

MINUTES

DEPARTMENT OF WATER SUPPLY COUNTY OF HAWAII WATER BOARD MEETING

February 24, 2009

Royal Kona Resort, Resolution Room, Kailua-Kona

- MEMBERS PRESENT: Mr. Riley Smith, Chairperson
Mr. Dwayne Mukai, Vice-Chairperson
Mr. George Harai
Mr. Francis Kuailani
Mr. Bryan Lindsey
Mr. Robert Meierdiercks
Mr. Art Taniguchi
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)
- ABSENT: Ms. Millie Kim, Water Board Member
Mr. Bernard Konanui, Water Board Member
Mr. Daryn Arai, Acting Director, Planning Department (ex-officio member)
Mr. Warren Lee, Director, Department of Public Works (ex-officio member)
- OTHERS PRESENT: Ms. Katherine Garson, Assistant Corporation Counsel
- Department of Water Supply Staff
- Mr. Quirino Antonio, Jr., Deputy Manager
Mr. Kurt Inaba, Engineering Division Head
Mr. Lawrence Beck, Engineering Division
Mr. Richard Sumada, Waterworks Controller
Mr. Daryl Ikeda, Chief of Operations
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Analyst, Operations Division

CALL TO ORDER - Chairperson Smith called the meeting to order at 10:00 a.m.

STATEMENTS FROM THE PUBLIC:

Chairperson Smith read the first paragraph of a memorandum distributed to the Board from excused Board Member Millie Kim regarding the Chairperson's proposed travel policy for Board members.

Ms. Kim wrote: “Below are some very minor style changes to the proposed BWS travel policy. New material is underlined and deleted material is bracketed.

In my opinion, this change is more than appropriate as a change in BWS travel both in state and out of state. I believe in the past the manager had no choice but to take a more open-ended practice because there was no official travel policy, otherwise he would be put into the position of deciding which board members would attend or not attend conferences. The current economic situation and the board’s position on being more attuned to public perception, provide an opportunity to provide more structure and rationale for BWS members’ conference travel.” (See attached memorandum from Ms. Kim.)

Chairperson Smith said the Board would be discussing the proposed travel policy further, later in the meeting under Item 8 (J) CHAIRPERSON’S REPORT.

APPROVAL OF MINUTES:

ACTION: Chairperson Smith entertained a Motion to approve the Minutes of the January 27, 2009 Water Board Meeting. Mr. Meierdiercks so moved; seconded by Mr. Lindsey and carried unanimously by voice vote.

APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA:

Chairperson Smith entertained a Motion to approve the addition of Supplemental Agenda Item No. 8 (B), regarding VEHICLE BID NO. 2008-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, and Supplemental Agenda Item No. 8 (I), to add to MANAGER’S REPORT a report on the Hawai’i County Green Team.

ACTION: Mr. Harai so moved, seconded by Mr. Meierdiercks and carried unanimously by voice vote.

NORTH KOHALA:

A. CONSTRUCTION RIGHT-OF-ENTRY AGREEMENT FOR THE HALA‘ULA EXPLORATORY WELL SITE:

(Note: This Item was deferred from the 1/27/08 Water Board Meeting.)

The Department of Water Supply (DWS) is seeking to construct an exploratory well in the Hala‘ula area of the North Kohala district. DWS intends to develop and test the well prior to acquisition of the property. If the well proves to be productive in terms of quantity and quality of water, then DWS will acquire the site to fully develop the well and to locate a storage reservoir at the site. In order to enter the site to construct and test the exploratory well, DWS has arranged to enter into a Construction Right-of-Entry Agreement with the current landowner, Surety Kohala Corporation. Surety Kohala Corporation has approved the Agreement and signed it on their behalf. Corporation Counsel has reviewed the document.

The well is to be located at the upper end of Hala'ula Road at approximately the 785-foot elevation. The reservoir overflow elevation will be at the 810-foot elevation to match the Hāwī Tank. Once constructed, the new Hala'ula well and 810-foot reservoir may be connected to the Hāwī water system such that either system can provide backup for the other system. The additional water from the new well will allow increased water availability in the area. Current water policy allows only one equivalent unit of water per pre-existing lot of record.

The Manager recommended that the Water Board approve the execution of the Construction Right-of-Entry Agreement, and further that either the Chairperson or the Vice-Chairperson be authorized to execute the Agreement.

MOTION: Chairperson Smith entertained a Motion to approve the recommendation. Mr. Meierdiercks so moved, seconded by Mr. Kuailani.

Ms. Garson pointed out that under this agreement, the Department is requesting Right-of-Entry. She noted that the agreement is atypical in that it stipulates that DWS will install a cattle barrier fence, and contains an obligation for DWS to restore the property after the work is completed (such as paying for trees that will have had to be cut down during the construction.). She also noted an indemnification clause whereby if anything happens and the grantor of the Right-of-Entry is sued, DWS will have to defend the grantor and pay any damages that result from DWS actions. Such damages would include reasonable attorney fees, Ms. Garson said.

Ms. Garson noted that under the circumstances, time was of the essence and the Department needed the Right-of-Entry.

The Manager explained that DWS had been trying to secure the site in question for the last couple of years, and by doing so, DWS is now able to put in a third well in North Kohala and open up water availability so that people can do family partitions or small subdivisions. For the past eight or nine years or even longer, DWS could only allow existing lots of record to get water service there. He noted that DWS' existing wells are above Hāwī town. The Hala'ula site is toward the east, so this well will mean that DWS will have wells on both ends of the town, and allow for greater flexibility – thus strengthening the system. Right now, DWS is flowing Hāwī water all the way to Hala'ula. With the new well, together with the two existing wells, DWS can serve customers in both directions, he noted.

Mr. Beck displayed area maps on the overhead to show the wells' locations.

The Manager noted that the Department has worked for years to get an additional well in North Kohala. He said that DWS also has a stand-alone system in Makapala/Kēōkea, that has its own well. He noted that a future well which will be located at Kokoiki will further strengthen the North Kohala system significantly.

Regarding the purchase of the site, Mr. Harai asked if the appraisal will vary before and after the fact.

The Manager said he was not sure if it would make much of a difference because DWS will be drilling the well and it will belong to DWS. In other words, the well will be DWS', although it will be on Surety's land. He said he did not know if the well would affect the appraisal.

