylik Drilling and Pump Service, Inc.	\$295,405.00
Derrick's Well Drilling and Pump Services, LLC	\$218,000.00

Project Costs:

1) Low Bidder (Derrick's Well Drilling and Pump Services, LLC.)	\$ 218,000.00
2) Contingencies (10.0%)	<u>\$ 21,800.00</u>
Total Cost:	<u>\$ 239,800.00</u>

Funding for this project will be from DWS's CIP Budget under Deepwell Pump Replacement. The contractor will have 180 calendar days to complete this project. The Engineering estimate for this project was \$184,000.00.

The Manager-Chief Engineer recommended that the Board award the contract for JOB NO. 2015-1038, LAUPĀHOEHOE DEEPWELL A REPAIR, to the lowest responsible bidder, Derrick's Well Drilling and Pump Services, LLC, for their bid amount of \$218,000.00, plus \$21,800.00 for contingencies, for a total contract amount of **\$239,800.00**. It is further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

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

The Manager-Chief Engineer said that this was a standard lineshaft deepwell repair, involving the replacement of the motor, pump, appurtenant fittings, couplings and column pipe.

Mr. Balog asked who set the 180 calendar days for completion.

The Manager-Chief Engineer said that DWS set the time frame.

Mr. Balog said that he asked was because the Board gets so many time extension requests. He asked if DWS consults with contractors to see if they can really meet the time frame.

The Manager-Chief Engineer said it is a balancing act. DWS does not set its contract completion dates as the best-case scenario, because that rarely happens. At the same time, DWS does not want to extend the completion date too far out, to the point that the date does not meet the Department's needs to get the well back in service. The completion date is based on the engineering staff's past history, the scope of work, the type of equipment, etc. The frequent requests for time extensions are indeed a concern that DWS is addressing; DWS is striving to get better at it, although the Department does not get it 100 percent all of the time, he said.

Mr. Ikeda said that DWS holds pre-bid meetings with contractors; if a contractor has a problem with the number of days set, the contractor normally says something.

The Manager-Chief Engineer said that aside from the pre-bid meetings, contractors are always free to send in a Request for Information (RFI) prior to the bid opening, in which they can state

that there is not enough time to meet the deadline. The burden is on the contractor to let DWS know, so that the contract documents can be adjusted accordingly, he said.

Mr. Balog said he was curious because there are so many requests for time extensions.

The Manager-Chief Engineer said that DWS scrutinizes the requests. He said that he would be explaining some of the subsequent time extension requests on today's Agenda.

Mr. Arikawa said he understood why the next Agenda Item has a time extension; the request arose from safety concerns.

Mr. Balog said he understand that, too.

Mr. Takamine commended the DWS staff for being hands-on during the pre-bid process, keeping the communication lines open to the contractors. He appreciated that DWS sets the expectations during the pre-bid meeting.

Ms. Lee Loy asked if DWS gets major challenges from bidders.

The Manager-Chief Engineer indicated that this was not the case.

Ms. Lee Loy said that is a really big indication that DWS is being collaborative with bidders.

The Manager-Chief Engineer thanked Ms. Lee Loy for raising that subject; DWS is proud that no major challenges have arisen.

Ms. Lee Loy said that DWS has a really good process which helps avoid challenges.

ACTION: Motion carried unanimously by voice vote.

B. JOB NO. 2005-870, LAUPĀHOEHOE (MANOWAI'ŌPAE) 0.5 MG RESERVOIR:

The contractor, Yamada Paint Contracting, Inc., dba GW Construction is requesting a contract time extension of 25 calendar days. This is the second time extension request for this project.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	10/18/2015	01/08/2016	82	Inclement weather, as well as new access easement
2	01/08/2016	02/02/2016	25	Inclement and unworkable weather conditions (6 working days or 8 calendar days) and our request to stop work to address electrical safety concerns (additional 17 calendar days)
Total Days (including this request)			107	

The contractor's time extension request of 6 working days is in concurrence with the Department's tally of reported rain-outs. The 17 additional calendar days are requested due to DWS's request to stop work due to safety concerns regarding the proximity of the crane to high voltage power lines.

The Manager-Chief Engineer recommended that the Board grant this contract time extension of 25 calendar days to Yamada Paint Contracting, INC. (GW Construction) for JOB NO. 2005-870,

LAUPĀHOEHOE (MANOWAI‘ŌPAE) 0.5 MG Reservoir. If approved, the contract completion date will be extended from January 8, 2016, to February 2, 2016.

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

The Manager-Chief Engineer said that the Department hears the Board loud and clear regarding time extensions, and is really trying to improve on them. At internal meetings, staff gives the Manager-Chief Engineer the information, and the request has to be justified internally. DWS does not take time extension requests lightly; the project has to be on the critical path; it has to be a vital component, or the delay may something imposed on the contractor by DWS. In this case, there are rain-out days involved, as well as a safety issue. DWS’s project engineer noticed that the crane boom appeared to be rather close to the power lines, so the decision was to stop work on the project, so that the general contractor could consult with HELCO. He said he fully supports the decision to wait until HELCO could put in the proper mitigative protection on the power line, in order to continue work. This project was definitely on the critical path, because without that piece of work being done, the subsequent work could not be completed, he said. This time extension is primarily safety-driven, the Manager-Chief Engineer said.

Mr. Balog commended DWS for putting safety first, and for looking out for everybody involved.

Chairperson Robinson asked if that safety concern was raised by DWS, and not by the contractor.

The Manager-Chief Engineer said that typically there is a DWS project engineer or an inspector on site almost every day, especially if something major is going on.

Mr. Inaba said that it was DWS’s project engineer who told the contractor to stop work; he did not want them to continue to put up their crane to lift the well, because it was very close to the high-voltage power lines. DWS immediately contacted HELCO, who said that they would need to come in and shield the lines. In many cases, such safety issues are pointed out by the contractor, but in this case it was definitely DWS’s project engineer who decided to stop the work.

Mr. Arikawa asked who the project engineer was.

Mr. Inaba said it was Mr. Jason Killam.

ACTION: Motion carried unanimously by voice vote.

7) SOUTH KOHALA:

A. **JOB NO. 2014-1015, ĀHUALOA DEEPWELL REPAIR – REQUEST FOR TIME EXTENSION:**

The contractor, Derrick’s Well Drilling and Pump Services, LLC, is requesting a contract time extension of 105 calendar days. The Department had requested change order work for increasing the pump setting depth to resolve issues of entrained air from this well, requiring extending the motor flat lead on the existing motor. This action has delayed the installation work, and was beyond the control of the contractor.

The Manager-Chief Engineer recommended that the Board approve a contract time extension of 105 calendar days for JOB NO. 2014-1015, ĀHUALOA DEEPWELL REPAIR. If approved, the contract completion date will be revised from December 31, 2015, to April 15, 2016.

MOTION: Mr. Takamine moved to approve; seconded by Ms. Wilson.

The Manager-Chief Engineer said that this time extension is due to DWS staff and the project consultant. This is the project with the entrained air coming out of the well, he said. DWS needed time to consult with the consultant, Mr. Tom Nance, on how to deal with the problem. DWS had thought this would be a straightforward well repair, but it was determined in consultation with Mr. Nance that DWS should actually lower the pump by about 140 feet. That would change the scope, and some things needed to be added, such as the motor flat lead.

Mr. Takamoto said that the existing flat lead was designed for the existing well assembly, but because DWS has to set the pump a little deeper, the cable is too short. As a result, DWS needed a Change Order to extend the flat lead, and there was an associated time period needed to complete that work, he said.

The Manager-Chief Engineer corrected himself on the additional depth, saying the pump would need to go 40 feet deeper; this would mean an additional couple of lengths of pipe column as well. DWS basically put the brakes on the contractor, he said. DWS did not want to just send the pump down the hole amid this problem of “entrained air.” DWS consulted Mr. Nance, the hydro-geologist, and he recommended the above-mentioned measures. The extra equipment, meanwhile, needs to be manufactured; the contractor is therefore asking for this time extension.

Mr. Elarionoff asked what “entrained air” is.

The Manager-Chief Engineer explained that after DWS pulled out the pump, staff sent a camera down the hole, and it was discovered that there were fine bubbles present in the water that DWS was distributing to the community. The air bubbles were apparently coming in from the ground; when the pump pressure rises and water is pumped to the surface, the fine bubbles get entrained in the water. These bubbles are not like normal ones, which float to the surface and dissipate, leaving clear water. These fine bubbles tended to stay in the water, even in distribution; that is what is known as “entrained air,” he said.

Mr. Inaba said the water tends to look milky, but if it is left to sit for a while, the bubbles make their way to the surface and the water clears up.

Mr. Elarionoff asked for confirmation that the bubbles are coming from the ground.

The Manager-Chief Engineer confirmed this.

Mr. Inaba said that DWS did some tests to make sure that the bubbles were not some kind of gas; DWS’s lab did some sampling.

The Manager-Chief Engineer noted that carbon dioxide would be corrosive, and the presence of methane would be a sign of decomposing matter. Neither gas was present.

Mr. Inaba said that it may be a pocket of air trapped in the ground below the water level.

The Manager-Chief Engineer said this was an unusual circumstance for DWS.

Mr. Arikawa asked what kind of additional cost would be associated with this work.

The Manager-Chief Engineer said it would cost about \$4,000.00.

ACTION: Motion carried unanimously by voice vote.

8) NORTH KONA:

A. **JOB NO. 2015-1040, KAHALU‘U A DEEPWELL REPAIR:**

This project generally consists of the replacement of the existing well vertical hollow shaft motor, pump, column pipe, enclosing tube, lineshaft, lineshaft bearings 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 December 3, 2015, at 1:30 p.m., and the following are the bid results:

Bidder	Bid Amount
Beylik Drilling and Pump Service, Inc.	\$284,400.00
Derrick’s Well Drilling and Pump Services, LLC	\$248,901.23

*Bids were corrected due to an obvious arithmetic error, in accordance with DWS General Requirements and Covenants and Hawaii Administrative Rules.

Project Costs:

1) Low Bidder (Derrick’s Well Drilling and Pump Services, LLC)	\$ 248,901.23
2) Contingencies (9.9%)	<u>\$ 24,798.77</u>
Total Cost:	<u>\$ 273,700.00</u>

Funding for this project will be from DWS’s CIP Budget under Deepwell Pump Replacement. The contractor will have 240 calendar days to complete this project. The Engineering estimate for this project was \$268,000.00.

The Manager-Chief Engineer recommended that the Board award the contract for JOB NO. 2015-1040, KAHALU‘U A DEEPWELL REPAIR, to the lowest responsible bidder, Derrick’s Well Drilling and Pump Services, LLC, for their corrected bid amount of \$248,901.23, plus \$24,798.77 for contingencies, for a total contract amount of **\$273,700.00**. It is further recommended that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality by Corporation Counsel.

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

The Manager-Chief Engineer noted that Mr. Takamoto was right on with the Engineering estimate once again.

