

## MINUTES

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

March 27, 2007

#### ROYAL KONA RESORT, RESOLUTION ROOM

MEMBERS PRESENT: Mr. Thomas Goya, Chairman  
Mr. Riley Smith, Vice-Chairman  
Mr. George Harai  
Mr. Loren Heck  
Ms. Millie Kim  
Mr. Dwayne Mukai  
Mr. George Wilkins  
Mr. Milton D. Pavao, Manager, Department of Water Supply  
(ex-officio member)

ABSENT: Ms. Paula Helfrich, Water Board Member  
Mr. Bernard Konanui, Water Board Member  
Mr. Christopher Yuen, Director, Planning Department  
(ex-officio member)  
Mr. Bruce McClure, Director, Department of Public Works  
(ex-officio member)

OTHERS PRESENT: Ms. Katherine Garson, Deputy Corporation Counsel  
Mr. Craig Masuda, Deputy Corporation Counsel  
Mr. Richard Yeung  
Mr. Robert Capelli  
Councilman K. Angel Pilago  
Mr. Del Green  
Ms. Barbara Scott  
Mr. Ken Melrose  
Mr. Robert Stuit  
Mr. Steven Lim, Carlsmith Ball, LLP  
Mr. Jim Stutheit  
Mr. Bob Akinaka  
Mr. Bill Brooks, Westpro Development  
Mr. Mike Kardas  
Ms. Paula Sparolini  
Mr. Sam Stoltzfos  
Mr. Gerard Capps  
Mr. John DeFries  
Ms. Janet Anderson

Mr. Andy Anderson  
Ms. Roselyn Petrie  
Ms. Lisa Huynh, West Hawaii Today  
Mr. Daniels  
Mr. Francis Kauhane  
Mapul Kunitake

Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy Manager  
Mr. Kurt Inaba, Engineering Division Head  
Mr. Daryl Ikeda, Chief of Operations  
Mr. Richard Tsunoda, Waterworks Controller  
Mr. Richard Sumada, Assistant Waterworks Controller  
Mr. Keith Okamoto, Engineering Division  
Mr. Lawrence Beck, Engineering Division  
Mr. Kawika Uehara, Engineering Division  
Ms. Bettina Arrigoni, DWS Kona Office  
Mr. Andrew Higa, DWS Kona Office

CALL TO ORDER - Chairman Goya called the meeting to order at 10:05 a.m.

STATEMENTS FROM THE PUBLIC (*verbatim*)

Chairman Goya stated that Mr. Richard Yeung was first to provide public testimony, and he wished to speak about water pressure above Mamalahoa Highway.

Mr. Yeung indicated that he wished to yield his comments to his neighbor, Mr. Robert Capelli, who would be speaking about the same issue.

1) Mr. Robert Capelli:

CHAIRMAN GOYA: Thank you Mr. Capelli. Go ahead.

R. CAPELLI: Well, so basically, about ten days ago, we had a situation mauka of Mamalahoa Highway. We had greatly reduced water pressure. And I should start by saying some of this is hearsay. I haven't done a thorough investigation myself. From what I understand, it's due to a reduction of water pressure in order to service some new homes going in at different parts of the community, I guess makai of the highway or ... And so myself and several of my neighbors are here, and several others couldn't make it; but there's a great number of homes affected. I would say my most pressing need is to understand, first of all, what can happen in the future; what sort of timeline is involved; and what our rights are as citizens who have been enjoying a certain water pressure. I mean we couldn't take showers, we couldn't flush our toilets. I mean it was pretty bad. So exactly what do we have to expect in the future, basically?

CHAIRMAN GOYA: Is that all?

R. CAPELLI: That's all. Thank you.

CHAIRMAN GOYA: Thank you. And, again, this is an area where we are only taking public statements. I'm sure that someone from the Department will get back to the community to answer your questions specifically. And if there is further need for additional information, go out to other members of the community, I'm sure that, again, someone from the Board will give you the appropriate response.

R. CAPELLI: Will these questions be addressed today, here?

CHAIRMAN GOYA: No.

R. CAPELLI: They will not?

CHAIRMAN GOYA: They will not today.

M. PAVAO: Can we have your address so we can ...?

R. CAPELLI: 76-6017 Mamalahoa Highway, Unit B. Unit A is over here, and several other citizens with the same concerns are sitting here; and several others, like I said, couldn't make it.

CHAIRMAN GOYA: Yeah, we need to give the Department enough time to fully review the situation and give an appropriate response.

R. CAPELLI: Response will be in writing or how will it be?

CHAIRMAN GOYA: The response will be in writing, and we will report it at the next ... It will be agendized as well on the next Board Meeting under the Manager's Report.

R. CAPELLI: Thank you.

CHAIRMAN GOYA: Thank you. Will you also be speaking on Waiaha South, sir?

R. CAPELLI: I have nothing further.

CHAIRMAN GOYA: Thank you.

2) Mr. K. Angel Pilago:

CHAIRMAN GOYA: At this time I would like to call on Mr. Angel Pilago, Councilman, regarding his subject matter, which is the Waiaha development agreements. Good morning.

COUNCILMAN PILAGO: Good morning Chairperson Goya and mahalo for having me here. Good morning sir. Good morning to the commission and all the Board Members and staff and

the Corporation Counsels that are here today. I speak in reference to Agenda Item B, Waiaha South, Waiaha North developers agreements. I already had sent in a memo asking for a public hearing. I'm going to read just the last couple paragraphs please. On behalf of our constituents, I request that the Water Board arrange for a public hearing on this matter to allow the community, the Planning Department, the Department of Public Works, and members of the Kona Community Development Plan Steering Committee to obtain information and provide input. I request that this public hearing be held prior to taking any action to accept the proposed developers agreement regarding Waiaha System LLC and Waiaha System II, LLC. The public hearing will certainly provide the community with important information and details regarding these proposals. Your favorable consideration is appreciated. I submit this testimony to try and forge partnerships amongst all of us, I think this is something we can resolve; and I urge you all to consider this request and let us know if we can help in any way. Again, there is definitely a lot of concerns in the community; and as partners in working for the public, I look forward to working with you on this issue. Thank you. Thank you Chair.

CHAIRMAN GOYA: Thank you Councilman Pilago. I would also like to add that Board Members did receive copies of a similar letter by Brenda Ford asking for the same consideration, dated March 23, 2007.

COUNCILMAN PILAGO: Thank you.

CHAIRMAN GOYA: Thank you.

COUNCILMAN PILAGO: Thank you all.

3) Mr. Del Green:

CHAIRMAN GOYA: Okay, we have Mr. Del Green who is representing 1250 Oceanside Partners, and he wants to speak to us today on a well site development agreement with Oceanside and Greenwell. Good morning.

D. GREEN: Good morning, Thank you Mr. Chairman, members of the Board, the staff of DWS, and the community. My name is Del Green, and I'm the attorney representing 1250 Oceanside Partners and I've been helping them develop the proposed well development agreement for the development of a well in Kealakekua. What I would like to do is just kind of hit on some of the points of the proposal if I may. This is an agreement for the development of a well at the cost and expense of 1250 Oceanside in conjunction with the Greenwells who will be providing the site at no expense to the community...the site for the well. 1250 Oceanside would prepare an exploratory well; and if the well produces the quantity and potable quality of water that we anticipate, which we are hoping to be in an amount at least a million gallons per day, we will go ahead with the completion of the well and well site improvements, which would include not only the development of the well, but also the development of the improvements necessary to transmit that well to the reservoir in the area. I think it is sort of a win/win situation. In addition to providing water for our development, the proposed well will also provide water for the community. As the agreement is presently drafted, the County would enjoy 15% of the water capacity from the well. In addition, the agreement has a 20-year term that will take us a number

of years before we actually need all of the water that would be generated from the well. In the interim, of course, the community would enjoy that additional water capacity for its use. In addition to that, of course, we have the provision of jobs for the community and the like, so there are a number of benefits to both parties. I might also add that as currently drafted, the agreement provides for the ability of the...in the event that the well actually produces more water than the one million gallons per day, there is a possibility for oversizing of the well, which would provide additional water capacity for the community and also, hopefully, for the benefit of the Greenwells and Oceanside. And I guess those are sort of the highlights at this point. So if there are any additional questions later on, perhaps we can address some of the questions that the Board may have.