Ms. Garson explained that what happens with an appraisal is that you can deduct the benefit to the land of the improvement. Once DWS does the infrastructure, the appraised value will greatly improve and that benefit would actually be deducted from the cost of the land. In the past, the Department has purchased the land and then drilled an exploratory well. However, the fear in this case was that the well may not be good, so the Department has decided to drill first and consider purchase based on results.

Chairperson Smith commented that if the Department knew that the well site was going to be productive, the Department would buy the site now.

The Manager concurred.

Chairperson Smith noted that when the Department tests the well and gets positive results, the site will definitely be more valuable. He said that the site is going to come in higher, but the risk is gone and the value *should* be higher, and DWS should pay the higher value. Otherwise, DWS would buy it now if the Department knew there was absolutely no risk. Summing up, Chairperson Smith said that the site will be assessed higher.

Mr. Harai asked if DWS could not have put pre-conditions on the purchase.

Ms. Garson said the Department tried to put pre-conditions on before, but in a separate case the negotiations ended up getting complicated when the landowner asked for a certain amount of water, and the deal fell through. She believed that the current arrangement with Surety was more expeditious, although the Department will end up negotiating at the back end.

Giving historical background, the Manager said the Department was confident that DWS will get good water at the site because the old plantation nearby had a well where the water quantity was great but the water quality was bad due to contamination by the Hala'ula Subdivision. For that reason, DWS decided not to buy the well years ago. The Department knows there is water there, and is drilling the well above the plantation camp to eliminate the possibility of contamination.

Mr. Mukai asked if the Agreement, drafted by Surety, contained any sore points.

Ms. Garson said that there were no glaring sore points, although agreeing to the indemnification clause carried an unknown financial obligation and made it an open-ended thing which required the Board to make a conscious, informed decision.

Regarding liability, Mr. Mukai asked if the site was a remote location that was inaccessible to trespassers or the like.

Mr. Beck, showing photos of the site, said it was high up the mountain in an orchard area on a dirt road, and that the location was fairly remote.

The Manager noted that realistically speaking, there are bound to be curiosity-seekers once the presence of a derrick becomes known.

Mr. Beck noted that the site will be fenced off to keep cows out.

At this point, Chairperson Smith apologized for not having introduced and welcomed the Board's newest member, Mr. Taniguchi, making his Board debut.

Chairperson Smith then asked about the cost of the exploration of the well.

The Manager said the cost would be about \$1 million.

Chairperson Smith noted that the terms of the agreement provide a Right-of-Entry that would allow DWS to access the site and have the Department's contractor dig a well. He noted that while there was no specific term where the agreement ends, he assumed that the agreement ends when the scope of the work is completed, at which time the well will be capped. Assuming that the well is productive, the Department would then enter into negotiations with Surety to purchase the site and fully develop it into a permanent well station.

The Manager said that the Department has been in discussions with Surety for years now, and DWS has gotten assurances that Surety would sell the site to the Department. He noted that Surety has been trying to sell off all of their lands to generate cash. Surety does not have any properties in the area that they are looking to develop, he noted.

Chairperson Smith noted that a lot of people in the area who would benefit from this well are former Kohala Sugar Company employees and their families. Surety, by virtue of being the former Kohala Sugar Company, would have a vested interest in helping their former employees, he said.

The Manager said that the added capacity that this well would provide would allow for family partitioning and small subdivisions that people in the area wanted to do for a long time, but up to now could not do.

ACTION: The Motion carried unanimously by voice vote.

SOUTH KOHALA:

A. JOB NO. 2007-919, EARTHQUAKE DAMAGED TANK REPAIRS, GROUP #2 (N. KONA/S. KOHALA), COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1664-DR-HI, FIPS NO. 001-UVKJ8-00:

Three bids for this project were received and opened on January 22, 2009, at 2:00 p.m.; and the following are the bid results:

<u>Bidder</u>	<u>Amount</u>
Isemoto Contracting Co., Ltd.	\$2,385,615.00
Bolton, Inc.	Non-Responsive
Abhe & Svoboda, Inc.	Non-Responsive

Project Scope: This project consists of the repair and seismic retrofit of six (6) reinforced concrete tanks in N. Kona (2 ea.) and S. Kohala (4 ea.) districts that were damaged in the October 15, 2006 Kiholo Bay Earthquake.

Project Cost:

1) Isemoto Contracting Co., Ltd.	\$2,385,615.00
2) Construction Contingency (10%)	\$238,561.50
Total Construction Cost:	\$2,624,176.50

Contractor Qualifications:

As part of the project plans and specifications, each bidder was required show that they meet specific qualifications for repair work involving the retrofit of tanks for Seismic Zone 4. Of the three (3) bidding contractors, only Isemoto Contracting Co., Ltd. met the qualifications.

Funding for this project will initially be from DWS C.I.P. budget; however, DWS will be pursuing reimbursement from the Federal Emergency Management Agency (FEMA) for up to 75% of the actual construction costs.

The Manager recommended that the Board award the contract for JOB NO. 2007-919, EARTHQUAKE DAMAGED TANK REPAIRS, GROUP #2 (N. KONA/S. KOHALA), COUNTY OF HAWAII, STATE OF HAWAII, STATE OF HAWAII, FEMA-1664-DR-III, FIPS NO. 001-UVKJ8-00, to Isemoto Contracting Co., Ltd., for their bid amount of \$2,385,615.00 plus \$238,561.50 for construction contingency for a total contract amount of \$2,624,176.50, subject to review as to form and legality of the contract by Corporation Counsel.

Ms. Garson asked the Board to defer this item until the March 24, 2009 Board meeting, because a protest had been filed on this procurement. She explained that under the law, whenever there is a protest, everything gets stayed until the protest is resolved. Ms Garson said it was safer not to award until the protest is resolved. She asked the Board to defer the item to the March Board meeting, when the protest will have been resolved, and the Department by that time will be able to make a recommendation.

Chairperson Smith asked about the process of resolving a protest.