Chairperson Robinson asked how soon work could start.

The Manager-Chief Engineer said that as soon as the Board approves and awards the project, DWS Contracts staff will send out the letter notifying the contractor.

ACTION: Motion carried unanimously by voice vote.

B. **JOB NO. 2014-1019, HŌLUALOA DEEPWELL REPAIR – TIME EXTENSION:**

The contractor, Derrick’s Well Drilling and Pump Services, LLC, is requesting a contract time extension of 55 calendar days. The contractor had submitted a request for inspection of substantial completion on September 4, 2015; Department staff verified that all installation work had been successfully completed as stated by the Contractor. Chlorination/start-up testing and

efficiency testing were delayed due to reinstallation of starter equipment by Department personnel. While conducting start-up testing, issues with high amps arose, prompting the extraction of the well assembly to diagnose the source of failure, leading to the need for the additional time.

The Manager-Chief Engineer recommended that the Board approve a contract time extension of 55 calendar days for JOB NO. 2014-1019, HÖLUALOA DEEPWELL REPAIR. If approved, the contract completion date will be revised from January 31, 2016, to March 26, 2016.

MOTION: Mr. Balog moved to approve; seconded by Ms. Wilson.

The Manager-Chief Engineer said that this time extension was caused by the Department. DWS is trying to be prudent by doing some work in-house with some of the starter equipment. The contractor had most of the work done, well within the time frame of the project. The contractor could not get the pump efficiency and the bacteriological testing done, because DWS could not start the pump without the starter equipment that DWS is trying to install in-house. DWS is trying to do what it can in-house in the interests of being more financially efficient, he said. In this case, it caused the delay to the contractor, because he could not finish up his work pending installation of the starter equipment. That is why DWS had to ask the contractor to request a time extension, in order to complete the final portions of his work, the Manager-Chief Engineer said.

Mr. Elarionoff observed that when the contractor is late, he gets fined, whereas when DWS is late, nothing happens.

The Manager-Chief Engineer said that DWS is held accountable by the Board, to whom the Department must explain any delays. DWS does not charge itself liquidated damages, but DWS plant staff know that this well needs to get back on line. Staff are doing whatever they can to get the well back online, in a timely fashion, he said.

Mr. Elarionoff said he asked because the contractor, who is waiting to finish the job, has his schedule thrown off by delays like this; it affects when he can get on to his next job.

The Manager-Chief Engineer said yes, DWS understands that, and the contractors let the Department know when the occasion arises.

ACTION: Motion carried unanimously by voice vote.

9) SOUTH KONA:

A. AGREEMENT RE: ASSIGNMENT AND TRANSFER OF RIGHTS TO 50 KEALAKEKUA WATER SOURCE AGREEMENT WATER COMMITMENT UNITS:

1250 Oceanside LLC (Oceanside) has 51 Kealakekua Water Source Agreement (KWSA) equivalent water units that are currently assigned to Tax Map Key (TMK) 8-1-035:001. Oceanside is requesting to transfer the rights of 50 units from this assignment, to Kalukalu Properties (Kalukalu), the owners of TMK 8-1-004:052 and 075. The assignment and transfer of the 50 units would be contingent only upon the approval of the proposed 4th Amendment to Well Site Development Agreement (4th Amendment).

DWS staff has reviewed the request for the transfer of 50 water units per the KWSA, and finds it in accordance with the terms of the KWSA. However, the terms of the 4th Amendment as proposed by Oceanside have not been agreed to by DWS staff. Staff has proposed revisions to the 4th Amendment that have not been agreed to by Oceanside.

The Manager-Chief Engineer recommended that the Water Board **not approve** the AGREEMENT RE: ASSIGNMENT AND TRANSFER OF RIGHTS TO 50 KEALAKEKUA WATER SOURCE AGREEMENT WATER COMMITMENT UNITS, due to lack of agreement on the 4th Amendment between Oceanside and DWS.

Chairperson Robinson asked if the Board was going to handle both Item 9(A) and Item 9(B) together.

Ms. Self said the Board would handle Item 9(A) first.

MOTION: Mr. Arikawa moved to not approve; seconded by Ms. Lee Loy.

The Manager-Chief Engineer said that the Department does not have a problem with the transfer of the 50 units, because it is within the scope of the Kealakekua Source agreement. However, because the transfer of the 50 units is tied to the 4th Amendment, the next Agenda Item, on which DWS could not come to an agreement, DWS has no choice but to recommend against approving the transfer of the 50 units.

Mr. Arikawa said the Board should go now to the 4th Amendment.

Chairperson Robinson said okay, the Board would take up the 4th Amendment, and then vote on both Item 9(A) and Item 9(B).

Ms. Self said that the Board could table Item 9(A), and then have a discussion on the 4th Amendment, i.e., Item 9(B).

MOTION: Mr. Arikawa moved to table Item 9(A), pending discussion of Item 9(B); seconded by Mr. Takamine.

Mr. Elarionoff asked for clarification regarding the discussion at the previous meeting, where the Board decided not to approve the 4th Amendment until the Board was satisfied that it was completed; he asked if this discussion was just a follow-through with what the Board agreed to at the last meeting.

Chairperson Robinson confirmed this, saying that once the Board tables Item 9(A), the Board can have the discussion on the 4th Amendment, and then return to Item 9(A).

ACTION: Motion carried unanimously by voice vote.

B. 4th AMENDMENT TO WELL SITE DEVELOPMENT AGREEMENT, 1250 OCEANSIDE (HŌKULIA) WELLSITE DEVELOPMENT AGREEMENT:

The developers: 1250 Oceanside, LLC (Oceanside), Kalukalu Properties (Kalukalu), and William N. Greenwell (Greenwell) have submitted a proposed “4th AMENDMENT TO WELL SITE DEVELOPMENT AGREEMENT” (4th Amendment). The original agreement and subsequent supplemental and amendments are still in effect. DWS and Oceanside have met regarding the 4th Amendment, and DWS proposed to include voluntary termination language related to the completion of Well Site Improvements; DWS also requested language indemnifying DWS as well as the Water Board, on behalf of all parties (Oceanside, Kalukalu, and Greenwell).

The Manager-Chief Engineer recommended that the Water Board **not approve** the 4th AMENDMENT TO WELL SITE DEVELOPMENT AGREEMENT, as submitted by Oceanside, due to lack of agreement between Oceanside and DWS.

MOTION: Mr. Arikawa moved to not approve; seconded by Ms. Lee Loy.

Chairperson Robinson called to the microphone Mr. Steve Lim, representing 1250 Oceanside, LLC.

Mr. Lim noted that with him was Mr. Jason Knable from his office, along with Mr. Ken Melrose, representing W. Greenwell and Kalukalu Properties, the other private party to this agreement. Also in the audience were Mr. and Mrs. A.D. Ackerman, who Mr. Lim said were interested in this proceeding.

The Manager-Chief Engineer said that there has been quite a lot of back-and-forth regarding the 4th Amendment. DWS felt strongly that they needed to include in this 4th Amendment a provision for a commitment from the developer to have the wellsite improvements completed in a timely manner. That is the biggest point of disagreement between DWS and 1250 Oceanside, he said. DWS had requested that the wellsite improvements be completed with a four-year time frame, by December 31, 2019. DWS is concerned that DWS might be adversely affected at some point in the future, should the wellsite improvements not be done in a timely manner; DWS wants some kind of termination clause in the agreement. The Manager-Chief Engineer explained that when someone drills a well, one does not put two wells close to each other, for fear that the wells will interact if both are pumped at the same time. The Kalukalu Exploratory Well was placed so that it could pump into DWS's Konawaena Tank; the well is directly mauka of the tank, which is above Konawaena High School. If the wellsite improvements are in abeyance indefinitely, with no deadline for doing the improvements, DWS would be in a predicament if it needed another well in the system because it would need to put that well as far as a quarter-mile away. DWS would need to find property to put that well on, and would also have to construct a new water tank, transmission lines, etc. That is what DWS is concerned about, should things be left as proposed, at eight years, he said. The original agreement was executed in 2007, and now, eight years later, all that DWS has is an exploratory hole. To extend that time frame *another* eight years, with future possibilities for time extensions, means that DWS does not see the light at the end of the tunnel. The urgency of this matter was brought home with the failure of the Haleki 'i Well, the Manager-Chief Engineer said. Therefore, DWS anticipates the need for a well in this vicinity, sometime in the near future. The lack of a firm commitment to complete the wellsite improvements in a timely manner puts DWS in an adverse situation.

Mr. Lim said he understood DWS's position, and everybody concerned is in favor of DWS having adequate water to service South Kona properties. However, the issue for 1250 Oceanside is the history of the development. He said the history is important because, unlike other DWS water agreements, the wellsite development agreement from 2007, amended three times through 2010, does not have any completion deadline for the well. He noted that 1250 Oceanside has gone through this subdivision, the sale of more than 300 lots in the project, the bankruptcy, etc., and the developer has made all kinds of investments. One of the things that 1250 Oceanside did assume during the bankruptcy was this wellsite development agreement, to which the County was also a party. Mr. Lim said that DWS perhaps should have said at that point in time that they needed a deadline, but DWS did not say anything. He said the developer had expended time and money, based on government assurances that the developer can proceed without a deadline for doing the improvements. Now, for the last month or so, DWS is telling the developer that DWS wants a deadline on the well, he said. That is like a bank suddenly calling a 30-year mortgage holder that he has to pay a balloon payment on the loan; that is the net effect of what DWS is asking of the developer, Mr. Lim said. The developer has spent a lot of time and money in trying to get to the point where 1250 Oceanside is sitting in front of the Board today; the deadline on this well is a big deal for the developer. It is a significant financial expenditure to do the improvements, which 1250 Oceanside was not going to put into the ground for at least another five years or more. Mr. Lim noted that the developer already has the water for Phases 1 and 2,

and a part of Phase 3 coming up. It is a significant change to tell the developer that he has to now move forward on an expenditure of \$3-4 million within **four** years, instead of within five to seven years, he said. He noted that 1250 Oceanside had submitted to DWS its last draft of the 4th Amendment last Friday; he offered to walk the Board through that last draft. Mr. Lim said that it was important for the Board to understand why 1250 Oceanside is resisting the imposition of this new deadline on the developer.