CHAIRMAN GOYA: Thank you Mr. Green.

4) Ms. Barbara Scott:

CHAIRMAN GOYA: At this time, I'd like to call Ms. Barbara Scott who wishes to comment on the Waiaha development project. Good morning.

B. SCOTT: Good morning. I'm somewhat surprised to see this on your Agenda. At this time, the Water Use and Development Plan is still being updated. It's quite a bit overdue. The Department of Water Supply has funded a contractor, Fukunaga & Associates, to update the plan, which is islandwide and considers the water use in association with development and what our long-term water usage will be. There is to be public hearings on the Water Use and Development Plan schedule May or June and would certainly tie in to any request of other well development and water commitment and other usage. So I would request, respectfully, that any of these long-range and large water resource commitments be delayed until after the Water Use and Development Plan has been implemented. It's right on the threshold. The Department of Water Supply funded it; and we need to be working together with Planning on how these things are done. For the Waiaha north and Waiaha south commitments that are requested, along with this water system, I understand that their Waiaha System LLC has had an agreement with the Department of Water Supply to develop these wells since, I think, 2005 that the commitment has been in place from some time with no public hearing; and I do request or reiterate Angel Pilago's request to have a public hearing on these matters. Waiaha north and Waiaha south, they both represent some huge development projects. Waiaha south formally was Malia Ohana and represents about 96 acres and quite a few developers. The other is in the Hinaloli area, would be Mailani View Estates. No one is operating in a void. Water certainly affects all other projects. It isn't specifically water commitments, but what this represents here is providing justification for a developer to continue with two very large projects that will affect the community. Also, whatever being developed here appears that it's an exchange for water commitments other than the Greenwell request, which is to develop a well resource and dedicate it to the County -, to the Board of Water Supply or to the Department of Water Supply. And I would expect that any developer who creates this resource would also dedicate it to the Board of Water Supply, Department of Water Supply, to distribute as needed by the community. That's my two cents. Thank you.

CHAIRMAN GOYA: Thank you again.

5) Mr. Ken Melrose:

CHAIRMAN GOYA: Well, the last person who signed up is Ken Melrose; and he wants to speak to us regarding Oceanside/Greenwell water agreement, and he is representing the Greenwell Family. Good morning Mr. Melrose.

K. MELROSE: Good morning Mr. Chairman, Director/Manager, Members of the Board of Water Supply. We would just like to ask for your support of this agreement, which has been in the process of development for a number of years. The Greenwell family currently owns and operates a coffee farm and production facility. They need additional water commitments to expand that farm and to expand their commitments for production, and we all know how Milton wants to support agricultural use of potable water; but, ah (laughter), it's not an irrigation source but a production source.

M. PAVAO: That's not nice (laughter).

K. MELROSE: Sorry. Out of order...I apologize. But, you know, the family resides on the property and the commitments would benefit the family and the lands held in the family for about 150 years. So I would ask for your support here that, and do this. They are also working with the Kona Historical Society who is developing the Kona Heritage Ranch on the adjoining lands, and they have been a part of that for a very long time. This whole frontage here at the highway all needs some renovation here, and water is a key part of making that happen; and we would appreciate your support of this Agreement. Thank you.

CHAIRMAN GOYA: Thank you Mr. Melrose.

APPROVAL OF MINUTES

ACTION: Mr. Mukai moved for approval of the Minutes of the February 27, 2007, Water Board Meeting; seconded by Mr. Wilkins and carried unanimously by voice vote.

ADDITION OF ADDENDUM AND SUPPLEMENTAL AGENDA - None

ACTION TO MOVE AGENDA ITEMS:

Chairman Goya indicated that in the interests of everyone from the public who was present, there would be some adjustments made in the Agenda by moving some items around.

ACTION: Mr. Mukai made a Motion to move North Kona items up before South Hilo, and to take up items under that category in this order--(C) Well Site Agreement Oceanside/Greenwell, (B) Waiaha Developer's Agreements, and then (A) Job No. 2005-880RFP; seconded by Mr. Smith and carried unanimously by voice vote.

The Manager also suggested that Item 6(A) Job No. 2005-880RFP in the North Kona category be moved to the end of the Agenda and be taken up along with the other Executive Session

Item, 7(H), to avoid having people leaving the room and having to come back after Executive Session.

ACTION: Ms. Kim so moved; seconded by Mr. Heck and carried unanimously by voice vote.

(The Board then proceeded with its Agenda.)

NORTH KONA:

**C. WELL SITE DEVELOPMENT AGREEMENT (OCEANSIDE AND GREENWELLS):**

The developers **Oceanside**, and the **Greenwells**, intend to develop a potable well site above the DWS 0.5-MG Reservoir Site above Konawaena High School and dedicate this site and improvements to the Water Board. This potential source will be redundant to the Halekii Well which also serves the Kona Hospital. Upon completion of the exploratory well, the developers will be granted water units as specified in the agreement for development of their lands subject to other necessary water system improvements. Water service will be subject to the completion of the production well and supporting facilities and all other necessary water system improvements including but not limited to the transmission of the well water to their lands where the existing DWS water system cannot support the proposed use.

DWS will also participate in the development of the well by requiring oversizing of the well should the well test prove the capacity is greater than the requirements for the developers. This will allow DWS to have a greater share of the well capacity for use in the entire South Kona Water System.

The Manager recommended that the Water Board agree to the terms of the Well Site Development Agreement between DWS, Oceanside, and the Greenwells and that either the Chairman or the Vice-Chairman be authorized to execute the agreement subject to approval by Corporation Counsel.

The Manager stated that this Agreement started many years ago and is a good one, which provides the Department with some additional capacity as well as provide for development. The Agreement was reviewed by Corporation Counsel.

MOTION: Mr. Wilkins moved for approval of the Manager's recommendation; seconded by Mr. Smith.

Mr. Wilkins stated, for the interest of clarity and honesty, that he would like to point out that his daughter, Ms. Michelle Wilkins, was one of the original plaintiffs against 1250 Oceanside Partners in the Hokulia lawsuit but that she has her mind and he has his mind. Sometimes they agree and sometimes they do not, and he thinks he can be honest in his appraisal here. He asked a question about the plan location of the well. Reading the map, he could not see any landmarks, such as roads, which would allow him to localize himself. The engineering development agreements say it is close to the current Halekii Well (distance unstated). He asked if it is close enough that the two wells could interfere as they both are being pumped.

The Manager replied that this site and the Halekii Well are far apart. This site is above the Konawaena School on the right.

Mr. Wilkins also asked about chloride levels, which must be less than 180 parts per million. If this is a high well with perched water, it seems like a high limit; and he wondered why it was set so high.

The Manager replied that the limit was put in the Agreement as an assurance that if it does not meet these standards, then the Department will not accept the well. However, the Department anticipates 10 parts per million.

Chairman Goya asked if the developer's representative might want to come forward.

Mr. Robert Stuit came forward and stated that he works with 1250 Oceanside Partners (Oceanside).

Mr. Harai asked about the water system bond. He noted that it indicates 130% of the estimated cost. He asked why it differs from the Waiaha North and South Agreements, which have 10%.

The Manager explained that the Department normally requires 130% because of the extra work that a government entity has to do to advertise and do the paperwork. The reason why it is different in the Waiaha agreements is that it was negotiated. It was started long ago, and the cost has been going up and up. It was purely a negotiated item. He hopes the Department never has to exercise it.