Ms. Garson said that a letter of protest is filed, and it first goes to the Chief Procurement Officer, who makes a determination as to the protest. The protest may or may not be resolved at that point. The Chief Procurement Officer then goes back to the bidder with his findings. The bidder may or may not appeal the findings. The appeal would then go to the Department of Commerce and Consumer Affairs, and a full-blown hearing would ensue. Ms. Garson reiterated that once a protest is filed, everything is stayed. The only way to *unstay* is if the

Chief Procurement Officer decides that it is in the best interests of the Department to go ahead with the award. Ms. Garson expressed concern that going ahead with an award in this case would mean that the Department has an obligation with one party to do something but actually the Department should have made the award to another party. She said there could potentially be damages on both ends if the Department were to proceed with the contract, where the Department should have awarded to someone else.

Chairperson Smith asked if the Department could make a contingent approval based on settling the protest, so that the Department does not have to wait for the next Board meeting to go forward if it were resolved prior to the next Board meeting.

The Manager said the Department could do that, but the price may be different.

Chairperson Smith said the Board could only approve what is known today, and therefore could only approve the current price. He suggested that the Board could approve a contingency, and if the Chief Procurement Officer resolves the protest next week, the Department could go ahead and not wait for another Board meeting.

The Manager said that would work.

Chairperson Smith said that would address the Manager's concerns because the Board would not be approving anything until the protest is resolved.

Ms Garson said her only concern was that the Hawai'i Administrative Rules say "staying all action," so a contingent approval could be a violation of a stay in all action.

Chairperson Smith asked when the 60-day period to make an award will expire in this case.

Mr. Inaba said it would expire one week prior to the next Board meeting.

Chairperson Smith said he was trying to figure out how important it was to take some action today so the Department could move forward.

Mr. Mukai asked whether in the ease of a stay in action, the 60-day clock on making an award stops ticking.

The Manager noted that the contract provisions say that the bidder is required to hold his price for 60 days, and that was a separate issue. In other words, the 60-day period would remain, regardless of the outcome of the protest.

Chairperson Smith, noting that the earthquake took place in 2006 and now it is 2009, said that the Waimea community was asking why it was taking so long for the reservoir to be repaired. He expressed hopes that the Department could take minimal risk while going forward with the repairs.

The Manager said while he thought the contingency award was a great idea, he was not sure if that was Corporation Counsel's recommendation.

Chairperson Smith asked who was filing the protest.

Mr. Meierdiercks asked if the Board had the right to know.

Ms. Garson said she did not know the answer to that question.

Chairperson Smith noted that the bidder was filing the protest because they had to be qualified to do this kind of work and yet did not submit their qualifications. He believed the matter was black and white: if a bidder is required to submit something and does not submit it, then the bidder's bid cannot be considered.

The Manager concurred with Chairperson Smith, but reiterated that the Department must follow the law.

Chairperson Smith said the Board has to follow Ms. Garson's interpretation of the law.

Ms. Garson said that all she could say is the law says a stay of all action, and that her interpretation is that even a contingent approval would violate such a stay because it would mean taking an action.

Chairperson Smith said that the risk would be that the Board would have to redo everything at the March Board meeting.

Mr. Mukai said he did not see a problem: if the Board voted today on a contingent approval and the Board were in violation then the approval would just be null and void, and the Board would have to come back to the matter anyway.

The Manager said it went deeper than that; the ramifications would be that the Department of Water Supply violated the law.

Mr. Harai asked if the protest only involved the bidder's qualifications. He asked that if that were the case, would it not be black and white.

Ms. Garson said that she did not want to comment on the contents of the protest.

The Manager said that his concern was with the reputation of the Department, and whatever the terms of the protest, he believed that there was a process to resolve it. He therefore believed that it was in the Department's best interests to follow the law.

Chairperson Smith asked Ms. Garson whether the Board could make a contingent approval, providing that Ms. Garson did not tell the Board to stop. If a problem arose, the Board could revisit the matter at the March Board meeting and approve the award again. He asked if that were an option.

Ms. Garson said that while she had not told the Board not to do a contingent approval, she was clear that the law said to stay until the Chief Procurement Officer finds that it was in the best interests of the Department to proceed.

The Manager said that he wanted to follow the law.

Ms. Garson said that her recommendation was to **defer** because a protest has been filed, and there is a stay in place.

The Manager said that he was pretty confident that the Contractor would be willing to hold his price beyond the 60 days, and that all it would take is a letter to the Contractor asking if he were willing to hold his price longer than the 60 days. The Contractor would respond affirmatively and the Board can award him at the next Board meeting.

Chairperson Smith said this would be the Manager's intuition.

The Manager said it had happened before, where one or two weeks extra did not make a difference, especially in the current difficult economic times. He said it was in the Department's best interests to follow the law and do what the Department is supposed to do instead of taking the risk of a violation.

Ms. Garson again recommended that the Board defer.

MOTION: Mr. Kuailani moved to defer action until the March 24, 2009 Board meeting; seconded by Mr. Meierdiercks and carried unanimously by voice vote.

NORTH KONA:

A. JOB NO. 2003-834 ((REVISED), CONSTRUCTION OF THE KONA BASEYARD FACILITY IMPROVEMENTS:

Attached to the Agenda was a copy of a letter dated February 5, 2009, from Central Construction, Incorporated, requesting an extension of contract time.

This is the contractor's sixth time extension request to allow the Department of Water Supply additional time to secure the necessary building permit for the project. Additional time is needed to fulfill the Disability and Communication Access Board's requirement to provide a readily accessible path of travel to the existing open garage building, which will be converted to office and workshop spaces under the scope of this project. Staff has evaluated this request and finds that the 90-calendar day extension is justified.

Previously approved time extensions by the Water Board:

- First time extension 64-calendar days (May 11, 2007 to July 14, 2007)
- Second time extension 60-calendar days (July 14, 2007 to September 12, 2007)
- Third time extension 60-calendar days (September 12, 2007 to November 11, 2007)
- Fourth time extension 65-calendar days (November 11, 2007 to January 15, 2008)

- Fifth time extension 417-calendar days (January 15, 2008 to March 2, 2009) with \$22,348.60 contract price escalation to compensate for the time delay.

The following is the time extension recommended for Water Board approval:

- Sixth time extension 90-calendar days (March 2, 2009 to May 31, 2009) with no contract price increase.