The Manager-Chief Engineer said that there was a time frame in the original agreement; the time frame for the completion of the water system improvements, which included the wellsite as well as all of the off site improvements, was December 31 of this year. He noted that there is a termination clause for the Greenwells to walk away. Under those provisions, the Water Board can terminate if 1250 Oceanside or the Greenwells do not fulfill the material terms or conditions of the agreement. The Manager-Chief Engineer said that neither DWS nor the Water Board at any time thought that this agreement to complete the improvements was open-ended; that was never the intent. He said that just because the Department did not set any time frame back then, that is not cause for DWS to adhere to that same stance now. The Manager-Chief Engineer said he had twice spoken with the developer, Mr. Duane Grimsman. The Manager-Chief Engineer said that while he understood Mr. Grimsman's concerns, it is the Manager-Chief Engineer's duty to do what is in the best interests of the Department, the Board and DWS's customers. DWS cannot compromise on allowing DWS to be adversely impacted, he said. A provision was inserted into the latest version, under Item 8, to allow for yearly time extensions if progress is being made; DWS has no objection to such yearly time extensions *provided that progress is being made*. The Manager-Chief Engineer said it is never DWS's intent to slam the door on the developer; DWS tries to work cooperatively so that both sides can get what they need. It may be that not everybody gets what they *want*, but hopefully, both sides can get what they **need**. The bottom line for DWS is that there is an existing agreement executed in 2007, along with three supplementals; those are all in place. However, the 4th Amendment that came in from Mr. Lim on Friday afternoon is decidedly slanted in the developer's favor, and not in the Department's favor. Therefore, DWS is not in agreement with the 4th Amendment that the Board is seeing today, the Manager-Chief Engineer said.

Chairperson Robinson invited Mr. Lim to walk the Board through the 4th Amendment.

Mr. Lim said the 4th Amendment under discussion was the version with red lines to show changes and deletions from prior drafts. The first change was a technical one on Page 2, defining the parties to the agreement. Page 1 of the 4th Amendment is the face sheet listing all of the TMKs that will be recorded; these TMKs are different from the 2007 Wellsite Development Agreement because since that time, 1250 Oceanside and the Greenwells subdivided into new, more numerous lots. He said that Mr. Knable double- and triple-checked the TMKs; if the Board approves the 4th Amendment, 1250 Oceanside will sit down with Mr. Inaba of DWS to make sure that Mr. Inaba understands what properties are covered on the face sheet.

Chairperson Robinson asked if the Ackerman properties are included in the face sheet.

Mr. Lim confirmed that the Ackerman properties are the first set of TMKs, starting with 7-9-012. Referring to the Background and General Information section on Pages 2 and 3, Mr. Lim said it was a reiteration of what had happened to date, including the change of ownerships on the Greenwell side. The Greenwells who were referred to in the original agreement are now defined as W. Greenwell and Kalukalu Properties, who are represented by Mr. Melrose.

Item No. 3, on Page 4, deals with Ratification of Agreement. In prior amendments to the 2007 Wellsite Development Agreement, some documents were not recorded, while some were; it was a

mish-mash. Mr. Lim said that Item 3 essentially says that no matter what happened in terms of recordation, etc., the parties agree that the Agreement continues to be a valid agreement, binding on each of the parties. 1250 Oceanside agreed to DWS's request to **strike out** the following language: "and (iii) any failure by Oceanside to have completed the construction and testing of the Exploratory Well prior to the Effective Date of this Fourth Amendment shall not be deemed to be a default under the Agreement."

Item 4, on Page 4, is a recognition, Mr. Lim said. He said the only time frame that 1250 Oceanside had in the original Wellsite Development Agreement was the deadline to complete the Exploratory Well, which was completed and acknowledged by DWS in the Department's June 8, 2011, letter to Oceanside.

Item No. 5, labeled Amendment of "Off Site Improvements – Increment 1," "Off Site Improvements – Increment 2," and "Off Site Improvements," is a recognition of the DWS's request for a deadline for completion of the Wellsite Agreement, Mr. Lim said. He asked the Board to turn to Page 6, Item 8, labeled Amendment of Water Board's Termination Right, saying that it dovetails with Item 5. Mr. Lim said that this Item is primarily DWS language that recognizes that there is going to be a new deadline of December 31, 2019, for dedication of the wellsite improvements to the Water Board. Mr. Lim said that DWS only needs to take the water from the well to its Konawaena Tank, which is a short run; 1250 Oceanside is agreeing to do a "Wellsite Improvements – Increment 1" by that deadline. That is four years from now, with one-year time extensions that *may* be granted, provided that 1250 Oceanside proceeds diligently. 1250 Oceanside wants that word "*may*" changed to "**shall**." 1250 Oceanside does not want DWS to have the discretion to change its mind on granting the time extensions; keeping that word "*may*" in would give DWS leeway to demand that the well be done right now, Mr. Lim said. 1250 Oceanside is willing to front-load the \$3 or 4 million expense to do the well, but the developer needs some certainty that they will have time to proceed, he said. Mr. Lim said that if they started work today and everything went perfectly, it would take three years to build and dedicate that well to the Water Board. Even within the four-year time frame, the chances are pretty slim that it will be done, he said. Mr. Lim said it will take a minimum of four years, and maybe more. That is why 1250 Oceanside is asking that the word "shall" be substituted for "*may*," he said.

Returning to Item 5 on Page 4, Mr. Lim said that he created two Increments for the Off Site Water Improvements. Increment 1 involves the water from the well through the Tom Pace property, on to the Konawaena Tank. Once that is done, 1250 Oceanside will have done all that it can do to get the water to DWS's system. The Off Site Improvements – Increment 2 will involve whatever else that 1250 Oceanside has to do to get the water to their properties; this will involve a lot of transmission lines makai to the project.

Ms. Lee Loy said she had a question regarding Increment 1 and Increment 2.

Chairperson Robinson said an explanation of that would be helpful.

Mr. Lim said that Increment 1 is designed to get the water from the Kalukalu Well to the Konawaena Tank, from which point DWS can take and utilize the water.

Ms. Lee Loy asked for confirmation that 1250 Oceanside can do that within four years.

Mr. Lim said yes, 1250 Oceanside is agreeing to that.

Ms. Lee Loy noted that Mr. Lim mentioned some of the unknown factors; she noted that this 4th Amendment has a Force Majeure clause, so that should give the developer some assurances in the event of delays for certain reasons.

Mr. Lim said that the developer is expecting the Force Majeure clause would enter into things in Increment 2, if at all. He noted that Increment 2 involves taking the water much further. He did not expect anything bad to happen in Increment 1, whereby the developer is taking the water a pretty short distance from the Kalukalu Well, through the Pace property, to the Konawaena Tank. 1250 Oceanside is hoping that can happen within that four-year time frame, Mr. Lim said. Once Increment 1 is done, DWS will have accomplished its goal of getting water into its system.

Chairperson Robinson asked if Increment 1 entailed putting pipe into the well.

Mr. Lim confirmed this. It would involve putting in a pump, electricity, etc., and would also involve construction of the control building, installation of the SCADA system. In other words, the work would involve everything the developer must do for their production well, he said. This will not be an inexpensive proposition.

Chairperson Robinson asked approximately how much it would cost.

Mr. Lim said it would cost roughly \$2 million.

Ms. Lee Loy asked if that was the definition of what the developer will do in Increment 1.

Mr. Lim confirmed this. He said that Increment 2 is everything else that 1250 Oceanside, W. Greenwell, and Kalukalu Properties need to do to get water to their properties. They will not get water until the improvements are done and are dedicated to the Water Board; there will be no deadline to do Increment 2, Mr. Lim said. It will be a matter of doing it when the three private parties need it.

The Manager-Chief Engineer asked for further clarification; he said he was confused, because this is all that DWS was asking for. The Department and Corporation Counsel were confused when they read the redefined "Off Site Improvements – Increment 1," which sounded as if it just meant the transmission line from the exploratory well, to the tank.

Ms. Lee Loy said she had a problem with that, too.

The Manager-Chief Engineer referred to Item 8, which talks about "Well Site Improvements – Increment 1," which lacks a definition in the agreement.

Ms. Lee Loy agreed that she had a problem with that as well.

The Manager-Chief Engineer said the Department was confused, because what it was asking for was the Well Site Improvements, which means outfitting the well, the electrical requirements the control building, etc., which would enable DWS to draw water from the hole, and put the water into the tank. That is defined in the original agreement as "Well Site Improvements," and that is all that DWS has been asking the developers to commit to, by the end of 2019, with options to extend.

Ms. Lee Loy asked if the hole is drilled.

The Manager-Chief Engineer said the hole is drilled and cased.

Chairperson Robinson asked how big the hole is.

The Manager-Chief Engineer said it has a 20-inch case.

Chairperson Robinson confirmed that the hole was cased; he asked if all that remained was the paving, etc.

The Manager-Chief Engineer said that there is quite a bit of work, which would cost DWS roughly \$3-to-5 million if the Department were to outfit it, depending on the depth of the well. That figure would be just to outfit the well, he added. This would include the requirements to get HELCO power to the site; this would cost DWS more than it would a private entity, because of all of the different requirements that DWS is subject to: OSHA requirements, regulatory requirements and procurement requirements.

Chairperson Robinson said he gets numerous calls from area residents about the water quality, etc. He noted that the nearby Haleki'i Well is down, meanwhile.

The Manager-Chief Engineer said yes, Haleki'i Well would have serviced the same area.

Ms. Lee Loy asked for confirmation that DWS is having problems with the definition of "Well Site Improvements."

Ms. Self said these are Off Site Improvements.

Chairperson Robinson asked why DWS does not call Increment 1 "On Site," and Increment 2 as "Off Site."

The Manager-Chief Engineer said that is where the confusion arose when the Department and Corporation Counsel met yesterday morning to discuss this latest red-lined version of the agreement. It sounded as if the "Off Site Improvements – Increment 1," meant just transmission pipe from an exploratory well to DWS's tank – which would not allow DWS to use the well.

Mr. Lim said yes, 1250 Oceanside was intending to include "Well Site Improvements," which is already a defined term in the agreement. 1250 Oceanside is agreeing to construct the Well Site Improvements, which are right there at the well, and which include the electrical controls and all of the other outfitting.

Chairperson Robinson asked if the developer were going to start immediately on that.

Mr. Lim said that if the agreement is approved, the developer will start immediately. He noted that doing so will be all new to the developer, but the developer is willing to make that commitment to go forward. Once the work gets off the well site, the agreement requires the Off Site Improvements to go from the well to the Konawaena Tank; that would be the Off Site Improvements – Increment 1. He said that Well Site Improvements – Increments 1 and 2, along with Off Site Improvements – Increment 1 have a time deadline.

Ms. Lee Loy noted that she was taught by a mentor to seek definitions at all times.

Mr. Lim said he believed that the parties were all in agreement in terms of what 1250 Oceanside is proposing to do. It is just going to be what 1250 Oceanside needs to do; it is a huge financial expenditure for the developer, who was not planning to undertake this for five to seven years. The developer will be effectively outfitting this well before the developer needs it for its project. Following the litigation and the bankruptcy, there is still a very big reservoir of lots that were sold but not yet built on, Mr. Lim said. Of 300 lots sold, only about 15 homes have been built. That is why the expenditure for the well now is pretty tough for the developer, but the developer

considers it so important that the developer is willing to do that, provided the developer gets what Mr. Lim said he would discuss next.

