

**DEPARTMENT OF WATER SUPPLY  
COUNTY OF HAWAI‘I  
WATER BOARD SPECIAL MEETING  
MINUTES**

**MEETING DATE:** November 13, 2014

**TIME:** 10:00 a.m.

**PLACE:** Department of Water Supply, Operations Conference Room, 889 Leilani Street,  
Hilo

**MEMBERS PRESENT:** Mr. Kenneth Kaneshiro, Chairperson  
Mr. Rick Robinson, Vice-Chairperson  
Mr. Russell Arikawa (arrived 10:56 a.m.)  
Mr. David Greenwell  
Ms. Susan Lee Loy  
Mr. Craig Takamine  
Mr. Jay Uyeda  
Mr. Quirino Antonio, Jr., Manager-Chief Engineer, Department of Water  
Supply (ex-officio member)

**ABSENT:**

Ms. Brenda Iokepa-Moses, Water Board Member  
Mr. Duane Kanuha, Director, Planning Department (ex-officio member)  
Mr. Warren Lee, Director, Department of Public Works (ex-officio  
member)

**OTHERS PRESENT:** Ms. Kathy Garson, Deputy Corporation Counsel  
Ms. Nancy Cook Lauer, West Hawai‘i Today

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy  
Mr. Kurt Inaba, Engineering Division Head

1) CALL TO ORDER - Chairperson Kaneshiro called the Special Meeting to order at 10:11 a.m.

2) STATEMENTS FROM THE PUBLIC:  
None.

3) MISCELLANEOUS:

**A. DISCUSSION OF WATER BOARD/DEPARTMENT OF WATER SUPPLY RESPONSE  
TO NATIONAL PARK SERVICE’S PETITION TO DESIGNATE KEAUHOU AQUIFER  
AS A GROUND WATER MANAGEMENT AREA:**

Ms. Lee Loy noted that the Board had received a response from the Commission on Water Resource Management (CWRM) related to the Notice of Appeal to the Office of Information Practices (OIP) from the Hawai‘i Leeward Planning Conference (HLPC). She noted that HLPC’s letter raised the issue of CWRM’s utilization of a Section on Contested Case (i.e., Section 92-6). Ms. Lee Loy said that she did not believe that CWRM answered the question on how CWRM was justified in using the Section on Contested Case. She asked Ms. Garson whether she read CWRM’s response letter the same way that Ms. Lee Loy did.

Ms. Garson said yes, but the Board needs to wait to see how OIP responds, and interprets. Right now, the matter is with OIP, and how this affects the process that CWRM is taking, has yet to be determined by OIP. It has yet to be determined by OIP regarding the investigatory meetings and site visits (on September 17, 2014, and October 9, 2014, in Kona). The Board needs to wait for OIP's determination, she said. She noted that there is one investigatory meeting, on November 19 at 11:00 a.m. in Honolulu. Ms. Garson said that DWS was asked to continue its presentation, which she said is supposedly part of CWRM's investigatory process. The date has been set, and the Agenda has been sent out. The Board has a copy of the Agenda in the packets, entitled "Briefing by the County of Hawai'i Planning Department and Department of Water Supply." She said that hopefully, OIP will respond soon. The November 19 meeting is similar to the previous two investigatory meetings, but CWRM agendized the November 19 meeting a bit differently.

Ms. Lee Loy said she noticed that, too. She noticed that CWRM in the November 19 notice did not utilize the same adjudicatory function as CWRM did for the previous two investigatory meetings.

Ms. Garson said that was right; CWRM is saying that they are entitled to conduct investigations, and that is otherwise provided by law – not necessarily the Contested Case proceeding. She reiterated that OIP will make the determination.

Ms. Lee Loy asked whether OIP has a specific timeline within which they need to respond. She noted that when someone files a complaint, OIP has a window to respond, and OIP asks the agency in question to respond by a certain timeline. CWRM made their response as of November 10, 2014; Ms. Lee Loy asked if there was a window for OIP to come back with their findings.

Ms. Garson said she did not know what their time frame was, but usually OIP is fairly prompt, especially with something as time-sensitive as this.

The Manager-Chief Engineer said that Item C(2) of the CWRM regular meeting agenda for November 19, 2014, has the Response to the OIP Notice of Appeal. He did not know what kind of response CWRM will have.

Ms. Lee Loy asked whether people would be allowed to testify at the November 19, 2014, meeting.

Ms. Garson said no, not according to the way that CWRM agendized the meeting. The meeting as set forth by CWRM is investigatory, but no public testimony will be taken. CWRM is saying that public testimony will be taken at the December 10, 2014, CWRM meeting in Kona. She noted that in past meetings, the public made comments, but there is no formal testimony segment of the meeting.

Mr. Greenwell asked if DWS is the only entity that can speak at the November 19 meeting.

Ms. Garson said that CWRM agendized presentations from Planning Department and DWS. This is because at the October 9, 2014, CWRM meeting, they ran out of time; it was late in the day when the presentations came, because the site visits took up the entire morning. DWS was cut really short, as were Planning, and DWS's consultant for the update of the Water Use and Development (WUDP), Mr. Jon Nishimura.

Mr. Greenwell asked whether other people, such as HLPC, etc., would be barred from attending.

Ms. Garson said not at all; this Briefing is open to the public per CWRM's agenda. It is open to the public, and the meeting will be videotaped and posted on the CWRM website. However, the Briefing on November 19 is not a *public meeting*, so no public testimony will be taken. That is how CWRM agendized it, she said.