The Manager recommended that the Board grant Central Construction, Incorporated, a 90–calendar day extension to the contract completion date from March 2, 2009 to May 31, 2009, for JOB NO. 2003-834 (REVISED), CONSTRUCTION OF THE KONA BASEYARD FACILITY IMPROVEMENTS.

MOTION: Mr. Kuailani moved to approve the recommendation; seconded by Mr. Mukai.

The Manager lamented the hurdles posed by the Building Division of the Department of Public Works regarding the Kona Baseyard work.

Mr. Inaba noted that each of the previous delays were related to getting a building permit. In each instance, the Department satisfied the conditions, and Public Works signed off on the construction plans, but later came back with additional questions. He expressed hopes that this would be the last extension.

Mr. Inaba said that many things were brought up by the inspector assigned to the project or the issuer of the building permit, prior to handing over the building permit to the Contractor. The latest questions involve access to the improvement site.

Chairperson Smith asked who the project consultant was.

Mr. Inaba said it was architect Jerry Watanabe.

Chairperson Smith asked what the original cost bid was, provided 756 days ago.

Mr. Inaba said the original cost bid was \$192, 513.40; with an additional \$22,348.60 in contract price escalation to compensate for the time delay.

Chairperson Smith said that meant that the cost rose about 10 percent in 2 ½ years.

ACTION: The Motion carried unanimously by voice vote.

At this point Chairperson Smith called for a brief recess, from 10:40 to 10:47 a.m.

MISCELLANEOUS:

A. DEDICATION OF WATER SYSTEMS:

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

(Note: Item #1 below was withdrawn at 12-16-08 meeting).

I. PURSUANT TO THE TRI-PARTY AGREEMENT BETWEEN MAUNA LANI SERVICES, INC, (MLS), MAUNA KEA PROPERTIES (MKP), AND DEPARTMENT OF WATER SUPPLY. APPROVED BY THE WATER BOARD AT ITS MEETING ON FEBRUARY 28, 2006. THE FOLLOWING DOCUMENTS ARE HEREBY PRESENTED FOR ACTION BY THE WATER BOARD.

A. GRANT OF EASEMENT

Grantor: Waikoloa Village Association
TMK: (3) 6-8-002:019

B. ASSIGNMENT OF EASEMENT

Grantor Mauna Lani Service, Inc.
TMK: (3) 6-8-001:001

C. BILL OF SALE

Seller: Mauna Lani Service, Inc.
TMK: (3) 6-8-001 and (3) 6-8-002
Final Inspection Date: Pending
Water System Cost: Pending

D. DEED (Well Site 5 and Well Site 8)

Grantor: Mauna Lani Service, Inc.
TMK: (3) 6-8-001: 044 and 047

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

Ms. Garson asked that this Item be deferred. She explained that with this project, Mauna Lani needed to cross the state highway; and at the time they were given a Right-of-Entry to do so. One of the state's requirements is that the party that crosses the highway has to sign a Use and Occupancy Agreement. The Department of Transportation does not give easements to cross the highway; instead there is a Use and Occupancy Agreement that allows you to be there and have a water line there. Currently, Mauna Lani Services is having issues with DOT on the Use and Occupancy Agreement. When Mauna Lani dedicates the system to DWS, Mauna Lani will assign that Use and Occupancy Agreement to DWS. The Department had worked on this

assignment about a year ago. DOT is currently in the process of negotiation with Mauna Lani on the terms and the amount of the payment that Mauna Lani Services, the developer, needs to make to DOT in order to occupy that portion of the highway. Mauna Lani is still working on it, and the Department cannot accept the assignment now because DWS would be missing the right to be in the highway if we took the dedication now. Ms. Garson suggested allowing Mauna Lani the time to work that out with DOT. She noted that Mauna Lani is pushing for March to get everything approved, and meanwhile they are at the mercy of DOT. Ms. Garson said that she has been talking weekly with Mauna Lani's attorneys to figure out a way to help Mauna Lani, but she does not want the Department to take the assignment now and be stuck having to negotiate with DOT and possibly have to pay to have the right to be in the highway. Therefore, she asked the Board to defer the matter to the March Board meeting. She added that if she and Mauna Lani come up with a different solution for trying to assist Mauna Lani, it would also be on the Agenda for the March Board meeting.

Chairperson Smith said that part of the reason that DOT is taking this stance is because when highways are constructed using federal highway fund participation, there is an enhancement clause that says if the property values of adjacent property owners increase because of something that goes through a state highway, the property owner needs to pay a proportionate share of the increase in value to the DOT and federal highways for the 80 percent federal funding that constructed the road. He said that DOT was consistently doing this with anybody whose property is adjacent to a state highway that crosses infrastructure, highway access or multi-lane interchange kind of improvements. DOT's view is that if an owner did not have the access of this road, the property would not be so valuable. Even though the easement may be 20 feet wide on Queen Ka'ahumanu Highway, DOT is saying that because Mauna Lani Resort increased in value by \$20 million, DOT wants 5 percent of the \$20 million increase.

Ms. Garson concurred, noting that what Mauna Lani is waiting for is for DOT to do their appraisal so they know what their property value is.

Chairperson Smith noted that this provision was always in the federal highway statutes, but it had never been imposed.

The Manager said it was only imposed recently.

Chairperson Smith cited the case of Waikele subdivision on Oahu, where two interchanges were done that connected to Waikele. DOT in that case said that if Waikele did not have those interchanges, the value of the property would be a lot less, saying they (DOT) spent \$100 million on this road, so Waikele should give something back.

The Manager noted that this issue was a deal-breaker for Surety because they had to pay a fortune to State Highways because Surety was going to run a well line on the state highway.

ACTION: Mr. Taniguchi moved to defer the Item, seconded by Mr. Kuailani and passed unanimously by voice vote.

B. VEHICLE BID NO. 2008-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY:

Bids were opened on February 18, 2009; and following are the bid results:

	Cutter Dodge Chrysler Jeep of Pearl City	Big Island Toyota	Inter Pacific Motors, Inc., dba Orchid Isle Auto Center
Part "A"			
Two (2) only 2008 or later, Mini-cargo or Passenger Van 2-wheel drive			
Total delivery price	\$54,751.73	\$52,971.58	\$51,250.00
Delivery time (calendar days)	180	30	150

Part "B", ½ ton compact pickup with extended cab, will be re-bid because there were discrepancies in each of the bids submitted.