Mr. Lim moved to Page 4, Item 6, labeled Amendment of Oceanside's Indemnification; 1250 Oceanside accepts DWS's requirement for full indemnification from any and all parties, including claims by the Ackermans, Kalukalu Properties or W. Greenwell, as well as claims by lot owners within the Hokuli'a project. That indemnification of DWS and the Water Board will stay in place until dedication of the wellsite, etc. Mr. Lim said that the exception is that Oceanside will continue to indemnify DWS and the Water Board for any claims made by Ackerman Ranch, "until the end of the life of the (Equivalent Units)", which is 20 years from the date of dedication of the whole system.

Chairperson Robinson asked if the date of dedication of the whole system means the dedication to DWS of the well and the off site waterlines, as well as the easements.

Mr. Lim confirmed this. He said the idea is that once Oceanside, W. Greenwell and Kalukalu Properties get the water to their project, then the 20-year time clock starts running. Mr. Lim turned to Item 7, the Amendment of the Greenwells' Termination Right; this is the only time element that is the current documents, changing the deadline from December 31, 2015, to December 31, 2023. He said that date is significant; it is a negotiated date with the Greenwells and Kalukalu Properties, showing that Oceanside is making numerous commitments to get easements, paying money, etc. It is a big thing that the construction of the well has been moved up to a relatively sooner date, Mr. Lim said.

Chairperson Robinson asked if Mr. Melrose, as representative of the Greenwell properties, was okay with this agreement.

Mr. Melrose said that this was the first chance he had to see this agreement, but it seems to be in order; he appreciated the efforts of DWS to move up the production of the well. He said this looks like a good improvement.

Mr. Lim moved on to Page 6, Item 8, and noted the previous discussion about changing the wording from "may" grant time extensions, to "shall" grant time extensions, so long as the developer is proceeding diligently.

Page 8, Item 12, deals with the assignment of 50 water units to Kalukalu Properties. Mr. Lim said he did not think that DWS had any problems with that.

On Page 9, Item 14, there is a clarification that each of the private parties have to grant their respective easements, and construction rights-of-entry over their respective lands.

Mr. Lim said that the Force Majeure clause in Item 20 was important for the developer, because the developer has a lot of land to cover with the full Increment 2 portion of the water; the developer has experienced delays from utilities like HELCO and other parties that the developer can do nothing about. That is why Oceanside is trying to beef up the Force Majeure clause, and included any delay caused by Oceanside's negotiations with Ackerman Ranch over their participation or non-participation in the water agreement, Mr. Lim said. That clause will take it all the way through any final judgment on any appeals, he said.

Chairperson Robinson asked if Oceanside had worked with Ackerman Ranch on this.

Mr. Lim said no. He said he thinks the Force Majeure clause covers them; this clause is primarily intended to cover DWS and the Water Board. What Oceanside does with Ackerman Ranch will be totally separate, he said. Oceanside is asking for this provision in the Force Majeure clause in

case the developer gets stuck in court, which could drag on five years; that would be a Force Majeure event and would stock the time clock.

Mr. Lim said that the last change involved the Commission on Water Resource Management (CWRM) petition to designate a Ground Water Management Area. The language is purely that of Corporation Counsel, so that should be okay to all concerned.

Chairperson Robinson asked if the Ackerman parcel was in the Keauhou Aquifer.

Mr. Inaba said he did not know if that parcel was in the Keauhou Aquifer; he said that Kalukalu Well is not in the Aquifer.

Ms. Lee Loy asked whether the language regarding a Ground Water Management Area was inserted because of the possibility of a designation in the area.

Mr. Inaba said that a petition to designate could arise with any aquifer.

Mr. Lim proceeded to language proposed by Oceanside in Item 21, saying that upon completion of the Increment 1 Improvements and acceptance by the Water Board, DWS may use a maximum of 15 percent of the maximum pump rate of the 1,000 (sic) gallons per day. He said that the reason that Oceanside included that language is because Oceanside is worried that DWS might over-allocate the use of the water from the well if DWS is allowed to pump 100 percent. If that happened, Oceanside would be in trouble, Mr. Lim said. He said it was not that he did not trust the Manager-Chief Engineer, but the language would be a protection for Oceanside. Mr. Lim said he did not know how much water DWS needs to use; he estimated that DWS would use roughly 150,000 gallons per day. He said he would assume that that would satisfy some of DWS's requirements. Mr. Lim said that this was a discussion item that the parties never talked about.

Turning to Item 22, Mr. Lim said it involved what Oceanside needs in order to do the up-front commitment. He said that part of the overall water plan for the Hokuli'a project was that an additional irrigation well would be needed. Oceanside is asking the Water Board to approve Oceanside's use, at its sole discretion, of the equivalent units that Oceanside gets out of this water agreement for potable water, irrigation water or blending potable and non-potable water for irrigation. This use of the equivalent units would come after Oceanside completes all of the Off Site Improvements, i.e., Increments 1 and 2, and would be after acceptance of the improvements for dedication, Mr. Lim said. This would eliminate the need for Oceanside to get another irrigation well within the near future, he said. It makes financial sense for Oceanside to now go forward and commit to do the up-front work of the Kalukalu Well, he said. This would be a trade-off, he said. Doing an irrigation well is pretty expensive, costing about \$1 million. If Oceanside is allowed to use the equivalent units for all of these purposes (i.e., consumptive as well as non-consumptive uses), it *should not matter* what Oceanside does with the water within its project, Mr. Lim said. He said that Oceanside thinks that is a fair trade-off for Oceanside to spend the money upfront on the potable well.

Chairperson Robinson said that as a point of clarity, he would refer to the improvements as On Site and Off Site. On Site Improvements means doing the well, putting in the pipe to DWS's tank. This would enable DWS to service all of its customers in the area. He said that he would refer to that as On Site, or Increment 1. The Off Site Improvements involve installation of the lines that go all the way down to the Hokuli'a project. The Chairperson asked Mr. Lim for confirmation that Mr. Lim is talking about using for irrigation the excess water that occurs after the completion of Off Site Improvements – Increment 2. He asked how far out that time frame would be.

Mr. Lim said that it could be seven years plus. Oceanside would not be able to use any water from the Kalukalu Well until the lines got down to the Hokuli'a project.

Chairperson Robinson asked for confirmation that at that point, Oceanside would have excess water for use.

Mr. Lim said that hopefully there would be enough water; he thought that was the trade-off for Oceanside. Oceanside would be able to use the water, while eliminating the need to do another irrigation well; this would follow DWS and the Water Board's duty to protect the public trust in water. It makes sense for Oceanside to move up its expenditure to do the potable Kalukalu Well, and hopefully, everyone gets what they want, Mr. Lim said.

Ms. Lee Loy said she had a question about the 15 percent stipulated in the agreement.

Mr. Lim said yes, that is one of the significant issues that Oceanside has in the agreement.

Ms. Lee Loy said that Item 21 seems to be talking about DWS getting only 15 percent of the water. She noted that Item 5 identifies Increment 1 as On Site, and Increment 2 as Off Site; meanwhile, Item 8 talks about the December 31, 2019 deadline.

The Manager-Chief Engineer said this line-by-line negotiation of the agreement -- at a Board meeting -- is something that the Department has been trying to avoid. However, if the Board wishes to go through it line-by-line, the Manager-Chief Engineer would address it. This is not the Department's preferred method, but he thanked the Board for its forbearance.

Turning to Item 5, the Manager-Chief Engineer said that DWS and Corporation Counsel met yesterday to discuss this red-lined agreement received on Friday. There was confusion about what Off Site Increment 2 was, and what Well-Site Improvements -- Increment 1 was. The Manager-Chief Engineer said that today he was hearing Oceanside's definition of Off Site Increment 1 as being equal to what DWS was asking for under Well-Site Improvements, i.e., outfitting the well, electrical controls, transmission to DWS's tank, etc. If that is the case, the main thing is that DWS understands what these defined terms are.

Mr. Lim said that the reason why Oceanside used the term Off Site Improvements -- Increment 1 is that *technically*, the transmission line portion, leading from the tank site to the Konawaena Tank, is *off* the wellsite. Therefore, the connection line would be off site, he said.

Chairperson Robinson said that for DWS, **on site** means the well and the transmission line, which is only 150 to 600 feet.

Mr. Lim agreed that it is a very short distance, but it is technically *off* the wellsite.

Chairperson Robinson said yes, it is off the wellsite, but it is very short, and it will get dedicated to DWS.

Mr. Lim said that Oceanside intended to do the Wellsite Improvements, and then Oceanside will do the Off Site - Increment 1, which is whatever it takes to get the water to the tank.

Chairperson Robinson said that was really a defined term, but invited Mr. Lim to go ahead.

The Manager-Chief Engineer said it did sound like defined terms.

Mr. Elarionoff said that he would prefer that the parties go back and talk the whole thing over, instead of involving the Board here.

Chairperson Robinson said he thought it was good to have the evolving discussion happen here, right now; it is helping people understand what is really a commonplace agreement.

Mr. Lim said there is a time element involved here; on December 31, 2015, W. Greenwell and Kalukalu Properties' right to terminate this agreement expires. If W. Greenwell and Kalukalu Properties do not terminate, they will waive; Oceanside does not want to put them in such a position, Mr. Lim said. It is understood that W. Greenwell and Kalukalu Properties want this project to go forward, and therefore, Oceanside would like to get the Board to act before the deadline.

Mr. Elarionoff again expressed dismay at hashing it out here.

Mr. Lim said he did not think the parties were too far off, with the exception of a few issues. He said the parties were close enough that they could agree *in concept*; the Board could approve the time extension and Oceanside could submit an updated draft agreement, based upon today's discussion and the Board's action today.

Mr. Elarionoff said he was bothered by the idea of agreeing in concept, without sorting out the nitty-gritty details.

Chairperson Robinson said that all of the people who are involved in working out the nitty-gritty details are here today. He believed that by having the discussion here now, a collective understanding could be reached, and greater progress could be made, than by leaving it in abeyance with bits and pieces stitched together later. The Chairperson said that Ms. Self of Corporation Counsel has been reviewing the document; Mr. Lim is here representing the developer, and the Manager-Chief Engineer has been playing shuttle diplomacy back and forth.

Ms. Self suggested that if the Board plans to pass this agreement today, everything should get cleared up and put into writing; this would be necessary so that everybody is sure that the agreement says exactly what the Board understands it to say. This is a really critical point, she said.

Mr. Elarionoff said that it would be in reality, then, not "in concept."

Ms. Self confirmed this.

The Manager-Chief Engineer said that on Item 6, DWS does not have any issues with that, even though DWS had proposed different language; that item was consolidated at Oceanside's request, and DWS is okay with that.

Turning to Item 8, the Manager-Chief Engineer said that this was a matter of defined terms. If Item 8 means getting the well to produce water and feed the tank, that is what DWS has been asking for all along. It is up to the Board whether to accept the word "shall," instead of "may," in that Item. DWS considers "proceeding diligently" to mean the submittal of plans for DWS to review – not just saying that Oceanside will do the well in a couple of years. Submitting plans, securing a contractor, etc., would signify "proceeding diligently," he said.