Mr. Stuit reiterated some of the benefits that Messrs. Green and Melrose had pointed out during public testimony. First of all, the County gets a well site free of charge. They get a new potable service for this growing area. The County also gets use of the excess water during the slow growth period that Hokulia develops. Hokulia is probably going to take 20 years before it is fully built out, perhaps longer. During that time, the County gets use of that excess capacity. There is also the benefit as a backup to the Halekii Well; and having a new well with cost savings to the Department of Water Supply, the County, and the public for the design, engineering, drilling, and outfitting of this well. In addition to the cost savings, there is a spread of some of the risk involved in developing a new water source; and that is important to the DWS and the County. They also go through the necessary steps to subdivide and acquire the well site parcel thereby saving the County on those costs. It also provides an accelerated development of water in this area. Without it, it is likely the DWS may not be able to drill a new well. The other thing the Agreement allows the County to do is oversize the well, and thereby getting even more capacity for the County and the DWS.

Mr. Smith stated that overall, he is in favor of this Agreement. One of the concerns he had in the Agreement was there were a lot of parts in it where DWS is typically used like a two-party agreement, but this is written as a three-party agreement where the Greenwells have to do something, Oceanside has to do something, and then the County has to do something. (Mr. Stuit replied that was correct.) Mr. Smith continued that one of his overall concerns was if there was a dispute between the Greenwells and Oceanside, he does not think the DWS should be the moderator or arbitrator. From the DWS' point, it should be able to just go to one entity and they

figure it out. That is talked about on Page 5, Item 2, on Page 6, Item 5, Page 6, Item 6, and on Page 7, Item 8. On Page 8, Item 10, it has to do with burial sites and artifacts. His concern was whether there were any potential impacts having to do with change orders or delays if they run into some kind of archaeological feature and things need to be realigned or consulted with the Burial Council. He asked how change orders and increases in cost would be handled.

Mr. Stuit replied that they had a survey completed last week, and the site does not have any historical sites on it, either burial or otherwise. In response to Mr. Smith's question of whether the Manager would have some discretion to allow extensions or if there are provisions if something were to be discovered when trenching begins, or something to that effect, Mr. Stuit replied that there are provisions for that.

Mr. Smith mentioned that one of the issues that comes up on the west side is the Kona Hospital, and it was mentioned that this is going to compliment the Halekii Well. Halekii Well services that hospital, so by having this well in production, it provides a redundant source that would potentially benefit the hospital. It would not impact when they have power outages, but at least there would be multiple sources, so the hospital would also benefit by having this on line.

The Manager stated that it would also benefit power outages because along with this source is a reservoir so it adds capacity. As the Board is aware, the hospital is served directly from a separate transmission line from the Halekii tank. Therefore, the more draw you have on other reservoirs, the longer the Department would be able to serve the hospital, so it would benefit during those types of situations.

Mr. Smith stated that on Page 10(2), it talks about delivery of the water system and the bond; and it was unclear to him if this Agreement allows for partial turnover of the improvements or whether the developer does not benefit from this until everything is completed.

The Manager replied that everything has to be completed.

Mr. Smith asked if the Department would want to allow that provision for partial turnover of improvements.

The Manager replied that it has to be completed before the Department can enjoy the benefits of it. After the exploratory well is done, they will do the development of the well. After that is completed, it will be dedicated to the Board. It could not be used anyway, without the pump and controls.

Mr. Kim stated that the concern that Mr. Smith had about the three-party agreement was her same concern. She asked if that was common and if the Department is comfortable with it.

The Manager replied that the Department is very comfortable with it and does not see it as a concern. Although it is not common, it does occur. The way it is written, Oceanside will basically be responsible for all financial responsibility. The bond will be by them and will cover everything. The Greenwells will be kind of on the side. Oceanside is taking full responsibility for the completion of the Agreement.

ACTION: A vote was taken on the Motion that the Water Board agree to the terms of the Well Site Development Agreement between the Department of Water Supply, Oceanside, and the Greenwells and that either the Chairman or the Vice-Chairman be authorized to execute the Agreement subject to approval by Corporation Counsel. Motion was carried unanimously by voice vote.

(Messrs. Akinaka and Stuit left the meeting.)

**B. WAIAHA SOUTH AND WAIAHA NORTH DEVELOPER'S AGREEMENTS:**

The developers of the Waiaha South and Waiaha North Water Systems, WAIAHA SYSTEM, LLC and WAIAHA SYSTEM II, LLC (Developers) intend to develop water systems along mauka-makai corridors that would allow the Department's Waiaha Well and Reservoir to be used in a more efficient manner. Currently, the existing water system cannot make use of the 2-million gallon capacity of the new well and reservoir. The existing system lacks the transmission capacity from the well site to the areas of "high consumption" or the makai systems. The Developers, upon completion of the water systems, will be granted water units for development on their respective parcels that are able to benefit directly from the installation of the water systems.

Upon execution of this Agreement, the Developers will have 120 days to finalize all parties involved and the actual number of units that will be allocated to each lot included in a subsequent agreement.

Chairman Goya commented that this has been on the Agenda the past few months; and for a few different reasons, no action was taken. He asked the Manager for his comments regarding this project.

The Manager stated that, based on the testimony the Board heard this morning, there seems to be a lot of misinformation out there. He clarified that first of all, this Agreement is not to develop sources. The source is already there. All this Agreement does is provide a transmission corridor from the Department's mauka water system to the lower water system, which would enable the Department to bring the higher quality water down into the Kailua area to increase the quality within Kailua itself. So if anything, this project would benefit the Department's water quality in the Kailua area. As far as the suggestion for a public hearing, all this Agreement does is provide the infrastructure. It does not allow the subdivisions. The subdivisions will have an appropriate public hearing process in itself that is just inherent in the system. Because this Agreement goes through, does not mean that developers will be able to do their subdivisions. They still need to go through the process anyway. In the past, the Department has been criticized for having too high a chloride content in the Kailua water. The Department has been working on this Agreement for three years now; and this will greatly reduce the dependency on the Kahaluu Shaft pumps, thus the chloride levels should decrease. The Department of Water Supply's function is to provide water. As far as who can subdivide or not, that is the Planning Department's decision.

Chairman Goya stated that the Board wanted to make sure it has all its cards stacked correctly and to go through the right procedure. In the Board's January 2007 meeting, the Department had

recommended approval of this project; and it was deferred to the February meeting, and there were some technicalities at that meeting. At this time, since the Manager gave his comments, it might be appropriate to ask the developer or their representative to come forward to give comments.

Mr. Steven Lim came forward and gave an overview of the project. They have been working on this project together for over three years. It is a unique opportunity for the DWS and the Board to have a developer who has control of the transmission line easements from mauka to makai, otherwise, what happens is you would never get a system built. They started out early on securing all the transmission line easements. In the end, the Department will be dedicated a minimum of three water storage tank sites, along with the transmission lines. It is a unique situation because you do not usually have that kind of control on the private side with the easements. As part of the Agreement, they have to prove that to the Water Board before they move forward. The last time the Water Board acted officially on this project was on the January 7, 2005, Waiaha System Memorandum of Agreement. What that was about was the developer needed to have assurance from the Water Board that this plan would work in a macro fashion. In other words, if the Water Board would support him, he would go out and spend the money to do the design plans, get the easements, and start to negotiate the terms of the Agreement. That Agreement provided that it would expire a year from January 7, 2005, if it did not come back before the Board. It has expired of its own terms, and it will be released.

What is before the Board now are four separate Agreements. There is a Waiaha System, LLC, which is the south side (areas were pointed out on a map). Mauka, on the top of the map, is Mamalahoa Highway, and on the extreme bottom is Queen Kaahumanu Highway. The North System consists of the pink line on the map's left side, which ends halfway down and will connect up to the Hinaloli Road Department of Water Supply system. The south system runs from the Waiaha Well up on Mamalahoa Highway and comes down all the way through the properties to the Queen Kaahumanu Highway (20-inch transmission line). The reason for the two separate systems is to have two separate potential pools of LLC members. The water system is designed to service the north side projects and bring the water into the Hinaloli Road system, and the south side is designed to bring the bulk of the water down the Queen Kaahumanu Highway. That is where you will see most of the transmission line and storage tank upsizing. The total project cost is approximately \$9.1 million for the south site and \$4.1 million for the north site. As part of their agreement with the Department of Water Supply, they are upgrading or upsizing a portion of the project and the tanks, primarily on the south side, in an approximate amount of \$4.77 million.