The Manager recommended that the Board award VEHICLE BID NO. 2008-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, to Inter Pacific Motors, Inc. dba Orchid Isle Auto Center, for Part A at a cost of \$51,250.00 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.

MOTION: Mr. Mukai moved to approve, seconded by Mr. Lindsey.

Mr. Ikeda said that every year, the Department seeks bids on at least 10 to 12 vehicles that DWS wants to replace due to high mileage. Amid the current economic situation, the Department has cut back dramatically on the number of vehicles it is looking to buy. The only vehicles put to bid this year were two meter reading vans, one each for Hilo and Kona, and one compact pick-up truck to replace one in Ka'u. The vans now in use have high mileage and make lots of stops, and are subject to breakdowns. The pickup truck in Ka'u has very high mileage and is very beat-up, and the Ka'u crew needs it on a daily basis. Mr. Ikeda said that the delivery time varies widely among the bidders, but he noted that in the Department's specifications, DWS does not reward bidders for early delivery. Instead, for comparison purposes, the Department does add \$25 a day for delivery time that exceeds 180 days. This \$25 a day does not affect the price, and is for comparison purposes only. He said that the Department recommended awarding to Orchid Isle Auto Center for \$51,250.00. Turning to Part B of the bidding, one of the specifications called for the compact truck to have an automatic shift on the floor. Orchid Isle did not have a vehicle with automatic shift on the floor, and only had a compact truck with a column shift on the floor. Cutter Dodge did not have a compact truck with automatic, and instead bid on a bigger truck than the Department wanted. Summing up, Mr. Ikeda said that the Department now needs to redo the specifications and put it out to bid again, because the bidders were bidding on two completely different things.

Mr. Mukai asked why the specifications were for automatic shift.

Mr. Ikeda said it was due to the preference of the employee using the truck.

Mr. Mukai asked why spend money on automatic, and asked if ADA considerations were involved. He said the Department should seek the most affordable vehicle possible.

Mr. Ikeda said the Department was trying to accommodate the employee, little knowing that doing so would cause such a problem.

The Manager assured that the Department would not do that again.

Mr. Taniguchi asked for an explanation of the \$25 a day added for delivery times exceeding 180 days.

The Manager said that the Department does not give consideration for early delivery, but gives a penalty for late delivery.

Mr. Ikeda gave as an example one company that can deliver in 180 days, and another that can deliver in 200 days. Just for comparison purposes, the extra 20 days is multiplied by 25, that is, \$500 which is added to the bid price of the company that bid 200 days' delivery time. He noted that the bid amount is still the bid amount, and the \$25 a day is for comparison purposes only.

Chairperson Smith said that the Department evaluates based on the liquidated damages for delivering the vehicle after the maximum 180 days.

Mr. Taniguchi asked if the Department was going statewide for vehicle bids.

The Manager noted that DWS had been criticized many times in the past for only getting vehicle bids from Hilo, and had encouraged vendors on other islands to bid. He noted that this was the first time Cutter Dodge had bid with DWS, and indeed the first time an off-island dealer had bid with DWS.

Mr. Ikeda said it was also the first time that Big Island Toyota bid with DWS.

Chairperson Smith said that as a government entity, DWS is subject to state procurement laws, and must open up bidding to all vendors. He suggested stipulating faster delivery time or negotiating on maintenance, etc.

Mr. Ikeda said that bidders know about the 180 day cutoff, and many vendors routinely bid 180 days to play it safe, knowing there is no penalty up to 180 days.

Mr. Taniguchi asked how immediate DWS' needs were for the vehicles.

Mr. Ikeda said the sooner the better.

ACTION: The Motion carried unanimously by voice vote.

C. WAIĀKEA OFFICE PLAZA LEASE AGREEMENT -- DCCA

The Department of Commerce & Consumer Affairs (DCCA), is a tenant at the Waiākea Office Plaza leasing 546 square feet of office space in the upper level of the Kapoho Wing. DCCA's lease expired December 31, 2008. This lease agreement extends the term of their lease through December 31, 2009. Lease rent is being increased from \$3.00 to \$3.54 per square foot as follows:

January 1, 2009 to December 31, 2009 \$1,932.84 per month

Common area maintenance comprises \$1.79 of the square foot rate with office rent making up the remaining \$1.75.

The Manager recommended approving Department of Accounting & General Services Lease Agreement No. 91-30-0011, subject to the approval of Corporation Counsel, and authorizes the Chairman or Vice-Chairman to sign the lease amendment.

MOTION: Mr. Mukai moved to approve, seconded by Mr. Harai.

Mr. Sumada explained that the lease agreement extends the lease to one of the current tenants at a higher monthly rent.

The Manager said the tenant, DCCA, has said it plans to move out when the other state agency tenants move out, but DCCA has not found a new space yet. DCCA plans to move soon after the Judiciary leaves.

Mr. Sumada noted that the new lease is a month-to-month lease.

Chairperson Smith said the new rent is an 18 percent increase, and asked how this compares with the rest of the Hilo market.

Mr. Sumada said the increase is due to the power cost, and that it is an increase in the common area maintenance cost, not an increase in the rental portion of the lease.

Chairperson Smith noted that DWS is the landlord, and when the Board approves the lease, they normally get a comparison of the local office rental market. He noted that the market is depressed right now, but to increase the common area maintenance portion is appropriate. In the future, he would like to see a comparison of the rental market. Because in our case a government entity is the landlord, it is important to get market rates.

Mr. Sumada said that Hilo rents ran from \$1.50 to \$2.50 per square foot a year ago, while our tenants in DWS' building have \$1.75 per square foot as the rental portion, and on top of that is the common area maintenance portion.

Chairperson Smith commended the Department for what it is getting in the agreement, adding that the Board needs the market information on the record so that the entire Board has the same data and so that the Board is covered in the Minutes.

The Manager said that when we do a lease agreement the next time, it will include that information, noting that the next time will be when the Judiciary moves out and the Department looks for a tenant for downstairs. The Department wants to occupy the entire upstairs of the building.

Mr. Taniguchi noted that on Page Two, Article Two, of the Lease Agreement there is a typo in the Bank of Hawai'i's street address, where the address should be "Kekūanaō'a" instead of "Kehuanaoa".