Chairperson Kaneshiro asked if anyone had further comment; he asked for a Motion to go into Executive Session.

Mr. Robinson first asked for confirmation that the meeting on November 19 starts at 11:00 a.m.

The Manager-Chief Engineer confirmed this.

Mr. Robinson asked how long CWRM had given Planning and DWS to give their presentations; he asked whether CWRM gave a timeframe of 30 minutes, 45 minutes, two hours, or as long as DWS/Planning wants.

The Manager-Chief Engineer said he was not sure how much time they would be giving for the presentations; he hoped it was at least one hour.

Ms. Garson said that CWRM had not put a notation on the agenda, nor have they said anything about a timeframe.

Mr. Robinson said that he assumed that CWRM would probably break for lunch, and reconvene, etc.

The Manager-Chief Engineer said that was not clear.

Mr. Robinson asked who was coming from Planning.

The Manager-Chief Engineer said Planning Director Duane Kanuha would attend. He said that he himself would attend, along with the Deputy, Mr. Inaba and Public Information and Education Specialist Kanani Aton from DWS. In addition, Mr. Nishimura, the WUDP consultant from Fukunaga & Associates, would also help DWS with its presentation.

Mr. Robinson asked Ms. Garson if she would also attend.

Ms. Garson said she thought so.

Mr. Robinson said that he himself would also attend.

Ms. Lee Loy said she was attending.

Mr. Uyeda said that he would try to attend.

Mr. Robinson said that this was very important for the Board and DWS.

The Manager-Chief Engineer strongly agreed. He noted that the December 10 meeting in Kona would be when CWRM will decide whether or not to move forward, or squash the NPS petition. He said that that meeting was scheduled for the West Hawai'i Civic Center, but the timeframe has not yet been announced. He said that he assumed that it would be in the morning; the Department will find out and notify the Board. He said he expected that there would be an agenda for the December 10 meeting.

Chairperson Kaneshiro asked whether the decision would be made on December 10, or at a later meeting.

The Manager-Chief Engineer said that the decision to proceed or not to proceed with the NPS position will take place at the December 10 meeting. If CWRM squashes the petition, that will be the end of it; if CWRM decides to proceed, there will be a 90-day period for public hearings. That is where public testimony can take place, he said.

Chairperson Kaneshiro asked whether a decision would be made on that day (i.e., December 10).

Ms. Garson said no, and cautioned the Board that December 10 is the date for the meeting at which CWRM will discuss and decide whether to proceed with the NPS petition. If there is a flood of public testimony on December 10, CWRM could conceivably recess that meeting, and reconvene it in order to continue to take public testimony and hold discussion. December 10 is the date, but that does not necessarily mean that a decision will be made on that date. There are a number of factors involved, she said. If there is a lot of testimony, the meeting could go on to the next day, or CWRM could move the continuation of the meeting to next month, Ms. Garson said.

Mr. Robinson said that December 10 is not really a determinant of whether or not there will be a designation. CWRM might decide that they had heard enough testimony, and may decide to continue discussion for another 90 days in order to develop more information; at the end of those 90 days, they might elect to continue it some more, and some more. He said this could go on for a long time.

Mr. Uyeda said it could take 17 years.

Mr. Robinson said yes, like the Waiahole Ditch Case.

Ms. Lee Loy asked for confirmation that the CWRM staff would be compiling a staff report ahead of the December 10 CWRM meeting.

Ms. Garson confirmed this.

Ms. Lee Loy asked whether that report will give some indication of the information that CWRM has received up to this point, and would give some indication of what the next steps would be.

Ms. Garson said yes, it would be the CWRM staff's Recommendation.

Ms. Lee Loy asked whether that Recommendation would be available prior to the December 10 meeting.

Ms. Garson said that she would assume so.

Mr. Robinson asked whether the CWRM staff report would be something that CWRM would send to the Board, or post on the CWRM website. He asked how it would be made available.

Ms. Garson said she did not know, but as soon as the report becomes public, DWS will get a copy.

The Deputy said that he had just called CWRM staff, regarding Mr. Robinson's question about how much time DWS and Planning would be allowed for their presentations. CWRM staff did not give a timeframe, but indicated that they would give DWS/Planning an opportunity to say what they need to say. It would not be unlimited time, he added.

ACTION: Mr. Greenwell moved to go into Executive Session; seconded by Mr. Uyeda, and carried unanimously by voice vote.

**B. EXECUTIVE SESSION RE: WATER BOARD/DEPARTMENT OF WATER SUPPLY  
RESPONSE TO NATIONAL PARK SERVICE'S PETITION TO DESIGNATE  
KEAUHOU AQUIFER AS A GROUND WATER MANAGEMENT AREA:**

*(Executive Session began at 10:26 a.m., and ended at 1:37 p.m.)*

ACTION: Ms. Lee Loy moved to approve the Recommendation of Special Counsel; seconded by Mr. Uyeda, and carried unanimously by voice vote.

4) ADJOURNMENT

MOTION: Mr. Uyeda moved to adjourn; seconded by Ms. Lee Loy.

Chairperson Kaneshiro said, before adjourning, that he wanted to thank Ms. Lee Loy and Ms. Garson, and DWS staff, for their hard work. The NPS petition issue is extremely important to the Board, DWS and the County of Hawai'i, he said.

ACTION: Motion carried unanimously by voice vote.

The meeting adjourned at 1:39 p.m.

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Secretary

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