The Manager-Chief Engineer said that there are things that are out of one's control, such as outside agencies like HELCO, but DWS disagrees with Oceanside's labeling HELCO delays as been a Force Majeure incident. He said he would discuss that issue later.

Ms. Lee Loy said she also wanted to know what "proceeding diligently" meant.

The Manager-Chief Engineer said that “diligently” is a subjective term. What Oceanside considers diligent work could differ from what DWS considers diligent work. That could be another defined term, he said.

Chairperson Robinson said that he figured that Oceanside was vested in the project the day that Oceanside wired \$20 million to the County for the road that was part of the Hokuli‘a project.

Mr. Lim said that his suggestion for an amendment to Item 8 would be the new Item 3, which talks about the Well Site Improvements and Off Site Improvements – Increment 1; this would cover everything.

Chairperson Robinson said that Increment 1 would take the water from the well to the tank.

Mr. Lim confirmed that it would take it from the well to the tank, so that covers everything.

The Manager-Chief Engineer noted that the waterline has to cross over another person’s property.

Mr. Lim said that would be the Pace property, which is not part of the wellsite.

The Manager-Chief Engineer said that the wellsite and DWS’s Konawaena Tank are not adjacent to each other; there is the Pace property in between.

Chairperson Robinson asked if DWS has the easement for the Pace property.

Ms. Self confirmed this.

Mr. Lim said this was added as an Exhibit to the agreement.

Ms. Self suggested that Oceanside just amend the definition in Item 5, to actually define Off Site Improvements – Increment 1. By doing so, it will be clear in Item 8 exactly what that includes; Ms. Self suggested even referring to the private property that the waterline crosses over.

Chairperson Robinson said this was a good point; that easement could be referred to as Attachment A or Attachment B.

Ms. Self said yes, she would make it very clear under Item 5 what Off Site Improvements – Increment 1 actually include, to alleviate any question of what that term means when it reappears in Item 8.

The Manager-Chief Engineer asked if that meant both a description and a graphic.

Mr. Lim said a rough graphic was available, which can be referred to as depicted in the Grant of Easement for Private Roadway, etc. That is the Pace land; this is an attachment already labeled as Exhibit A. It is a Grant of Easement attached to the agreement, labeled Exhibit A, he said.

The Manager-Chief Engineer turned to Item 12. DWS had been confused here because the term Well Site Improvements – Increment 1 had not been defined. DWS had been concerned that maybe Oceanside meant that Increment 1 involved just the already-completed exploratory well. DWS was concerned because there was no definition of Well Site Improvements – Increment 1.

Mr. Inaba said that term should change to “Off Site Improvements,” just to make sure.

Mr. Lim said that would be Off Site Improvements – Increment 1, which would be the first thing that Oceanside would do; Oceanside would like the Assignment to be approved at that point in time, he said.

The Manager-Chief Engineer clarified that it would be with the well outfitted and everything.

Mr. Lim said yes, it would be everything to get the water to the Konawaena Tank.

Ms. Self said that it would be exactly how Mr. Lim and the Manager-Chief Engineer described it; that description of exactly what the work entails in Increment 1 is what should go into the agreement here. That is what should go into the definition of terms, she said.

Chairperson Robinson said absolutely: it should include the pump, the electrical controls, the outfitting, the lines, etc. In other words, it should spell out exactly what will be done, he said.

Ms. Self said that Increment 2 will be all of the rest of the work; this will ensure that all of the parties are clear, and are using the same language.

Mr. Lim said that he is not an engineer, but he thought that everything that is *not* on the wellsite property is the easement that Oceanside obtained across the Pace land, that is described in the Grant of Easement attached to the agreement.

The Manager-Chief Engineer said the way this is being dealt with today is a very rare instance, but it is being handled this way in the interests of accommodating all concerned. This is a major project for everybody here, he said.

The Manager-Chief Engineer noted that DWS had wanted to delete Item 15, involving DWS's Construction Right of Entry Agreement, because it was unnecessary and covered by Item 17. However, DWS agreed to keep it in, because it was not a make-or-break deal for DWS.

Turning to the Force Majeure clause in Item 20, DWS has concerns with the added language in the first two red lines; DWS fears that this language leaves things too wide-open in terms of invoking Force Majeure. Undertaking any project involves getting permits, arranging for getting electrical power, etc., and these elements are built into the terms of any agreement or contract and delays in obtaining them are not Force Majeure events. On the other hand, unusual circumstances may arise, such as strikes and Acts of Nature; these are the events that the Force Majeure clause is intended to cover. Force Majeure does not cover delays by utilities or agencies; these are things that happen which are built into the contract or agreement. DWS does not let its contractors impose a Force Majeure clause if the contractor fails to get his building permit on time, or if HELCO fails to do its work on time. The current agreement has language that invokes Force Majeure for delays caused by Hōkūkano, HELCO, or any owners of land through which the water system must be constructed, as well as any delays arising from Oceanside's dispute with Ackerman Ranch. Putting that language into the agreement would give Oceanside an opening to delay the project; DWS's intent has been for DWS and the Water Board to be firewalled away from the dispute between Oceanside and Ackerman Ranch, the Manager-Chief Engineer said.

The Manager-Chief Engineer said that DWS has recently begun including language involving Ground Water Management Area designations, etc., and the Department sees that as a separate item – not as a Force Majeure event. He said he would prefer to see that as a separate line item in this agreement, adding that he had not yet discussed this with Corporation Counsel.

DWS cannot agree to Item 21, where there is a typo; it says 1,000 gallons per *day*. It should be 1,000 gallons per minute. He said the original agreement was based on 700 gallons per minute (GPM), or a million gallons a day; the 85/15 split stipulated there was based on a million gallons per day. The First Supplemental to the original agreement said that if DWS can outfit the well for anything greater than 700 GPM, DWS will then get 50 percent of that excess water. This red-

lined version contradicts the terms of the original agreement and the First Supplemental, so DWS cannot agree to that, the Manager-Chief Engineer said. DWS also cannot agree to this because DWS needs the flexibility to provide water for the entire community; it cannot restrict its portion of the water to just 15 percent of the pump's capacity, he said.

The Manager-Chief Engineer said that he had discussed this with the developer, Mr. Grimsman. Oceanside wants to get what they paid for, which is understandable. If Oceanside is going to pay to outfit this well, Oceanside will want to make use of it, but apparently, the developer cannot make use of it on the existing 300 lots unless they use the water for irrigation. Amid the petition regarding designation of Keauhou Aquifer and amid heightened public scrutiny, DWS is keeping a close eye on its management of public trust resources. DWS cannot agree to using a potable water well for irrigation and other non-consumptive needs under the same conditions that DWS does for consumptive use of water. Oceanside is asking for that, he said. When a customer asks to use water specifically for irrigation, DWS agrees, if water is available. In such a case, DWS enters into an agreement with the customer, who agrees to pay the highest block rate; the customer can be cut off at any time, if need be. Under those circumstances, Oceanside would be the first to get cut off, because irrigation is not what DWS's well sources are constructed for. DWS wells are constructed for consumptive, potable water use, he said. While the Manager-Chief Engineer understands what Oceanside wants, his duty is to look out for the Department and the Board, and to ensure the proper management of the public trust resources. Therefore, DWS cannot agree to the use of this well for non-consumptive use at the same basic rates that DWS provides for consumptive uses. Summing up, the Manager-Chief Engineer said that DWS cannot agree to Items 21 and 22.

Mr. Elarionoff said his question again was whether the parties would agree or not agree.

Mr. Lim said that he did not have the authority without consulting his clients, who was presumably listening to this discussion via Mr. Lim's phone. He asked the Board for a recess so that he could call his clients and also consult with Mr. Melrose here.

Chairperson Robinson said that the Board understands that Mr. Lim needs to talk to Mr. Melrose, as the year-end deadline looms.

Mr. Lim said his clients are worried that if this agreement is not finalized today, the Board's next meeting is in January. In the meantime, W. Greenwell and Kalukalu Properties may have to exercise their right to terminate the agreement, because otherwise they would totally lose that right.

Chairperson Robinson said that would mean that the well sits there, and DWS will be stuck because they will have to go a ¼ mile away to drill another well.

Mr. Elarionoff asked if the Greenwells could extend the agreement verbally.

Mr. Lim said it would need to be extended in the agreement. The Greenwells have already agreed to extend it, based on Oceanside's loan of the 50 water units from the first tranche of water units under the Kealakekua Source Agreement. Oceanside is agreeing to lend them the 50 water units from the ones that Oceanside has right now; when Oceanside dedicates the whole water system from Kalukalu, the Greenwells will give back to Oceanside the 50 units from their share. The split from the Well Site Development Agreement is 85 percent to Oceanside, and 15 percent to DWS. Out of the 85 percent that Oceanside gets, the Greenwells will get 15 percent of that.

Chairperson Robinson said that is why today's Agenda Items 9(A) and 9(B) work together.

MOTION TO RECESS: Ms. Lee Loy so moved; seconded by Ms. Wilson.

Mr. Elarionoff asked if the Board could table this Item, and continue with the rest of the Agenda. The parties could talk outside during the recess, he said.

Chairperson Robinson said that was a good idea.

Ms. Lee Loy said that this Item would be **deferred** to the end of the Agenda.

ACTION: Motion to recess carried unanimously by voice vote.

(The Board recessed at 11:33 a.m., and reconvened at 11:41 a.m.)

10) MISCELLANEOUS:

A. DEDICATIONS:

The Department has received the following document 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. RELEASE AND CANCELLATION OF GRANT OF EASEMENT

Grantor: Kohanaiki Shores, LLC

Tax Map Key: (3) 7-3-068: 041

(Formerly a portion of TMK: (3) 7-3-068: 003 and 004

Road A of SUB-09-000898)

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

MOTION: Mr. Arikawa moved to approve; seconded by Ms. Wilson.

Mr. Inaba explained that this Item involves overlapping easements at the Kohanaiki Subdivision. The developer wanted to clear title so that there was no confusion in the title reports. This involves cancelling a previous easement that is considered unnecessary, because there is another easement that overlaps it.

ACTION: Motion carried unanimously by voice vote.

B. UPDATE RE: NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:

The Manager-Chief Engineer said that DWS continues to work with CWRM staff on the Department's obligations under the Water Use and Development Plan (WUDP). There is no specific news to report regarding the petition, he said.

Ms. Wilson asked if there were any timeline regarding the next CWRM meeting.

The Manager-Chief Engineer said no, DWS only knows that CWRM staff were going to try to revise *by the end of this year* their Preliminary Findings of Fact that came out on December 10, 2014. DWS is waiting for the revised Findings of Fact, and will talk about it next month if it comes in.

Mr. Arikawa asked if there were a statute of limitations on these things.

The Manager-Chief Engineer said no.

C. **EXECUTIVE SESSION RE: NATIONAL PARKS SERVICE'S PETITION TO DESIGNATE KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:**

(No Executive Session was held.)