What is before the Board today are two agreements for the South and two for the North. The first Agreement for each side is what they call the Agreement regarding the developers of the system. That is just a cover Agreement that basically says to the Developer that we agree to develop this system and it would have a maximum capacity for both the north and the south side of 1,500 equivalent water units, or water commitments. What they are seeing on the private side, in terms of the funding, is that they may have developers who participate on the north side but need to get their water from the south side so there may be some members who are members of both LLC's. They do not know for sure who is going to sign up, but the ones they have been talking to breaks out such that the north system may be short funded so they would have to bring some of the south participants in to become financial members of the north system. That is why they are asking for flexibility in terms of floating the 1,500 units between the two systems' participants, no matter

where they put their money in. The first Agreement essentially sets a time of 120 days from the approval by the Water Board for the developer to go out and secure firm commitments from the participants. The proposal, so far, is to require them to fund an up front deposit, which gives him certainty to sign agreements that they will contribute their share of the funding. Then he comes back to the Water Board in 120 days to fill in what is shown as Exhibit "D" on the second Agreement. Exhibit "D" is the tax map key parcels, the number of equivalent units of water that will be attached to that tax map key parcel, an identity of the fee owner, and the developer of the parcel. At the end of the day, what they will have to do before they come back to the Board is to prove to the Department of Water Supply the identity of all of the developers and the tax map key parcels that will be serviced by the Agreement. In response to Mr. Harai's earlier question about the bond, Mr. Lim stated that the 10% bond that they are proposing in this Agreement is something that was negotiated many years ago. They have been working on it for three years. A possible offset to why they should get the 10% bond is that they are, on the developer's side, going to be bonding this \$4.77 million worth of Department of Water Supply oversizing, so they feel that is a fair number. What will essentially happen after they come back to the Board is they would be successful in going out to secure the members who will participate financially in these systems, and then come back to the Board for the final approval of the water agreement seen attached as Exhibit "B" to the first Agreement.

Mr. Lim continued that he understands the Department does not have a formal recommendation for or against the Agreements and this may be because they were negotiating with Corporation Counsel on the language. At the February 27, 2007, Water Board Meeting, he had handed out a set of the Agreements for the Board's perusal. What they did since then, with the Department of Water Supply and the Corporation Counsel's office, was go back and forth on the language. They are very close now; but there are only two issues left--one is on the first Agreement on Page 3, Paragraph 2, third to the last line, it starts with "receiving the water commitments within the lands." Corporation Counsel wanted to add in the phrase, "and will have a direct benefit from the improvements" right between the "lands" and "all the exhibits." They had objected to that addition because until they know all the participants, they may need a participant that funds part of the north system but is getting his water commitments from the south side. All of these commitments will only be available for use by the developers when the system is finished. They anticipate from the time the Water Board says go, construction time will be somewhere between 12 to 18 months. It was determined that because of the DWS upsizing a portion of the system, that was a potential involvement by the DWS, which then would trigger the Hawaii Revised Statutes, Chapter 343, Environmental Assessment requirement. Rather than fight that issue, the Developers agreed to go ahead and process that as if it was a Department of Water Supply project, so they will be processing an Environmental Assessment for the project. It is anticipated to take eight to ten months. There will be some gap between the time the system is actually constructed. The second issue in terms of language is in the second Agreement, Page 5, Paragraph 6, the Corporation Counsel wanted to indicate an estimated oversizing and they deleted the words "estimated" in that paragraph. Mr. Lim stated that for their side, it is neither here nor there. If the Board wishes to retain the word "estimated," it is okay with them. The whole idea was that one of the only remaining issues they had was that the Developer is required to provide to the Department of Water Supply its estimate of cost for constructing the system. The Department of Water Supply gets to approve that cost, and it would then have to be bonded, plus 10%, and then go on to build the project. At the end of that, the Developers come back in and give the Department of Water Supply

an affidavit of the actual cost for the oversizing and the Department would then reimburse them. His client had some concerns that the amount that was agreed to up front would not significantly depart from the amount that was reimbursed to him because at that point, he has dedicated the system and has very little leverage to deal with the Department. So they worked on some language together that indicated that they would take into account, in their determination of the reimbursement amount, the amount that was agreed to up front. He asked for the Board's considerable consideration and turned it over to Ms. Garson for her comments.

Ms. Garson stated that there was no recommendation on this Agreement because they did not actually have agreement as to the type of language they wanted for these two documents. Going to Mr. Lim's first issue, which is in the Developer's first agreement regarding developers for development of the Waiaha System, one of the concerns was that if you had a developer who was benefiting from the north system or benefiting from the south system, it made sense for that developer to be a member of that system. Today was the first day that she heard that they might be members of both of the Agreements. So the language that she and the Department had wanted in the first Agreement would be that the Developers who signed on to either Agreement must have a direct benefit from that Agreement in that System. The reason is that they are different projects, they have different bonds, there was a concern raised before of where you have multiple parties involved. Although this Agreement is with one party, an LLC, there are multiple players and multiple land owners. Her concern was is that there might be a problem with a developer who is supposedly going to benefit from the North System and then that system does not get built, but he was actually written in as a member of the South System. To her, it kind of presented a bit of an issue that would be very hard to resolve from a litigation perspective. Therefore, she had put in the Agreement that you would have to be a member of the system that you were going to benefit from. This was not something, as Mr. Lim explained, that was going to be doable for his client because he seemed to be short on developers for one system over the other. The second issue with the reimbursement of the cost--what the Department does is take into account the costs that are estimated up front for the oversizing and then at the end, the actual cost that was incurred. On the one hand, you would not want the Developer to go hog wild and, at the very end, present a bill for the oversizing to the Department of Water Supply which was totally unexpected. What the Department of Water Supply was unwilling to do, and is in its Rules and Regulations, is that you cannot agree to reimburse the developer just based on the estimate. Although the estimate would tentatively be agreed upon in the beginning, you still have to show the Department at the very end what you actually spent; and the Department needs to have the discretion to look at both of those figures and come up with something fair, based on the estimate. Part of it is to keep the Developer from expending too much. Then again, if for some reason there are legitimate cost overruns, that would be also something the Department would consider at the end. She mentioned that she has a draft that the Department of Water Supply worked out with the language in there; however, the Developer has not agreed to it.

Mr. Lim stated they basically incorporated the language into it, except for the "estimate," and they are prepared to leave that in if that is what it takes to get it done.

The Manager commented that he would love to see this go through because of the benefit to the Kailua area and Kona in general. As said earlier, this is simply infrastructure. It is not an effort to

be the Planning Department. Whatever happens after the infrastructure goes in still needs to go through the appropriate process.

Chairman Goya asked what would be needed for a recommendation to address the concerns about the language of the Agreements.

The Manager asked Ms. Garson to suggest a Motion, assuming that Mr. Lim is agreeable to certain language in the Agreements.

Mr. Lim stated that the only difference between last time was in the first Agreement, they deleted a reference to the phrase, "and will have a direct benefit from the improvements." In the second Agreement, they deleted the references to "estimated." They would agree to put those words back in. The only thing he is uncomfortable with negotiating out is the first phrase because, as said earlier, how they fund it and who becomes members is really a private concern and not the Department of Water Supply's. In the end, they have to provide the bond plus 10%, and the Department has to approve all of the plans. As long as they can spread the 1,500 equivalent units of water within the definition of the lands, as indicated in the Agreement, then they will do it.

Ms. Garson stated that she could put on the record, right now, what the suggested language is for the two different paragraphs. (Mr. Lim agreed with that.)

Chairman Goya asked if the Board should defer this until they have a firm recommendation with the correct language.

Mr. Lim stated that because of the long delay on the project, they are experiencing credibility problems with their potential partners. Every time things are delayed, they lose a couple more partners, potentially. It is very critical now, and he felt it could be solved by taking a break today and working something out. (The Manager felt that was a fair suggestion.)

Mr. Harai stated that the reason why Councilman Pilago was here, and because of testimony, perhaps Councilman Pilago would like to ask some questions about what was discussed.