ACTION: The Motion was carried unanimously by voice vote.

D. MONTHLY PROGRESS REPORT:

The Manager said that as always, the Board is welcome to call the Department with any questions they may have regarding the Monthly Progress Report.

E. ISSUANCE OF GENERAL OBLIGATION BONDS:

The Department anticipates obligating approximately \$32 million during the remainder of FY09 on construction projects. The Department further anticipates needing \$37 million for construction projects in FY10. This brings total construction funding requirements over the next year and a half to \$69 million. Currently, DWS has approximately \$19 million available for construction leaving a shortfall of \$50 million that the Department would like to raise via General Obligation Bond issue as provided for in the Department's July 2007 Rate Study prepared by RW Beck.

Interest payments totaling \$1,250,000 for these new General Obligation Bonds have been included in the proposed FY10 budget.

The County of Hawai'i cannot say exactly when their next General Obligation Bond issue will be but has indicated that Water Board approval is required in order for DWS to be included.

The Manager recommended that the Water Board approve a request to the County of Hawai'i to be included in the County's next General Obligation Bond issue for \$50 million; that DWS reimburse the County of Hawai'i for DWS' share of debt service and costs of issuance; and that the Manager be authorized to execute the necessary documents to complete the issuance.

MOTION: Mr. Mukai moved to approve, seconded by Mr. Kuailani.

The Manager said it is the Department's intention to ask the County for G.O. Bonds to finance some of our CIP projects. In the current economic situation, the Department is not generating enough revenues to put the customary 15 percent reserves back into CIP. DWS revenues are

covering the Department's expenses, with very little left over to put into CIP. G.O. Bonds are a way to generate CIP funds, so that we can put out the Department's CIP projects. The Department has checked with the County and it is not a problem. As the Manager mentioned during the last Board meeting, the Department has the ability to float revenue bonds, but the rates for revenue bonds are higher than for G.O. Bonds. Therefore it is to the Department's advantage to piggy-back with the County on the County's G.O. Bond float.

Chairperson Smith noted that the recommendation is that the Department be included in the County's G.O. Bond application and that the Department's request is for \$50 million, and that the County's request would be for something significantly more, and the Department would pay a pro rata share of the counseling and other setup fees.

The Manager confirmed that this is how the Department always does G.O. Bond floats with the County.

Chairperson Smith noted that if the Board approves, all it means is that the Board agrees to ask the County that DWS be included in the County's bond float. He asked when the commitment would ensue.

The Manager said the commitment would be when the Department brings the projects to the Board.

Chairperson Smith noted that the Board is just saying that it approves the Department to ask the County to be included in the bond float, and that there is no commitment on the Board's part at this point; that it is only an authorization from the Board to proceed.

The Manager confirmed that it would just be an authorization from the Board to go ahead to see if DWS can borrow the \$50 million, and that there is no commitment whatsoever.

ACTION: The motion carried unanimously by voice vote.

F. DEPARTMENT OF WATER SUPPLY PROPOSED OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEAR 2010:

The Department distributed copies of a Public Notice to announce the March 24, 2009 Public Hearing on the Department's Operating and CIP Budgets for Fiscal 2009-2010. The Public Notice must be submitted to the newspapers by no later than March 9, 2009.

Chairperson Smith asked that the Public Hearing be set for 9:30 a.m. at the Waimea Community Center, with the regular Water Board Meeting following at 9:40 a.m., to give the Board flexibility in case no one shows up at the Public Hearing. He asked the Board to review the Public Notice and bring any questions or concerns to the Department before the Public Hearing.

The Manager said the Department was prepared to answer the Board's questions regarding the Operating and CIP Budgets.

Regarding the \$39.7 million under Receipts: Sale of Water Services, Chairperson Smith asked how it compared with the past 12 months' experience on water service sales, specifically, whether it reflected a change in water consumption.

Mr. Sumada said he was forecasting slightly less consumption in Fiscal Year 2009-2010 because consumption has been decreasing over the past three years. He saw a continuation of this declining trend.

Chairperson Smith asked to what Mr. Sumada attributed the consumption decline.

Mr. Sumada said there was no obvious reason for the decline, but noted overall consumption islandwide amid increased rainfall.

Chairperson Smith asked if the leak detection program was a factor in the decline.

The Manager said leak detection does not come into play; leak detection instead reflects the Department's electrical cost. He noted that Hilo area water consumption is pretty steady, thanks to high levels of rainfall. Meanwhile, Kona has had a lot of rain in the past two months, and that has translated into falling water consumption because Kona normally uses lots of water for irrigation. He noted that when there is a reduction in irrigation, there is a reduction in revenues for the Department as well. He believes that the decline in consumption is coming from the West side of the island, while East side consumption has held steady. Last year, the decline in water consumption in West Hawai'i marked a definite trend.

Chairperson Smith said that while in Waimea there had been a prolonged drought, the past two months have seen dramatically more rain.

The Manager noted that since the earthquake damaged the Waimea reservoirs, the operators of the Waimea treatment plant issue daily reports on both storage and consumption. Consumption has definitely declined with the higher rainfall, he said.

Turning back to the Public Notice, the Chairperson asked Board members to email any questions to the Board Secretary.

The Manager said that any changes, including corrections of typos, must be made early, before the March 9 deadline for submission to the newspapers.

Chairperson Smith asked whether the Department was projecting any change in personnel count.

Mr. Sumada said the personnel count was rising slightly, although not as much as before. He noted that the Department did not budget for union pay increases, after consulting with the County which does not plan to budget for pay increases. He said that with the union contracts expiring on June 30, 2009, there is nothing beyond that to indicate any pay increases.

The Manager said that the Department was adhering to the Mayor's lead on the hiring freeze. The only positions that the Department will add are positions involving the Department's core function; that is, the Department's ability to serve its customers. The positions in question would be customer service, operations personnel in the field and information technology personnel to improve the Department's communications with the public. Aside from those positions, the Department is in a hiring freeze.

Chairperson Smith said he approved the Department's conservative fiscal stance in the current economic circumstances.

Mr. Taniguchi asked about the Department's projected annual salary expenses.

Mr. Sumada said that last year they were budgeted at \$9.1 million, whereas this year they are at \$8.7 million and next year at \$9.2 million.