D. **DISCUSSION OF AMENDING DWS RULE 3-10, REGARDING LEAK ADJUSTMENTS:**

Ms. Lee Loy said she had sought comments from the Department on the draft Rule.

Ms. Self apologized that she had not given her comments.

Chairperson Robinson suggested deferring this Item to next month's meeting.

Ms. Lee Loy noted that Mr. Sumada was going to take a look at the draft Rule, and she recalled that the Board had had some questions.

Mr. Sumada said yes, the Board had had questions last month, so he had asked Customer Service Supervisor Calvin Uemura to be on hand today to provide information about leak adjustments that had been incurred in the last year or so. The Board last month had asked for statistics on leak adjustments caused by vandalism and Acts of God.

Ms. Lee Loy said the change that she made to the Rules involved an option for a consumer to be limited to only one leak adjustment; she said that she specified that option at the end of all of the options. She said that the way the Rules are framed, in their entire context, a consumer would have an opportunity for only one leak adjustment, regardless of whether it was due to someone leaving the water running, property damage or Acts of Nature. Ms. Lee Loy said that is the way the Rule is framed here in the amendment.

Mr. Uemura clarified that leaving the water on would not qualify for a leak adjustment. DWS grants the once-in-three-years leak adjustment *only* for Item 4 on Ms. Lee Loy's list. For Acts of God and vandalism, the number of leak adjustments allowed is unlimited; there is no restriction. Therefore, if a consumer had a regular leak adjustment, and then six months or so later, had a leak due to vandalism, the consumer would qualify for both leak adjustments, Mr. Uemura said. DWS most recently granted leak adjustments caused by Acts of God for damage done by Hurricane Iselle in 2014. In 2015, there were no such leak adjustments. As for leak adjustments for vandalism, DWS averages maybe six such claims a year, or one every couple of months. Mr. Uemura said he normally rejects about 50 percent of them, and this year, he has not granted any. The reason for the rejections is generally because the police report is done too long after the event, whereby the policeman is just taking a narrative from the customer; there is no in-depth report to confirm the act of vandalism itself, Mr. Uemura said. Without a detailed report, there is no proof that the leak was caused by vandalism.

The Manager-Chief Engineer asked Mr. Uemura how many adjustments DWS did during the Iselle event.

Mr. Uemura said there were 11 leak adjustments for Iselle, whose impact was focused on the Puna area, where DWS has the lowest concentration of customers. The 11 leak adjustments came to 639,000 gallons, or a total adjustment amount of about \$2,900.00.

The Manager-Chief Engineer said that information provides the Board with the perspective on how to frame this Rule Amendment.

Mr. Uemura noted that on Item 4, the adjustment is granted at 100 percent over the customer's average bill.

Ms. Lee Loy said that the way it is framed by DWS is at 100 percent, and it does not have to come to the Board; it is handled administratively. The Board never sees it, so if that is the will of the Board, Ms. Lee Loy said she was happy to re-set it at that amount, and the Department can just carry on as before.

Mr. Balog asked if anyone had abused the Acts of Nature or vandalism provisions, by coming back repeatedly to DWS for leak adjustments.

Mr. Uemura said the only example that he could recall was a customer in South Kona who claimed that his leak was caused by an earthquake. As a result, Mr. Uemura was obliged to comb through 60 days of logs of earthquakes all over the island; there were over 1,200 quakes in that area. Mr. Uemura narrowed it down to three out of the 1,200 quakes that may have been large enough to have caused the leak. However, Mr. Uemura reached the conclusion that the quakes were far enough away from the customer's property, and could not have caused the leak. DWS denied the leak adjustment, he said.

Ms. Lee Loy said in any case, a customer still has recourse to the appeals process under DWS Rules at any time.

Mr. Arikawa asked for clarification that in the case of an Act of God or vandalism, the customer can apply for a leak adjustment any number of times, whereas with a regular leak it would be only granted once in a three-year period.

Mr. Uemura confirmed this.

Mr. Arikawa asked if a customer could apply for a leak adjustment any number of times in a year, if the leaks are due to earthquakes or criminal property damage, etc.

Mr. Uemura said that under current Rules, a customer may do so, but Mr. Uemura had never encountered it. To claim a leak adjustment for Acts of God or vandalism, DWS requires documentation, such as photos and some kind of report to verify what happened.

Mr. Arikawa said he did not see that in the Rules, but that was good to know.

Ms. Self recalled that she had made comments on the Rule changes after all; she had written down some comments.

Ms. Lee Loy said that she and Ms. Self had noted cases where a consumer took a leak adjustment in the three-year period, but when faced with another, bigger leak, tried to swap the more expensive leak for the cheaper one. Ms. Lee Loy said her intent was to close that gap; to make it clear that a customer gets **one leak adjustment per customer in a period of 36 months**, i.e., three years. She said she was open to suggestion if the Board wants to keep it at the three-year period, or change it to 24 months, etc. She asked Mr. Sumada if Honolulu Water Supply grants leak adjustments once every 24 months.

Mr. Sumada said he was not sure.

Mr. Uemura said that Kaua'i Water Supply grants leak adjustments every 24 months, but only for underground leaks.

Ms. Wilson asked how DWS arrived at the Rule granting leak adjustments once every three years.

Mr. Uemura said that was in the Rules long before he came on board.

Mr. Balog asked for clarification that the Rule amendment would not stipulate only one leak adjustment in a three-year period for Acts of God or vandalism.

Ms. Lee Loy said no, she would just move that section.

Chairperson Robinson said that in that case, Ms. Lee Loy and Ms. Self can now put this Rule amendment into final form for the next Board meeting.

Ms. Lee Loy said absolutely.

Ms. Self suggested that Mr. Sumada should be in on finalizing it as well.

E. **MONTHLY PROGRESS REPORT:**

Chairperson Robinson asked for an update on the Ola‘a 6 project.

The Deputy said that he was expecting the contractor to drop off the as-built drawings today; once they are in hand, the Deputy can process the final close-outs on the project.

Mr. Balog asked if the contractor would get anything after the liquidated damages.

The Deputy said that DWS held a retainage, and the liquidated damages would be less than the retainage. DWS will subtract the liquidated damages from the retainage, and that amount will be the final payment.

Chairperson Robinson asked how much the retainage would be.

The Deputy said it would be around \$120,000.00 or \$130,000.00, after the liquidated damages.

Chairperson Robinson asked how the Lālāmilo Windfarm project was going.

Mr. Inaba said the contractor is trying to work things out with the Department of Land and Natural Resources (DLNR), but the work is progressing. He said that he saw some email traffic this morning on this; the contractor is working directly with the State, but DWS is asking for regular updates to make sure things are moving along.

Chairperson Robinson asked if the State has finally agreed to the easement.

Mr. Inaba said that the State will produce what the contractor needs, but it takes time to amend the documents and to route them through the various agencies, including the Attorney General’s Office.

Mr. Balog asked how long it takes to figure out which trees to cut on the Waikoloa project.

Mr. Inaba said it involves environmental consultants; it means a separate scope because they now have to factor in these consultants. It is a specific plan regarding what trees will be removed, what kind of consultant needs to be brought in, etc. The project engineer for this project is the same one for the Windfarm, and he has been following up weekly on the tree removal, Mr. Inaba said. There is no schedule available yet, but DWS is pushing to get a commitment, he said.

Mr. Balog said he was asking because this is something that has to get done.

Chairperson Robinson asked for confirmation that DWS needs to get an environmental consultant to cut a tree.

The Manager-Chief Engineer confirmed this.

F. REVIEW OF MONTHLY FINANCIAL STATEMENTS:

Mr. Sumada said that the audit is not yet final, because of a report that is still pending. He reported that the staff has started working on the Fiscal Year 2016-2017 Budget this month. He reminded the Board that next month there will be a Public Hearing on the reduction in the Power Cost Charge.

Chairperson Robinson asked if DWS's net income is up, thanks to the continued decrease in the cost of power.

Mr. Sumada confirmed that expenses are down because of the drop in the cost of power.

G. MANAGER-CHIEF ENGINEER'S REPORT:

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

- 1) Public Information and Education Specialist Update – Ms. Aton reported that the Board would have a 17-page article from Hawai'i Business.com emailed to them; the article is entitled "49 Facts You Should Know about Hawai'i's Water. DWS issued a South Kohala Conservation Letter, and will be doing a presentation to the Waimea Community Association, in anticipation of a dry winter. The DWS calendar for 2016 has been distributed. DWS co-hosted with the Department of Environmental Management an evening during the two-weeklong Magic of the Season event at the County Building. DWS is finalizing its video on Source Water Protection Conservation, and has taken delivery of Project Wet activity booklets for the classroom. The DWS employee newsletter went out as a PDF to the Board, but it needs to be re-formatted because the file is too large, Ms. Aton said. Regarding educational efforts, Ms. Aton and the Deputy will be doing presentations to schools, starting in West Hawai'i, possibly one Friday a month. Ms. Aton notified the Board that the 2016 Pacific Water Conference registration information and technical agenda are now available. The Manager-Chief Engineer said that there will be four Board slots for the conference, based on seniority. He asked interested Board members to contact the Private Secretary soon, because the deadline for early registration is coming up quickly. Mr. Elarionoff said that when the Department does its presentations in Waimea, the staff should be prepared for questions about the chlorine in the water; Mr. Elarionoff had been asked numerous times about it. The Manager-Chief Engineer said that the Department would look into it.
- 2) Upcoming Legislative Session – The Manager-Chief Engineer said that he has been in contact with the other counties through quarterly phone calls. All of the counties agreed to keep each other in the loop in case anything arises. Kaua'i is expected to introduce some legislation. The Manager-Chief Engineer went to Oahu last Friday to meet with the Realtors Association and BWS Manager-Chief Engineer Ernie Lau; the realtors are still opposed to placing any liens for delinquent bills, especially if it involves the owner or a tenant's liability. Mr. Lau and the Manager-Chief Engineer agreed to hold off on pursuing the matter at this current Legislative Session. However, if the Board wants to pursue it further, the matter can be discussed, and DWS will work with the other counties if need be. In the meantime, Kaua'i is looking to introduce some housekeeping-type of legislation, with a document retention bill; this is nothing major. Ms. Wilson asked if DWS retains a lobbyist in Honolulu; the Manager-Chief Engineer said no. Ms. Lee Loy noted that Mr. Takamine last month raised the idea of creating a

special fund for DWS's energy projects. She thought that might be something to run past Mr. Lau for the upcoming Legislative Session; she suggested a carve-out for some funds that DWS could utilize to upgrade sources or water tanks, etc.; these funds would be separate from the State Revolving Funds (SRF) that DWS applies for. She asked that the Manager-Chief Engineer keep that on the radar this Legislative Session. The Manager-Chief Engineer said that he would do so.

Chairperson Robinson said that the Board would return now to Item 9(B), which was deferred earlier.