Councilman Pilago came before the Board. He stated that one issue he strongly agrees with is the Manager's recommendation that this is only an issue of transmission, and that is what is within the Board's purview. But what is also important that needs to be included here is that if water rights and water credits are being transferred, that is a structural thing that needs to be discussed. You are looking at 1,500 credits to the south unit and 1,500 additional water credits to the northern, so in his understanding, you are looking at approximately 3,000 water credits. The water credits are important as developers go through their application processes and go through the rezoning and subdivision applications, which becomes the County's purview. Going back to water and the movement of water, these kinds of water credits enable developers' applications to be reinforced and that is where the Board comes in. It is out of that understanding, and because it is a public resource, there must be public comment. Public comment is very simple in that why are 3,000 water credits being discussed here, where do they go, and very importantly, who is applying for them? He thinks the public has a right to know this because you talk about this nebulous developer, but there is no label on who this developer is that is bargaining for approximately 3,000

water credits that will affect the total community. He finds no difficulty with the infrastructure and the need to transfer water because the southern well is high in sodium; and for the health and wellbeing of the community, it must be freshened with the northern water. He has some issues where the transmission facilities are not dedicated to the County but there will be a consideration for dedicating the storage facilities (water tanks). These kinds of unknowns are important to him and the public needs to be brought in. It is their resource, and their community, and their future. He requested the community be included in participation for this discussion.

Mr. Wilkins stated that his concern is that in North Kona, there are some 10,000 outstanding water commitments, not including these North and South Agreements. It is about 80% of all of the outstanding water commitments on this island. He asked if these 3,000 new water commitments are being added to the 10,000 or are they existing water commitments that are somehow being gathered up. If so, how can the land owners be identified, the tax map key landowners, who are responsible for those commitments? Finally, what happens to the people who hold the existing 10,000 water commitments? Are they backed up by another large number to come behind this Developer?

Ms. Garson and the Manager clarified that both of the Agreements combined total 1,500 units. It is not 1,500 for each. Ms. Garson stated that the problem that Waiaha was having was because they did not know who was going to participate, they could not specify exactly how much they needed for one system or the other; but the Department said, fine, but you cannot go over 1,500, and you need to split them up amongst the two systems.

Mr. Wilkins noted that is half of the total capacity of the Waiaha Well, counting leakage.

Chairman Goya noted that is a Department question. He thanked Councilman Pilago for coming forward again. Chairman Goya suggested that any further questions from the Board be taken now in order to give the attorneys some time to ask their questions before meeting during a break.

Mr. Mukai asked what percentage of people that will be affected by these two wells would be agreeable, in this preliminary stage.

Mr. Lim stated that he felt more comfortable about it a couple of months ago; but every month that goes by, he feels less and less comfortable with the people because it is a credibility game where you are asking people to put money up front based upon a developer's commitment to build a water system. Every time it gets delayed, they see that as some failure on the part of the developer. He added that Mr. Bolton could not be here today as he had to be on the mainland. He did not know how long he can hold on to these easements and these Agreements. He hopes he can hold on for the long term, but he knows he is having significant credibility problems. He did not even know how many people would say they are willing to put their money down. There was a lot of interest about a year ago; but because of delays from last August, it has being dragged out. Waiting any longer is going to be difficult. The Agreement they are asking the Board to adopt today does contemplate dedication of the system to the Department of Water Supply and will be built in accordance with their plans and requirements. The Agreement to be adopted today is the initial agreement that basically gives the okay for the Developer to go and find these participants in 120 days and come back with the full Agreement, showing exactly where these water commitments

are going to go and who is going to use them and on what tax map key parcel. That is why he asks the Board to take action and move on this Agreement now because the issues will not be known until it is clear who is going to be involved in the Agreements. He thinks that would be the better time to come and address those issues rather than stop it dead in its tracks today. If it is stopped now, he does not know if they are going to come back.

Ms. Garson added as a caution that the way this Agreement is written, the first Agreement basically says if he comes back in 120 days with the participants, the Board will approve the Agreement. The Board will not have an option.

Mr. Heck asked what percentage of the well capacity would the 1,500 water units be.

The Manager replied that the total capacity is about 3,300, so it is less than half. It is a 2-million gallon well. The other thing is that without this system, that Waiaha Well that just got completed will have a hard time transmitting that water to where it is needed because it is on the mauka highway. This Agreement would allow the corridors to bring the water down. Although the Developer will have 1,500 units, the Department will be able to flow another 1,700 down into Kailua where it is needed. One of his greatest concerns is that the Department needs to reduce the chlorides in the Kahaluu Shaft, and this will help. This is the kind of project that people have been asking the Department to do.

Mr. Smith commented on Councilman Pilago's statements about public input. The Water Board is comprised of representatives of the nine districts; and it is the Board's task to represent the constituencies. He thinks the opportunities for the public to provide comment have been in place. Agendas are published for the public to review, they can call each Board member, as they do for Council, and provide input on whether or not they are in favor of various propositions that come before the Board. He thinks the public has adequate opportunity to provide input. A couple other comments...in the past, the Department has been criticized for not expanding the system, for focusing only on its existing customers; and he understands the Manager's point of view that this is his first priority. In the recent past, there have been more opportunities for private/public partnerships, such as the development agreement with Lanihau Partners as well as the Department of Hawaiian Home Lands, where they get together to develop well sources. This effort where the County cooperates with developers to provide transmission corridors instead of going through condemnation or having staff find land is commendable. Every time the Board has come to a meeting in Kona, Ms. Brenda Ford, now Councilmember in Kona, has come before this Board to raise issues about the quality of the water in Kona, citing both chlorides and sodium levels. He thinks this is exactly the answer to her concerns. Mr. Smith asked about the transfer of water commitments between the north and south sections and if the Department's distribution transmission system can accommodate flexibility to provide water to either side.

The Manager replied that if both systems are constructed, it is coming from the same source, Waiaha Well, so there is no problem either flowing north or south.

Mr. Smith stated there will be two separate Agreements written up, so if one is completed and the other one is not, he asked if it would potentially be a problem.

The Manager replied that as far as the Department's ability to serve the different north/south legs, there is no problem. He pointed out the Waiaha Well on the map. There is a 2-million gallon reservoir and a 2-million gallon pump there. Without these improvements proposed today, the Department would have a hard time taking that water anywhere except on the upper highway.

Mr. Wilkins asked if the Waiaha Well will be connected along Mamalahoa Highway to any other distribution system, or if the pump fails, for example, can water be brought from elsewhere.

The Manager replied that there would be backup from wells along the Mamalahoa Highway, which include the Queen Liliuokalani Well and a couple of others the Department has in the works.

Ms. Kim stated that she appreciated so many people coming to today's meeting. Going back to the Manager's earlier comments, she is satisfied that the draw on the Waiaha 2-million gallon well and reservoir would be less than half, should this even materialize someday. She is satisfied that is appropriate for the Water Board to support this because it is within the Board's jurisdiction. She thinks it is a common misunderstanding by the public that the Department of Water Supply is able to get into growth or no growth policies, which is not what it is supposed to do, and is not the case here.

The Manager stated that, with all respect to Councilman Pilago, if the Water Board had to go to public hearing every time it proposes to give water commitments, it would never be able to do anything.

Mr. Smith stated that one of the concerns he had was if reimbursement is going to be according to the cost provided by the Developer. Mr. Bolton is also a contractor, and it is likely that he is going to do this work by his own forces.

The Manager stated that when the Department does oversizing, theoretically there is a size that the cost is compared against. Because that size will not be built, the sizing has to be estimated-- example, if you do a half-million gallon tank and say to the developer you want a million-gallon tank for future needs, the actual cost that you will see will be what it would cost to do a 1-million gallon tank. To compare that to the half million gallon tank, which is what he would have to have done, DWS' engineers and their engineers would have to agree on what a reasonable cost would be for a half-million gallon tank. That would be the basis for the oversizing. It has to be estimated so that DWS can compare the final cost against what all parties agree would have cost to do something smaller, and that difference is what gets reimbursed. The Department has good engineers who have a lot of cost history, so it can get costs relatively accurate.