Mr. Taniguchi asked for clarification of the term "hiring freeze."

The Manager said it meant new hires. In some cases, the Department is not replacing people who have left or transferred. If the position is not part of the Department's core function, the Department will not fill the position until the hiring freeze is lifted and the economy improves. If the position does involve the Department's core function, DWS is hiring to replace staff but is not hiring anybody new. As an example, the Department is not filling an electrician's position recently requested by Operations. However, the Department is watching the County to see if they hire for a similar position and if so, the Department will follow suit. The Manager said the Department is basically following the Mayor's lead.

Mr. Sumada said that there are some positions that the Department is budgeting for, but the positions are frozen. The Department will not fill those positions until the hiring freeze is lifted.

The Manager said that budgeting for these positions provides the Department with a cushion, so that when the economy improves, the Department will not be stuck in a position of not being able to fill vacancies.

Ms. Garson noted that the County Council last year or so had an issue over whether to fund vacant positions, which would entail taking money in the budget from something else to fund the positions. She believed the County Council was looking selectively at that issue.

Mr. Mukai asked the Department, for information purposes, to add up all of the positions that are currently frozen, together with salaries and benefits. Doing so would give the Board an idea of how much those positions figure in the budget; these funds would be ones that the Department does not anticipate using.

The Manager said the Department could do such a tally. He noted that it was good to have funding for vacant positions because as a water utility the Department often needs to increase staff such as Microlab personnel, to comply with reporting requirements by the Environmental

Protection Agency. He noted that Microlab staff has grown dramatically in the last few years because there is so much reporting that needs to be done.

Chairperson Smith it would help to know how many positions are frozen out of the \$13.7 million the Board will be asked to approve on Personnel Services, to see how much leeway the Department has in case the economic situation gets even worse.

Mr. Kuailani asked whether the Department had ever laid off staff.

The Manager said he never heard of the Department laying off staff, and that it was the last thing he would ever want to do. He noted that the Department's Table of Organization contains many positions which are not filled, and that the Table of Organization reflects an ideal situation for DWS, where there are enough engineers to devote to projects, for example.

G. REVIEW OF MONTHLY FINANCIAL STATEMENTS:

Mr. Taniguchi asked about the Department's procedure on lapsed warrants and whether the Department must keep them forever.

Mr. Sumada said the Department sets aside those uncashed checks, putting them into a separate account for about three years. Efforts are made to contact the payees and if successful the Department issues a new check. If no contact is made, the Department eventually turns over the uncashed checks to the State.

Mr. Taniguchi asked about the Department's property and where it appears on the balance sheet.

Mr. Sumada said it appears under the Fixed Assets category, under Plants in Service. This includes land, building, wells, trucks and other assets.

The Manager noted that it also includes easements granted to the Department, dedicated water systems and other assets.

H. WATER RATE STUDY:

Discussion was held on the new water rate study that the Department wants to conduct, to address the shortage of funds being generated from water sales.

The Manager recommended that the Department do a new water rate study. He said the primary reason for doing so is that, amid the current economic situation, the Department does not have enough monies to do construction projects. While the Department is allowed 15 percent to do CIP projects, the Fiscal Year 2009-2010 budget has no money going into CIP. The Department wants to go through the procurement process to select a consultant to do a water rate study. A new water rate study would look at the entire economic situation and what the Department has done in the past; such a study would give the Department an idea of where

the Department should be five years hence, and what rates need to be adjusted during that time. He noted that the last water rate study that affected rates was done in 2001. The most recent water rate study, done in 2007, did not recommend any change in rates.

Chairperson Smith said that a rate study would clarify for the Board whether consumption rates cover operating expenses to provide the water, versus to recover CIP. He noted that some strategies involve the Facilities Charges paying for current and future CIP improvements, and the monthly bill just pays for the water – not to provide a reserve that the Water Department would use to build more infrastructure for future customers.

The Manager noted that if the Facilities Charge was the sole vehicle for CIP, it would be outrageously high. At \$5,500 for the amount of lots that are coming in, that is not going to support a CIP program. He said that a water rate study would take a look at the balance between rates and the Facilities Charge. As with previous studies, the consultant would keep the Board very comprehensively informed on what they do, how they do it and the assumptions they make.

Mr. Sumada said this is a good time for a new water rate study because so much has changed since the 2007 study, which predicted 2 percent growth and did not anticipate the spike in fuel prices that subsequently occurred.

Chairperson Smith said he agreed that the Department should do a new rate study at this time.

Mr. Lindsey noted that while the Department normally has 15 percent for CIP in the budget, this budget has no money going into CIP.

Chairperson Smith said that if a developer wants to improve their lands, the Department requires that landowners provide infrastructure that DWS accepts for maintenance. Typically, DWS does not build infrastructure; instead the Department's primary focus is to provide water to existing customers. Typically, the Department's CIP needs are minimal, unless DWS needs to replace something that is outdated or similar problems arise.

The Manager noted that a lot of CIP money is used to keep DWS in conformance with EPA regulations, as in the case of remedial action to a spring. Rarely does the Department expand the system, and this is very controversial because a lot of people want DWS to expand the system. The Department rarely puts in new transmission lines to pick up new customers, and instead DWS lets developers do that kind of infrastructure, he noted.

Mr. Harai asked if the Department has CIP projects budgeted but which DWS cannot do because of the cost.

The Manager said that the Department has a lot of projects that have not been bid out yet because DWS does not have the money, and some projects that the Department intends to bid out for which there are funds in reserve. He cited the example of the \$15 million Palani project in Kona, for which the money has been reserved as part of a previous bond float with the County.

I. MANAGER'S REPORT

The Manager provided a report on the following:

1. Negotiations with Kamehameha Investment Corporation –The situation is status quo; KIC is still in discussions with their master developers and they have not contacted DWS yet.

The Manager raised the subject of the economic stimulus, and expressed disappointment at what it means for the Department; it does not do the Department much good. The stimulus money is going through the State Revolving Fund (SRF), administered by the Department of Health. The SRF program provides funds to counties to put them into compliance with EPA regulations. The total stimulus money available is \$19 million, for which the four counties will compete. To obtain this money, DWS would have to comply with SRF requirements, and only certain projects meet those requirements. Most of the projects that DWS was hoping to do with stimulus money were “shovel-ready,” but they did not qualify under SRF. He noted that there are monies coming up for competitive projects, but it is not clear what the criteria will be. DWS plans to apply, to fund projects that would not qualify under SRF. In addition, DWS also plans to apply for money for alternative energy projects.