9) SOUTH KONA:

B. 4th AMENDMENT TO WELL SITE DEVELOPMENT AGREEMENT, 1250 OCEANSIDE (HÖKULIA) WELLSITE DEVELOPMENT AGREEMENT:

Mr. Lim said that he would go over what he discussed with his client, and hopefully the parties would get close to what DWS wants in this agreement. He said that his client was okay with Pages 1 and 2.

Mr. Lim proceeded to Page 6, regarding the Amendment of the Water Board's Termination Right, with the insertion of the deadline to complete the Well Site Improvements. Mr. Lim asked to add to that language, starting at (3) "The Well Site Improvements *and Off Site Improvements – Increment 1*, have not been completed, ...by December 31, 2019, provided that DWS..." At this point, Mr. Lim asked to insert the word "*shall*" grant time extensions of one year each for completion of Well Site Improvements *and Off Site Improvements – Increment 1*."

Chairperson Robinson said that in other words, Mr. Lim wants the word "shall" (instead of "may").

Mr. Lim continued reading new language in the section: "so long as Oceanside is proceeding *financially, diligently, and continuously*," as reasonably determined by DWS." Mr. Lim said it was an attempt to provide DWS with some certainty, and to define for DWS what the word "diligently" means.

Mr. Balog asked to confirm that if DWS does not consider that Oceanside is proceeding diligently, DWS can refuse to grant a time extension.

Mr. Lim confirmed that was correct.

Chairperson Robinson said that would be in DWS's sole discretion.

Mr. Lim, quoting the agreement, said that it would be "as reasonably determined by DWS." He said that Oceanside would argue otherwise, but he did not think it would come to that.

Chairperson Robinson said that the Manager-Chief Engineer would have all of the points lined up.

Mr. Lim said that once the developer decides to pull the trigger on this project, they are going to go whole hog to get this done in time. The developer will be spending a lot of money and resources, so it will be in the developer's best interests to finish the improvements quickly. Mr. Lim said he did not know if the developer planned to take loans to do this, but if they do take a loan, it will behoove them all the more to hurry up and get it done.

Mr. Elarionoff asked if the Board would decide on the insertion of the word "shall."

The Manager-Chief Engineer confirmed this. He said that the staff will do its review of the contract and the technical analysis, but it will be brought to the Board for action. An amendment to a contract or agreement must go before the Board for its approval. Mr. Lim may request that it be placed on the Agenda, if the parties today do not come to an agreement; DWS typically honors such a request, the Manager-Chief Engineer said.

Ms. Self asked for a quick recap of the changes to Item 8(3); she asked for confirmation that two changes were being made.

Mr. Lim confirmed this.

Ms. Self said that Mr. Lim had added on the first line: “The Well Site Improvements *and the Off Site Improvements – Increment 1.*”

Mr. Lim said yes, acknowledging that in the red-lined version he had inadvertently left those two terms out.

Ms. Self said the other change was the substitution of the word “shall,” instead of “may.”

Mr. Lim said that the other change was in the fourth line: “each for the completion of the Well-Site Improvements *and the Off Site Improvements – Increment 1*, so long as Oceanside is proceeding *financially, diligently, and continuously.*” Those are the objective tasks that DWS can force Oceanside to prove, Mr. Lim said.

Chairperson Robinson confirmed this.

Mr. Lim said that going back to Page 4, Item 5, Oceanside would further define what constitutes Off Site Improvements – Increment 1, by adding a good graphic, and by defining the Off Site Improvements as “the water transmission lines and other facilities appurtenant to the well that are not located on the well site property, and as depicted on Exhibit A hereto, which is the easement across the Pace land.” He said he believed that language would resolve DWS’s issue. He said that the indemnity language is what DWS and Corporation Counsel wanted. He said there was nothing significant on Page 7. On Page 8, he believed that the DWS was agreeable to the language saying: “Once Oceanside completes the Well Site Improvements *and the Off Site Improvements (adding the words Increment 1)*, DWS and the Board will have deemed to approve the Assignment of the 50 water units.

Mr. Lim said there was a technical change on Item 14. On Page 9, Item 15, Mr. Lim said that Oceanside would like to keep the DWS executing Construction Rights of Entry; Mr. Lim said he has seen DWS do that regularly in the past, and Mr. Lim’s client thinks that it is important to keep that language in. It does not change things, he said.

Turning to the Force Majeure clause in Item 20, on Page 9, Mr. Lim’s client is willing to waive the first set of red lines, which states: “The Parties to this Agreement, Hōkūkano, Hawai‘i Electric Light Company, Inc., or any owners of land through which the Water System must be constructed...” The client is willing to take that language out, i.e., to delete it. The one thing that the client cannot delete is the language under (d): “delay due to Oceanside’s dispute with Ackerman Ranch, Inc., over issues relating to the Agreement, to include without limitation, any settlement, negotiations, and/or litigation through to a final Judgment entered after all appeals...” Mr. Lim said that this was something that Oceanside needs to have in as a Force Majeure clause, because this is something that Oceanside knows is going to happen. Mr. Lim noted that Mr. Ackerman and his wife were sitting in the audience paying attention to today’s proceedings. If Oceanside cannot reach quick agreement with Ackerman Ranch, there will be a prolonged

delay in Oceanside proceeding with the improvements, Mr. Lim said. He was pretty sure that Oceanside will not expend the construction funds, without working out a deal with the Ackermans, one way or the other.

Chairperson Robinson asked if this involved Increment 1 or Increment 2.

Mr. Lim said it would involve Increment 1; this is a significant expenditure of money, and Oceanside cannot put it at risk, for fear of ending up with only 50 percent of the water once Oceanside makes a deal with Mr. Ackerman, etc. At that point, it would not be financially feasible to do the well; therefore, Oceanside needs to have that Force Majeure protection.

Mr. Lim said that the CWRM language is what Corporation Counsel suggested, and Oceanside accepts it.

On the allocation of the 15 percent of the water, the Manager-Chief Engineer has stated that DWS does not want to be constrained in the use of that water once the Well Site Improvements and Off Site Improvements – Increment 1 are done. Mr. Lim's client has agreed that so long as DWS and the Board are committing to reserve the allocation to 1250 Oceanside, Kalukalu Properties and W. Greenwell under the Well Site Agreement that is already in place, the client will agree to delete Item 21.

Ms. Self said that was already in the original agreement.

The Manager-Chief Engineer asked for confirmation that the allocation was already in there.

Ms. Self said the allocation was in there.

Mr. Lim said the allocation is in the original agreement, but this limitation on DWS's use of the water is not in the original agreement.

Chairperson Robinson said that limitation, i.e., Item 21, is now out.

Mr. Lim confirmed that Item 21 is now deleted.

The Manager-Chief Engineer said that DWS will abide by the terms of the original agreement, as well as any subsequent Supplementals or Amendments.

Mr. Lim said that he and his client would accept that representation by DWS. The only section left to discuss was Item 22; Mr. Lim said that his client was willing to waive it, provided that DWS will enter into an irrigation agreement similar to those with a lot of other developers in the area. The only condition that is different is that DWS, if it were to cut back Oceanside's irrigation use, could only do so by the same percentage as cutbacks to everybody else in the South Kona area. DWS cannot just single Oceanside out for cutbacks, and leave everybody else alone, Mr. Lim said. He said it would be understandable to cut back on the irrigation water in the case of a drought or other circumstances out of DWS's control; Oceanside is okay with that so long as the cutbacks are equally distributed among all irrigation users in South Kona.

The Manager-Chief Engineer said that DWS does not single out any party to an irrigation agreement; any such cutbacks are handled on a case-by-case basis, and may even be handled on a source-related basis. Therefore, DWS cannot make such a commitment should a well go down; Oceanside might actually be the only irrigation agreement party in that service area, he said. In such a case, Oceanside would be the only ones to be affected, while other irrigation users in South Kona would not be affected, because they are taking water from another source. The

Manager-Chief Engineer said he understood Oceanside's desire for equity, but DWS could not specifically honor to the letter what Mr. Lim is proposing; the Manager-Chief Engineer said that was his concern.

Chairperson Robinson said that an irrigation agreement would be a separate agreement; it would not be part of this agreement.

Mr. Lim noted that typically the Board does not see these irrigation agreements. He expressed confidence that Oceanside and DWS could work out language regarding cutbacks on an equitable basis.

Ms. Self asked for confirmation that Mr. Lim was deleting Item 22.

Mr. Lim confirmed that Items 21 and 22 would be deleted.

Chairperson Robinson asked if this was something that the Manager-Chief Engineer could live with. He asked if DWS could work an irrigation agreement with Oceanside.

The Manager-Chief Engineer said that DWS would need to see.

Chairperson Robinson said that at least, DWS can get the well started.

Mr. Lim said that that is why Oceanside needs the Ackerman dispute as a Force Majeure clause, because Oceanside needs to work things out with Ackerman Ranch. If Oceanside cannot reach an agreement with Ackerman Ranch, the parties will have to go to court, a process that might take a couple of years.

Chairperson Robinson said that by virtue of the Ackermans being present today, it shows that the Ackermans have an interest in working things out.

Mr. Lim said he hoped so.

Mr. Ackerman asked to speak, noting that he was handed the red-lined version of the 4th Amendment as he walked in the door today. He said he had not had a chance to consult anybody on it; what concerned him most was Item 22. Mr. Ackerman's property is mentioned as beneficiaries of this well; Ackerman Ranch is no longer part of the Oceanside development, through no fault of the Ackermans, he said. Ackerman Ranch hopes to get water at some point down the line, Mr. Ackerman said. However, he was concerned by the fact that Oceanside could irrigate their *driveway*, while Ackerman Ranch could not get any potable water. Mr. Ackerman asked if this was a potable well or an irrigation well.

Chairperson Robinson said that was why Oceanside agreed to delete Item 22.

Mr. Ackerman said that he felt much more comfortable with that language deleted.

Chairperson Robinson asked the Manager-Chief Engineer if he could live with the changes to the agreement.

The Manager-Chief Engineer said that the only thing that he was not comfortable retaining was the Ackerman dispute provision in the Force Majeure clause. He said he wanted to consult with Corporation Counsel on what that means, and whether retaining that language would toss out entirely the deadline for the Well Site Improvements and Off Site Improvements – Increment 1. He wondered if that would leave the agreement open-ended again, in the event that the dispute drags on, and W. Greenwell and Kalukalu Properties would have the right to water anyway. The Manager-Chief Engineer said that DWS was concerned that the Department would be adversely

affected if DWS were constrained so as not to be able to do the well on its own – should DWS choose to. If DWS were to do the well on its own, it would cost DWS very much more because it would mean finding another property, installing another tank, doing transmission lines, etc. He was not sure what impacts would arise from keeping this Ackerman provision in the Force Majeure clause.

ACTION: Ms. Lee Loy moved to go into Executive Session to consult with Corporation Counsel; seconded by Ms. Wilson, and carried unanimously by voice vote.