Mr. Smith stated that in Ms. Ford's letter, she talked about the Water Use and Development Plan. As far as he understands the Plan, it is consistent with this Waiaha development, so he does not see why the Department would need to wait for that to be finalized. (The Manager agreed.)

Another comment from Mr. Smith is because a private developer is doing this work, he does not have to follow Davis/Bacon wages so, in effect, the reimbursement the Department pays for the oversizing is done at a lower cost than the Department would be able to contract for.

The Manager replied that was correct. Because of extra requirements a government entity is required to do, when the Department pays for the reimbursement for oversizing, it is getting it at a bargain.

Mr. Smith directed attention to Page 8, Section 12, in either Agreement, where it mentions a 5-year period; and if it is not done by that date, the Agreement terminates. He asked if a provision should be placed in there to give the Manager discretion to allow reasonable extensions of time.

The Manager stated that the intent of it is that if there is legitimate reason, the Department can always come back to the Board and have the Agreement amended.

Mr. Smith stated that the Board trusts the Manager's judgment so if that is something he would want to put in now so it would not have to come before the Board down the road, that would be fine.

The Manager stated that it was originally three years but was increased to five to make sure that everything goes okay. If extensions become necessary, it can be brought to the Board.

Mr. Smith stated that if the two attorneys can work out the language and it can be clearly stated to the Board, he is comfortable voting on it. As part of that discussion, the attorneys would probably want to fill in that blank on Page 6.

Mr. Lim replied that will be filled in when they know who the participants are. The 1,500 water units will be allocated between the two systems.

Mr. Wilkins asked the Manager if during this 5-year build-out period, the Department envisions the main transfer pipeline can be in place, conducting water down to lower Kailua-Kona so it could be put into use earlier.

The Manager replied that the transmission will be part of the five years.

Mr. Wilkins stated that it seems to him that the main transmission line could be put in place before the branch lines are added.

The Manager clarified that there are no branch lines--only a transmission line.

Mr. Wilkins stated that you have to feed water to users along the way if there is to be a development project.

The Manager indicated that after the two main transmission lines are in, it is up to a developer to install separate lines. He assured the Board that this transmission line will be built as one single line. Should the developer get approval for any subdivisions that come within this area, it is up to the developer to put in the separate lines.

Mr. Wilkins stated that it seems like it would be to the Department's advantage to be able to duct water down those two pipelines as early as possible to dilute the coastal water.

The Manager agreed. That is why the Developer is allowed five years to complete it, because of all the problems with getting the necessary funds.

Mr. Mukai stated that if he is hearing Mr. Wilkins correctly, what he thinks he is trying get at is once the lines are drawn, if there would there be a benefit to the public even though the Developer has not gotten approval for his development.

Mr. Wilkins stated that was the intent of his question.

The Manager replied that, yes, once this is completed, the Department will be able to bring water into the transmission line (he pointed it out on the map).

Mr. Wilkins asked if it would be while the developer is continuing with the full project.

The Manager replied in the affirmative. If the developer wants to do his own subdivision, he puts in his own lines. The Department has no control over that.

Mr. Wilkins replied that was okay. The Department could always stub off lines and add to them. (The Manager confirmed that was correct.)

BREAK: The Board took a short break from 11:28 to 11:42 a.m.

Chairman Goya asked if the Manager had a recommendation for the Board.

The Manager stated that he did; but before that, he wanted to mention that he was corrected by a gentleman during the break, and he needs to clarify this. For those lands that are within the development that are already zoned, they would not have to go through the hearing process.

He continued that his recommendation is that the Agreement be approved, subject to the following changes, which would be as noted by Ms. Garson.

Ms. Garson noted that first, the change to the Agreement regarding developers for development of Waiaha North Water System, Page 3, Paragraph 2, third line from the end of the paragraph where it starts "receiving," that line will now read, "receiving the water commitments that are within the lands, and will have a direct benefit from the improvements, and all exhibits to the Agreement are completed to DWS' satisfaction." The same change will be made to the South Agreement. As to the attachments, which everyone is calling the Second Agreement, but is actually an exhibit to that first Agreement, so the Exhibits "2," which are the Agreement regarding development of North Waiaha Water System and the same change will be made on the South--beginning on Page 5, Paragraph 6, insert the words "estimated." So it will read, "at least 90 days prior to the start of construction of the water system, Waiaha System II shall furnish the DWS with the project fees and cost and the *estimated* DWS oversizing." The second sentence that begins "within 30 days," it will say, "within 30 days of submittal of all documentation to support the DWS oversizing cost by Waiaha System II, the DWS shall approve or disapprove all or part of the *estimated* DWS

oversizing cost submitted.” The third sentence will read, “to secure the completion of construction of the water system, once all cost *estimate* items have been agreed upon” and continuing on.

Mr. Masuda asked for the first DWS estimated oversizing, if “oversizing” or “estimated” are going to be capitalized. (Ms. Garson replied it is not.)

Ms. Garson continued that the last insertion of “estimated” will be on Page 6, the end of that paragraph, second line up from the bottom that begins “oversizing cost,” it will say, “oversizing cost and the *estimated* and approved DWS oversizing cost.” So there are four places where there are insertions of either “estimating” or “estimated” in Paragraph 6. The same is true for both of the Agreements--North and South.

Chairman Goya asked if both parties are in agreement.

Mr. Lim stated that was correct. They also had discussed a suggestion about the extension on the five-year time for construction of the system. They have already included a force majeure clause in the Agreement, which allows them significant latitude; and based on the Manager’s indication that he would be favorably disposed to coming back and going for a time extension with the Board, if they ran into problems, then that is sufficient for them. They ask for the Board’s support again of this proposal. The Department of Water Supply, as in most of these private systems, will have five to ten years use of almost the other half of the system that is available because what happens is these projects will not come online tomorrow. They have to go through the entitlement process. For a significant period of time, you will have all the water coming down and almost 100% use for some years. Additionally, the development of the system would also free up water commitments to be used to service affordable housing projects that are already approved or are slated for approval soon.

Chairman thanked Mr. Lim for his time and effort and for putting up with some of the delays caused by the Department. Hopefully this Agreement can move forward. He asked if there was a Motion from the Board.

Mr. Mukai first asked if the Manager could explain about the water corridor again. He asked if he was understanding correctly that the development along the transmission line still has to go through the process. (The Manager confirmed that.) Mr. Mukai stated that the reason he asked was because he thought he heard something was already approved, so he just wanted that clarity.

The Manager explained that this project will not provide for the stubouts that will serve subdivisions. It will just provide the transmission lines.

Mr. Smith moved that the Board approve the North and South Waiaha Agreements, as amended and stated by Ms. Garson; seconded by Mr. Mukai.

Mr. Wilkins stated that he had requested, as the North Kona representative on the Water Board, that he be allowed to make the first Motion.

In response to Chairman Goya's question if Messrs. Smith and Mukai wished to withdraw their Motion, they withdrew the Motion to approve the Agreements.

MOTION TO HOLD PUBLIC HEARING: Mr. Wilkins moved that a public hearing be held, in Kona, on the matter of the Waiaha North and Waiaha South development projects in order to provide the west Hawaii community with important information and details regarding these water proposals and that this hearing be held before the Water Board votes to approve or disapprove this issue. Mr. Heck seconded the Motion for purposes of discussion.

Mr. Wilkins asked again if the 1,500 water commitments that being discussed today would add to the some 10,000 water commitments already outstanding in North Kona. It was at 10,000 according to County records two years ago.

The Deputy Manager stated that whatever the number of units is, the 1,500 units that are being discussed today will add to it because most of the participants in this Agreement do not have commitments at this point in time. According to the Department's engineers, some may have but may be subject to pipeline and storage requirements. At the end of the day, these developers will be identified, and the Department can come up with better numbers as far as what the total commitments would be.

The Manager added that whatever that number is, as the Deputy Manager mentioned, a lot of those commitments come with conditions. It is not like they are just hanging there. They need to do improvements to be able to use them. It is not as gloomy as it seems.