The Manager said he was hosting the managers of the three other water departments on February 25 at his office, to discuss upcoming legislation and plans for the upcoming Hawai'i Water Works Association conference on the Big Island in October. Regarding the **American Water Works Association conference** in San Diego from June 14 through 18, the Manager urged Board members to make their reservations soon because hotel rooms are going fast. He said that DWS was allowing a day for attendees to get acclimated to the city, and so attendees should travel on Friday, June 12, rest on Saturday, June 13 and be rested by the Sunday, June 14 conference opening. He noted that DWS staff had booked the Embassy Suites, but it was probably booked solid by now. He urged Board members to find a hotel with shuttle service to the conference. The Board Secretary can offer assistance with arrangements, and all registration for the conference should go through her. On reimbursement, the per diem is \$135 a day up front, which includes \$85 per night accommodation. The Department will further reimburse amounts exceeding \$85 per night, reimbursable upon return, with the attendees submitting the hotel receipt. Ground transport to and from the hotel (but not during the conference) will be reimbursed. Airfare will also be reimbursed up to a specific amount to be determined; the Manager noted that airfares are currently running around \$680-700 round-trip to San Diego. The Manager said there are two types of registration for the conference: 1) full conference (including classes) and 2.) Exhibition Hall only. (The price difference between the two registration types is sizeable, he noted.)

Chairperson Smith encouraged Board members attend the sessions to get the maximum benefit from attending. He also noted that as part of the proposed travel policy, attendees will be required to provide a written report on what they learned, due within five days of return from the conference.

2. Recycling Program –Ms. Myhre reported on the Department’s program to boost recycling and awareness of sustainability issues. After introducing the recycling program at the Hilo Baseyard last year, Ms. Myhre and Ms. Aton kicked the program off at the Waimea and Kona Baseyards in February. The Hilo program in February, meanwhile, began weighing the amount of trash diverted from the landfill. Currently it runs about 200 pounds of trash a week, including paper, plastic and metal that are non-HI5 recyclables. Once Waimea and Kona Baseyard personnel get more used to the program, their diverted trash will also be weighed. The diverted trash goes to the County Mixed Waste Transfer Station in Hilo, and the County bales the trash and ships it to the Mainland for sorting.

3. Transportation Committee –Due to the spike in fuel prices, DWS staff spontaneously began reducing their amount of driving DWS vehicles. Ms. Myhre noted that fuel consumption is running about 19 percent less than the same time last year; at 6,100 gallons of unleaded gas a month currently versus last year’s average of 7,500 gallons a month. Meanwhile, DWS is looking to purchase higher gas mileage vehicles, including possibly hybrids or plug-in vehicles.

4. Hawai’i County Green Team Report –Ms. Myhre said that in December, the Department of Environmental Management invited County departments to discuss recycling initiatives. It was decided to form a County “Green Team” to focus on energy, transportation, waste and construction issues, to provide support and recommendations *within* the County. The next step is to approach the new Mayor to make sure that he is on board.

J. CHAIRPERSON’S REPORT:

Chairperson Smith introduced the following two items:

A. Discussion and approval of Travel Policy for Board members – Chairperson Smith worked on a travel policy proposal with Vice-Chairperson Mukai, in an effort to show fiscal responsibility. (See attachment). For travel to the AWWA conference in San Diego, there will be a hierarchy of which Board members may attend. The Manager said the Department can fund 5 (five) Board members. The Chairperson proposed that he and the Vice-Chairperson should attend, with preference then given to the members with the shortest terms remaining on the Board. New members Mr. Taniguchi and Mr. Lindsey would be excluded, and Ms. Kim has said she cannot attend.

Mr. Kuailani asked what format the post-conference reports should follow. Ms. Garson offered to share samples of post-trip reports she has done. Chairperson Smith said it was important to show documentation after taking trips on County funds to illustrate the usefulness of attendance at conferences. He asked for and received consensus on the Travel Policy.

Chairperson Smith urged Board members who do not attend the San Diego conference to go to the state convention in Honolulu in May. Because DWS is the host of the HWWA conference in Waikoloa in October, all Board members should plan to attend. Chairperson Smith also

received the Board's concurrence with Ms. Kim's memo item #3 which encourages the Chairperson and Vice-Chairperson to attend all three of these events.

B. Discussion on lunch protocol after Board meetings – Chairperson Smith expressed concern that post-Board meeting lunches at restaurants might raise negative comment from the public. To be a little more fiscally restrictive, he suggested bringing in lunch such as bentos. He suggested that the year-end Board luncheon could be a restaurant meal which the Mayor might attend. Mr. Harai, noting that he has difficulty staying for lunch on Board meeting days, said bringing lunch in was a good idea.

ANNOUNCEMENTS:

1. Next Meeting:

The next meeting of the Water Board will be held on March 24, 2009, at **9:40 a.m.**, at the Waimea Community Center (next to the Ball Park); 65-1260 Kawaihae Road, Kamuela, Hawai'i. This will be preceded at **9:30 a.m.** by a Public Hearing on the Department's proposed FY2009-2010 Operating and CIP Budgets. A site visit to the mauka reservoirs and the Clearwater tank is scheduled to follow a bento lunch after the regular Water Board meeting. Ms. Garson said a field trip would be considered part of a Board meeting, so Minutes will be taken to comply with the Sunshine Law. She said she would work on writing the field trip into the March 24 regular Water Board meeting Agenda. The public can attend the site visit as part of the Board meeting, she said.

2. Following Meeting:

The Board chose to hold its April 28, 2009 meeting at the Department of Water Supply Baseyard, Operations Center Conference, 889 Leilani Street, Hilo.

ADJOURNMENT:

ACTION: Chairperson Smith called for the meeting to be adjourned. Mr. Harai so moved; seconded by Mr. Kuailani, and carried unanimously by voice vote. Meeting adjourned at 12:22 p.m.

Senior Clerk-Stenographer

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