

December 23, 2009

WATER BOARD, COUNTY OF HAWAI'I
NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that the Water Board of the County of Hawai'i will hold a special meeting in the Department of Water Supply, Hilo Operations Center Conference Room, 889 Leilani Street, Hilo, Hawai'i, on Thursday, January 7, 2010, at 10:00 a.m. for the purpose of considering and approving a Right-of-Entry across TMK 7-4-008:001, portion, to allow CTS Earthmoving, Inc., to continue work on Job No. 2003-823, Palani Road Transmission Waterline, Māmalahoa Highway to Palani No. 2 Reservoir.

All those desiring to express their views, arguments, or submit data on the above matter may do so by submitting statements in writing to the Chairperson of the Water Board of the County on or before the date of the special meeting; but anyone interested may appear in person to submit their data, views, or arguments orally before the Water Board at the meeting. Submissions made to the Chairperson prior to the date of the special meeting shall be mailed or delivered to the Chairperson in care of the Department of Water Supply, 345 Kekuaaoa Street, Hilo, Hawai'i 96720.

If accommodation or auxiliary aid and/or services (i.e., sign language, interpreter, large print) to participate in the meeting is required, please call (808) 961-8050.

Dated at Hilo, Hawai'i, this 23rd day of December, 2009.

WATER BOARD OF THE
COUNTY OF HAWAI'I

By: Riley Smith
Its Chairperson

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

Posted on the Internet at:
www.hawaiidws.org

Hawaii Tribune-Herald
December 31, 2009

West Hawaii Today
December 31, 2009

**DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAI'I
WATER BOARD SPECIAL MEETING
AGENDA**

MEETING DATE: January 7, 2010

TIME: 10:00 a.m.

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

1) CALL TO ORDER – 10:00 a.m. (*please turn cell phones off or set to silent*)

2) STATEMENTS FROM THE PUBLIC

3) NORTH KONA:

A. PIPELINE INSTALLATION RIGHT OF ENTRY AGREEMENT WITH QUEEN LILI'UOKALANI TRUST (QLT) FOR THE PALANI ROAD TRANSMISSION WATERLINE PROJECT (JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE, MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR):

The Water Board is being asked to consider approval of a Right-of-Entry (ROE) agreement across TMK 7-4-008:001 (Portion), to allow DWS' contractor, CTS Earthmoving, Inc., to continue work on JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE, MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR.

Typically, the Manager of the Department of Water Supply (DWS) has the authority to sign Right-of-Entry Agreements; however, this matter must come before the Board because the property owners inserted an indemnification clause within the agreement.

The Department of Water Supply is already in the process of constructing the transmission waterline and related facilities in the North Kona area. Sections of the project will run across portions of Queen Lili'uokalani Trust (QLT) land through easements and two reservoirs will be built on portions of what is now QLT land.

Per an agreement that DWS and QLT wish to execute regarding cost-sharing and capacity-sharing, these easements will be granted to DWS and the reservoir sites will ultimately be purchased and owned by DWS. Although both parties have indicated that they agree to the proposed terms of that agreement, the parties have yet to complete the execution of that Agreement. *Please note that Board approval of that agreement will be agendized for the January 26, 2010, Water Board meeting.* However, once that agreement is approved and executed, it will still require some time to complete the grant of easement and transfer of the reservoir sites to DWS.

CTS Earthmoving Inc., has already been working within the subject easements and reservoir sites based on a current, limited construction right of entry agreement, previously approved by the Water Board, which also has an indemnification clause. That scope of work was limited to clearing and grading.

Most of that work has been done, and to keep working, CTS needs to start installing pipeline in a matter of days. Therefore, QLT has consented to a new construction right of entry agreement which will allow CTS to also install pipe.

QLT is only granting the limited scope of work in order to push both sides to complete the main agreement. However, as mentioned above, even once the main agreement is executed, it will take some time to complete the legal transfer of the property and construction needs to continue without stop. Therefore, the department seeks approval from the Board for the Pipeline Installation Right of Entry Agreement.

RECOMMENDATION: It is recommended that the Water Board approve the execution of the Pipeline Installation Right of Entry Agreement, and further that the Chairman or Vice-Chairman be authorized to execute the Agreement, subject to review as to form and legality by Corporation Counsel.

B. PROPOSED AMENDMENT TO PIPELINE INSTALLATION RIGHT OF ENTRY AGREEMENT WITH QUEEN LILI‘UOKALANI TRUST (QLT) FOR THE PALANI ROAD TRANSMISSION WATERLINE PROJECT (JOB NO. 2003-823, PALANI ROAD TRANSMISSION WATERLINE, MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR):

The Department of Water Supply (DWS) would like to propose an amendment to the ROE Agreement to Queen Lili‘uokalani Trust (QLT). Due to the time constraints, the DWS has not been able to receive QLT’s agreement to this amendment at the time of the posting of this agenda. Therefore the DWS would like the Board’s pre-approval to amend the ROE should QLT agree. The department is proposing to amend the ROE Agreement with the addition of a self-executing clause that upon full signature and execution of the main agreement regarding cost sharing and capacity sharing, the construction right of entry agreement amends itself to include all types of construction related to the project and extends the period of the ROE agreement for the duration of the project or until such time as the easement is granted and title to the properties has transferred to DWS. At that time, the ROE will self-terminate and only the terms of the main agreement will be in effect.

RECOMMENDATION: It is recommended that the Water Board approve the execution of the Amended Pipeline Installation Right of Entry Agreement, subject to QLT agreement and further that the Chairman or Vice-Chairman be authorized to execute the Agreement, subject to review as to form and legality by Corporation Counsel.

4) STATEMENTS FROM THE PUBLIC:

5) ADJOURNMENT

Anyone who requires an auxiliary aid or service for effective communication or a modification of policies or procedures to participate in this Water Board Meeting should contact Doreen Shiota, Secretary, at 961-8050 as soon as possible, but no later than five days before the scheduled meeting.

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

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