Mr. Wilkins stated that it is also true that people holding these commitments are paying \$150.00 per year per commitment to keep them active. (The Manager indicated that is by choice.) Mr. Wilkins added that he worries that these 1,500 might bump the others further down the list.

The Manager indicated that for those holding the commitments, if they were to do the necessary improvements, they could use the water right away. It is by choice that they do not.

Mr. Smith wanted to clarify one point, and that is that this project will bring in 3,200 water units total. Of that, the developer is going to be allocating 1,500, so the Department is going to have access to 1,700 water units that it did not have access to before, which could be utilized to help fulfill whatever the number of the outstanding water commitments is.

The Manager replied that was correct. Also, another benefit of this project is that once it goes in, it allows the Department to develop further wells and use the same transmission corridors to send down a whole lot more water. It is not only the 1,700. That is the reason the Department oversized the system because it allows the opportunity to bring additional water down, over and beyond the 3,200 (their 1,500 and DWS' 1,700). That is the nice part because it provides for the future.

Mr. Smith stated that based on that reply, he would be voting against holding a public hearing on this matter.

Mr. Mukai stated that his understanding is that if the corridors are approved, the Developer still has to go through the process with the Planning Department so there could be a situation where the corridors are there and the developments do not really happen.

The Manager replied that is very possible.

Mr. Heck asked what participation would the Board have at a public hearing, if any, or how it would be beneficial.

Mr. Masuda replied that as far as the Board is concerned, it does not seem like it would be a scheduled Water Board hearing. It might be scheduled something more like a Council hearing. At that point, the Board Members are free to attend and comment; but unless Board Members have approval from the Board, they cannot speak for the Board at any kind of hearing event.

Mr. Wilkins asked if it meant that if this Motion is voted down, that a member of the County Council could call for such a public hearing.

Mr. Masuda replied that they can always call for a public hearing. The question then becomes what is the role of the relative people. It would probably be just for informational purposes.

Mr. Wilkins also asked if his Motion is voted down, could the Board move for a conditional approval of the application at this time, without being constrained, to follow closely what is done in the next 120 days.

Mr. Masuda replied that would require modifications of the Agreement before the Board today.

Mr. Wilkins stated that if his Motion is voted down, he would be very unhappy about being asked to approve or disapprove a project plan in which the Board does not know the participants and has not seen one tax map key number to identify the lots that would participate. It is like looking into a "black sack" where you do not know the contents or even where the bottom of the sack is.

The Manager commented that the Board knows him and what he is concerned about. He is really concerned about precedent. By having a public hearing, this Water Board would be relinquishing its authority to make just and right decisions. By setting that precedent, it would mean that very time there is an Agreement, a public hearing would be required, regardless of the benefits of the Agreement. The Board might want to consider that. This Board is a semi-autonomous body and has every power in its position. He asked the Board to be cautious.

Ms. Kim stated that she feels comfortable that there will be sufficient allowance for public hearing down the road as this development pursues its course. In the meantime, the idea of having additional water to improve the quality in Kona through these major transmission lines is far more important to act on at this time.

Mr. Heck commented on Mr. Wilkins reference to the "black sack" or the potential use of the water, as he understands it; and he asked Mr. Lim for confirmation, that there is no way to know

who the participants are unless they get this Agreement and then decide whether or not to participate.

Mr. Lim replied that was correct. You have somewhat of a defined “black sack” in terms of the description of the lands, which is Exhibit “E” to the Agreement. It runs essentially from just the north side of Palani Road through the south edge of Pualani Estates Subdivision, near the Chevron Station, and from Mamalahoa Highway down to the Alii Drive area. That is the area that will be served, agreed upon between themselves and the Department of Water Supply.

Mr. Smith asked for clarification that the Agreement is between the Department of Water Supply and Mr. Bolton so the Board may not know who the other parties are, but he is committed to comply with the terms of the Agreement.

Mr. Lim replied that was correct. (The Manager added that he is also committed to show the Department the results.) Mr. Lim stated that they will need to come back and work with them and the Department of Water Supply approves everything.

ACTION: A vote was taken on Mr. Wilkins’ Motion to hold a public hearing before voting on this matter. By show of hands, the Motion was defeated (Ayes: 1 - Mr. Wilkins; Nays: 6 - Ms. Kim, Messrs. Harai, Heck, Mukai, Smith, and Chairman Goya.; Absent: 2 - Ms. Helfrich and Mr. Konanui).

MOTION TO APPROVE: Mr. Smith moved that the Board approve the North and South Waiaha Agreements, as amended and stated by Corporation Counsel; seconded by Mr. Mukai.

Mr. Heck stated that he would just like to underline the fact that it would be almost impossible to produce these two corridors without the help that the Board has heard about today. What is pushing him toward a favorable position is that the Department is saving a tremendous amount of money and can drill two more wells to produce three times the amount of water to help with the situation of the water quality in North Kona. Therefore, he would be very much in favor of this proposal.

Mr. Wilkins asked the Manager if his understanding was correct in that the easements for these two routes already exist.

The Manager replied they do not. It is part of the Agreement that these easements will be given to the Department. Without this Agreement, the Department would not have these corridors.

Mr. Mukai spoke in favor of this Motion. Although he represents east Hawai‘i, he knows the concerns in west Hawai‘i are the quality of water. He is in favor of approving the quality of water and the supply of water in west Hawai‘i.

Mr. Wilkins stated that the Board has heard, at various meetings, that the Kahaluu water supply, which is described as five to six million gallons a day, all of moderate to high chloride and sodium content and does not see the one million gallons a day from this pipeline doing very much to dilute

that water down to a level to where it is healthy. He thinks there are other solutions that should be examined, such as reverse osmosis.

ACTION: A vote was taken on the Motion that the Board approve the North and South Waiaha Agreements, as amended and stated by Corporation Counsel. Motion was carried by six ayes (Ms. Kim, Messrs. Harai, Heck, Mukai, Smith, and Chairman Goya), one Nay - Mr. Wilkins; two absent - Ms. Helfrich and Mr. Konanui).

Mr. Lim stated he would see the Board in 120 days. (Mr. Wilkins indicated he would be present at that meeting.)

Chairman Goya informed the public that the Board tries to be open and have a good dialogue. He thanked those from the community for sitting through this process today and understanding the Board's role. He welcomed them to attend any of the Board meetings. Mr. Wilkins also deserves credit and has served the Water Board well.

(Some members of the public left the meeting at 12:02 p.m.)

**A. JOB NO. 2005-880RFP KAHALU'U SHAFT BY-PASS HYDROELECTRIC PROJECT AT THE KAHALU'U SHAFT:**

Taken up later in the Agenda (see Page 30).

**SOUTH HILO:**

**A. HONOMU EXPLORATORY WELL, DWS JOB NO. 98-705 AND HONOMU PRODUCTION WELL AND 0.3 MG RESERVOIR, DWS JOB NO. 2005-863; DRINKING WATER STATE REVOLVING FUND (DWSRF):**

The Department intends to utilize the DWSRF loan program administered by the State Department of Health to fund this project. The Final Loan Agreement outlines the conditions of the loan program specific to this project. Note that the Department has only completed the Honomu Exploratory Well (Job No. 98-705) project and it is these costs that are reflected in the current Final Loan Agreement. This agreement will be amended when the Department proceeds with the Honomu Production Well and 0.3 MG Reservoir (Job No. 2005-863).

The Manager recommended that the Board approve the final loan agreement as well as its subsequent amendment(s) and that the Chairman be authorized to sign the documents.

ACTION: Mr. Smith moved for approval of the Manager's recommendation; seconded by Mr. Mukai and carried unanimously by voice vote.