(Executive Session began at 12:29 p.m., and ended at 12:58 p.m.)

The Manager-Chief Engineer said that after further discussion, the Department really cannot agree to include this sub-item (d), “*delay due to Oceanside’s dispute with Ackerman Ranch,*” etc. DWS cannot agree to retain that in Item 20, the Force Majeure clause.

Mr. Lim said that he talked with his client about that, and the client remains adamant; that delay is something that his client **knows** is going to happen. To ignore that would put Oceanside on a time clock that would set Oceanside up for failure, Mr. Lim said. Mr. Lim said that his client, Mr. Grimsman, is listening to the proceedings via Mr. Lim’s cell phone; Mr. Grimsman has said that he is willing to put a three-year cap on that process. He said that he and his client anticipate a four-to-five year delay if the dispute were to go all the way to the Supreme Court, but his client is willing to put a three-year cap on the Ackerman Ranch delay. Mr. Lim said that was a middle ground for them, which would afford Oceanside with some protection. He noted that everything has already been held up for eight months, with the letter back in May from Mr. Ackerman’s attorney, Mr. Randy Vitousek, which raised the issue of removing Ackerman Ranch from the TMKs listed for this agreement. Because Oceanside knows that there will be negotiations and possibly litigation, Oceanside cannot simply remove the dispute with Ackerman Ranch as a Force Majeure item. However, Oceanside is willing to cap the delay at three years.

The Manager-Chief Engineer said he wished that Mr. Lim had said that before the Board went into Executive Session.

Mr. Lim said he had not known it was going to be an issue; that is why he spoke with his client during Executive Session.

Chairperson Robinson said the Board is good on everything else except this Force Majeure item.

The Manager-Chief Engineer agreed.

Mr. Balog asked if that delay would affect Increment 1.

Mr. Lim said that was correct.

Mr. Balog asked for clarification that instead of a four-year period, it would be seven years.

Mr. Lim said that under the proposed three-year cap, it would be seven years at the most. It would probably be imprudent for Oceanside to charge ahead with the construction of the well, because Oceanside does not know what will happen with the dispute with Mr. Ackerman. Oceanside might end up with just 25 percent of the equivalent units under the agreement; if that were the case, Oceanside would not have done the project.

The Manager-Chief Engineer said that DWS understands Mr. Lim’s position. However, with all contracts that DWS does which contain Force Majeure clauses, the Force Majeure reasons for delay are confined to certain unforeseen incidents, such as Acts of Nature, strikes, and similar

events. Putting in the dispute with Ackerman Ranch as a Force Majeure-type event would set a bad precedent for future agreements, he said.

Mr. Lim suggested moving the potential delay for the dispute with Ackerman Ranch into Item 8(3), i.e., the termination deadline of 2019. This would be provided that DWS will grant one-year time extensions. Mr. Lim said he could put in language to the effect that any further delays due to disputes with Ackerman Ranch would extend this period no longer than 36 months, or three years.

Ms. Lee Loy asked for confirmation that in that case, the Force Majeure clause would be confined to the routine Force Majeure language.

Mr. Lim confirmed that he would delete the delay due to disputes with Ackerman Ranch from the Force Majeure clause. He would insert that language into Item 8(3), along with the three-year cap.

Ms. Self asked for confirmation that the only way that the December 31, 2019, deadline could be extended is if there were litigation with Ackerman Ranch, and that that could go out another three years. Aside from that, any delays would be for routine Force Majeure events, which are events that are beyond the parties' control.

Mr. Lim said that was correct. He said he assumed that the CWRM-related provisions would be left in.

Ms. Self said yes, that provision stays in.

Mr. Lim said okay, he would insert that language regarding the delay of a maximum of three years, or 36 months.

The Manager-Chief Engineer suggested changing that maximum delay to *two* years, noting that in today's discussion, the time frame has jumped from four years to seven years.

Chairperson Robinson said he agreed; it should be two years.

Mr. Lim bowed to the Chairperson's desire for a two-year cap; it would be two years.

Mr. Ackerman asked where in the agreement the Board was; he asked which page the Board was discussing.

Mr. Balog said it was Page 6.

Mr. Lim said it was Page 6, Item 8. He said to Mr. Ackerman that Oceanside is trying to give itself time to negotiate a deal with Mr. Ackerman. Although it may take more than two years, Oceanside is going to agree to a cap of two years; hopefully, the negotiations go more quickly, Mr. Lim said.

The Manager-Chief Engineer said that DWS has made it clear that the Department does not want to get involved in the dispute between Oceanside and Ackerman Ranch. He suggested that, assuming the time frame now is six years, it would make sense to amend Item 8 to just say six years, i.e., a deadline of 2021, and not even mention Ackerman Ranch.

Chairperson Robinson agreed that all reference of Ackerman Ranch should be taken out.

Ms. Lee Loy said she supported that; there are too many words on the paper already. She agreed that it would be good to refine the language to just provide a drop-dead deadline, which would cover what Oceanside needs, while providing a 24-month window.

Chairperson Robinson asked for confirmation that the deadline would be 2021.

Mr. Lim said yes, the deadline would be changed to December 31, 2021.

Chairperson Robinson said that all reference to Ackerman Ranch will be removed.

Mr. Lim said okay, providing that Oceanside would have the ability to get time extensions for diligently and financially proceeding, etc.

Chairperson Robinson said that determining what constitutes diligently, etc., would be left to the Board's discretion. In other words, Oceanside will have to prove that it is doing all of this; this is a contract, and all contracts are brought to the Board by the Manager-Chief Engineer.

Mr. Lim said that the language currently says: "as reasonably determined by DWS." He asked if the Board wants to add the words: "and the Board."

Chairperson Robinson said DWS is DWS.

Mr. Lim recapped by saying that the deadline would be extended to December 31, 2021.

Chairperson Robinson said yes, and all reference to Ackerman Ranch would be omitted, except the identification of the TMKs.

Ms. Lee Loy said yes, and the Force Majeure clause would be kept as a typical Force Majeure.

Mr. Lim asked that the Board take action on the Kalukalu water assignment matter first, and then take up the 4th Amendment.

Chairperson Robinson said no, the Board would take up the 4th Amendment first, and then do the Kalukalu item.

Mr. Lim said that Oceanside's agreement with Kalukalu Properties *is*, contractually, the agreement. The idea was that the Board would act to transfer the 50 water units first, and then act on the 4th Amendment.

Chairperson Robinson said that from a procedural standpoint, the Board is going to take action on the 4th Amendment *as amended*, and then take action on the 50 water units.

Ms. Self raised a concern about Item 8, regarding the language: "as reasonably determined by DWS." She asked if the *Board* wanted to make that determination, or did the Board want the *Department* to make that determination. She noted that the time frame for this could be a few years down the road, since the deadline is 2021; it would involve a new Board and possibly even a new Manager-Chief Engineer.

Chairperson Robinson said that DWS *is*, in essence, the Board, and DWS brings contract matters to the Board. This *is* a contract after all, he said.

Mr. Inaba suggested that with other agreements, DWS gets annual progress reports from the contractor.

The Manager-Chief Engineer said that was a good suggestion. He said that language could be added to oblige the developer to provide annual reports indicating progress; with those reports in

hand, DWS could decide to either handle things administratively, or bring matters of concern to the Board.

(Several Board members said they liked the idea of annual progress reports.)

Mr. Inaba said that DWS has similar language in other agreements, stipulating tracking points, etc.

Ms. Self said okay, so the Board is asking Mr. Lim to agree to provide annual progress reports, and to insert that language into the contract.

The Manager-Chief Engineer asked Mr. Lim if that was okay with him.

Mr. Lim said annual progress reports are fine.

Ms. Lee Loy said this would be in keeping with the 2021 deadline.

Mr. Lim confirmed this.

Chairperson Robinson noted that the original Recommendation to the Board was not to approve this Item, but now there is some degree of agreement with Oceanside.

Ms. Lee Loy agreed to withdraw her original Motion.

Ms. Self said that no formal Motion to Withdraw was needed. As long as Ms. Lee Loy agrees to withdraw, there is no need for a Motion to Withdraw, or a second.

Chairperson Robinson said okay, the Board will now consider this Amended 4th Amendment, as revised. He asked for a Motion to approve.

Ms. Self said that before the Chairperson entertains a Motion, she wanted the Board to be very clear on the extensive changes made to Item 8. She said that in meeting with the new deadline of December 31, 2021, there would be new language included for Oceanside to provide annual progress reports.

Chairperson Robinson confirmed that those annual progress reports would be submitted to DWS.

Ms. Self said okay.

ACTION: Mr. Arikawa moved to approve the 4th Amendment as Amended; seconded by Ms. Lee Loy, and carried unanimously by voice vote.

A. **AGREEMENT RE: ASSIGNMENT AND TRANSFER OF RIGHTS TO 50 KEALAKEKUA WATER SOURCE AGREEMENT WATER COMMITMENT UNITS:**

Chairperson Robinson noted that the above Item was taken out of order; the Board would now return to Item 9(A) here. He entertained a Motion to approve the transfer of the water commitments from the Kealakekua Water Source Agreement, to Kalukalu Properties.

ACTION: Mr. Balog moved to approve; seconded by Ms. Wilson, and carried unanimously by voice vote.

Mr. Lim thanked the Board, and said that he would provide Corporation Counsel with the revised agreement.

C. **ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON FOR 2016:**

Chairperson Robinson asked if there were any nominations for Chairperson.

MOTION: Ms. Lee Loy moved to nominate Mr. Takamine as Chairperson; Mr. Arikawa moved that the nominations for Chairperson be closed.

Chairperson Robinson asked if Mr. Takamine accepted the nomination.

Mr. Takamine said that he humbly accepted the nomination.

ACTION: Motion carried unanimously by voice vote.

Chairperson Robinson asked if there were any nominations for Vice-Chairperson.

MOTION: Ms. Lee Loy moved to nominate Mr. Arikawa as Vice-Chairperson; seconded by Mr. Takamine.

Mr. Arikawa said he humbly accepted the nomination.

ACTION: Motion carried unanimously by voice vote.

D. CHAIRPERSON'S REPORT:

Chairperson Robinson said that his tenure on the Board had been fun. He reported that he had applied for a vacancy on the Board of Ethics, but had not heard anything yet.

The Manager-Chief Engineer said that while Mr. Robinson was waiting to hear, Mr. Robinson could through his good graces continue to serve on the Water Board for up to another three months.

11) ANNOUNCEMENTS:

1. Next Regular Meeting:

The next meeting of the Water Board is scheduled for 10:00 a.m. on January 26, 2016, at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

2. Following Meeting:

The following meeting of the Water Board will be held at 10:00 a.m. on February 23, 2016, at the West Hawai'i Civic Center, Community Center, Bldg. G, 74-5044 Ane Keohokalole Hwy, Kailua-Kona, HI.

12) ADJOURNMENT

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

The meeting adjourned at 1:18 p.m.

Secretary

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

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