MISCELLANEOUS:

A. DEDICATION OF WATER SYSTEMS:

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

1. **BILL OF SALE**  
KALAOA WELL OUTFITTING  
Seller: Seascape Development, LLC, by Westpro Holdings, LLC  
TMK: (3) 7-3-004:017  
E.W.O.: 2007-060  
Facilities Charge: *Not Applicable*  
Final Inspection Date: *Efficiency Test scheduled for 03/20/07*  
Water System Cost: *Not available at time Agenda was posted*
  
2. **GRANT OF EASEMENT AND BILL OF SALE**  
KONA VIEW ESTATES  
Subdivision Application No. 2005-0036  
Grantor: 327 Kona, LLC  
TMK: (3) 7-4-008:047  
E.W.O.: 2006-070  
Lots: 29 Total  
Facilities Charge: \$153,190.00  
Final Inspection Date: February 8, 2007  
Water System Cost: \$367,835.00  

Zoning: A-1A, A-5A  
Paid: February 1, 2007
  
3. **GRANT OF EASEMENT**  
**BILL OF SALE**  
ORCHARDS AT PEPEEKEO SUBDIVISION, PHASE II  
Subdivision Application No. 2004-189  
Grantor: Continental Pacific, LLC  
Seller: Hawaiian Rainbows Second Fund, LLC  
TMK: 2-8-008:095 portion  
E.W.O.: 2006-080  
Lots: 10  
Facilities Charge: 68 EU through 2-inch meter (paid July 16, 2002) @ \$940.00/unit  
Transfer of 20 water units to Lot 82 & 83 approved by Water Board 9/23/03  
Final Inspection Date: 06/16/06  
Water System Cost: \$255,730.00  

Zoning: AG20
  
4. **GRANT OF EASEMENT (OFF-SITE)**  
**BILL OF SALE**  
KE KAILANI SUBDIVISION – Easement “E”  
Subdivision Application No. 2004-079

Grantor: Mauna Lani Resort (Operation), Inc.  
Seller: Ke Kailani Development LLC  
TMK: 6-8-022:039 portion  
E.W.O.: 2006-020

Note: Action was taken on the Grant of Easement and Bill of Sale document for the remainder of Ke Kailani Subdivision at the November 28, 2006, Water Board Meeting.

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

MOTION: Mr. Mukai moved for approval of the Manager's recommendation; seconded by Mr. Smith.

Mr. Inaba stated that the water system cost for Item No. 1, Bill of Sale, Kalaoa Well Outfitting, is \$695,389.00.

ACTION: A vote was taken on the Motion. Motion was carried unanimously by voice vote.

**B. MONTHLY PROGRESS REPORT:**

No questions.

**C. DEPARTMENT OF WATER SUPPLY PROPOSED OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEAR 2007-2008:**

Chairman Goya stated that he would appreciate it if the members of the Board could be provided with a little more detail regarding how the budget was formed and what considerations were made, especially in the area he expressed before regarding the filling of positions. If some of that information were on these sheets, it would give the Board a little more background to prepare to ask staff the appropriate questions.

Mr. Tsunoda asked if Chairman Goya was asking for detail like identifying vacant positions.

Chairman Goya replied that was correct. It seems like while the year goes along, the operating expenses appear to have quite a bit of flexibility regarding salaries and benefits. It always seems to be that the *recorded* is substantially below *forecast*. Maybe a little more information would help, and highlight some of the key items for the Board regarding additional spending to meet some of the Department's other requirements.

The Manager stated that it is early in the schedule for budget discussion, so more details can be provided for the next meeting.

In response to Mr. Tsunoda's question of whether Chairman Goya wanted more information on the C.I.P. as well, he replied that he thinks that is open for discussion as well because the Board's

understanding is that the Department goes through a prioritization process within the Department; and it would be good to have that clarified for the Board on how projects are selected and how priorities are placed on replacement versus new. It would benefit the new members on the Board.

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

No questions.

**E. KONA WATER QUALITY:**

The Manager stated that what the Board did today by allowing the Waiaha agreement to go through is a big step toward improving the water quality in Kona. In addition, the Department has its project in design for the Kahaluu Shaft. (Mr. Ikeda indicated that bid opening for that project is next week.) Mr. Wilkins asked that updates on this project be sent to him.

**F. HAWAIIAN OCEAN VIEW ESTATES:**

The Manager reported that the Department ran into a snag because the property where the well was to be located is owned by the County of Hawai'i, Parks and Recreation. There is a provision in the dedication of the land that prohibits this Department from drilling wells on that property. The consultants chose another property just mauka of that site. This Department is under a tight schedule on this project because the funds from the Legislative appropriation have to be encumbered by June 30, 2008, and there is no extension allowed to that date. The Department has a contract with a consultant, and what they will do is contract out for bids to do an exploratory well. While that is being done, the consultant is also doing the design-build contract for the ultimate development the well. That is the only way this Department can encumber the funds by June 30, 2008. If the Department were to go through the normal bid process, it would not make the deadlines. The Department is stuck with that deadline to encumber the funds. Therefore, the Department is trying to be innovative and assure that the exploratory well can be drilled and the design-build contract can be advertised prior to May of 2008 because it takes awhile to encumber the funds. The State's recognition of "encumbrance" is when the contract is executed (signed)--not awarded. If it was "award," it would be much easier. It is a very tight schedule. In the Department's efforts to stay within schedule, it has periodic meetings with the County because although the Department of Water Supply is initiating the project, the money is going to the County. It involves the County receiving the funds while the Department of Water Supply administers the project.

In response to Chairman Goya's question of whether the Department is keeping the appropriate people informed as to the current status of the project, such as members of the community and elected officials, the Manager replied that Ms. Shari Komata, the Department's project engineer, disseminates that information. He invited Board Members to call the Department any time with questions.

Mr. Heck mentioned that Ms. Komata has been emailing him. The updates are not quite enough; but when he does request an update, he has been getting her responses. He heard in the beginning it was going to be updated every two weeks, but it is more like every month.

The Manager indicated that Ms. Komata has been very busy the past month because of the problem with the park site.

Mr. Heck asked about the plan proposal--in order to amend that at all, say the community would like a waterline to the park, for instance, what would be the procedure to do that. He knows there is a plan, and it is really not final yet. They are working on it.

The Manager indicated that if the community gets it in to the Department early enough, it would be taken to the consultant.

Mr. Heck mentioned that there is going to be a main transmission line. The community is asking how they can tap into that line because of the potential in that area, what they are going to want is for different zoning to be commercial so they can have whatever they need, whether it is a school, health centre, etc.

The Manager stated that this is a decision the Board is going to have to make at some point in time. The Department recommends that nobody be allowed to tap into that line other than the water haulers and the free spigots. The reason is because it is a one-source system. If the Department was to allow services from that line and the well goes down, then the Department would be obligated to serve the area, and the Department would have to truck water out there. He recommends not doing that until another well for backup can be implemented. This would be up to the Board to decide.

Mr. Heck asked what the water quality is in the USGS test well.

The Manager stated that a sample was sent to a laboratory, and it was not that bad. The chlorides were about 80 or 90; water level was 3.8 feet, which is a thin lens for that area, so he does not anticipate a high yield. You are looking at anywhere between 150 to 300 gallons per minute maximum. USGS did not have capability of testing the well, and that is the true measure of a well is when it is tested. The exploratory well will be tested, and the Department will have a very good idea of what it can yield.

Mr. Heck mentioned the property that is on the highway that is potentially the site for the standpipes. He asked if that was underway or being purchased.

The Manager replied it is. Mr. Harry Yada, the County's Land Agent, is working on that, as well as the site that the Department had to obtain above the park. There are actually four separate parcels that Mr. Yada is trying to obtain by appraisals and negotiations with the owners. If worse comes to worse, Ms. Garson is ready to condemn.

Mr. Heck stated that he understands the problems and appreciates the work that is being done. He mentioned that he will be giving a report to the Ocean View Chamber of Commerce next week. They are probably going to ask what they can do, as a community, to promote anything--whether it is property at the park or whatever it is.

The Manager replied that the Department is doing everything it can as fast as it can. Those involved from the County are aware of the need to move fast to stay within the deadline. As far as that meeting, if Mr. Heck would like to have someone from the Department come out there to answer questions, we would be glad to go out there.

Mr. Heck indicated that would be good; and he noted that the meeting will be at the Ocean View Community Center on Tuesday, April 3, 2007, at 12 noon.

**G. MANAGER'S REPORT:**

- 1) The Manager provided an update of negotiations with Kamehameha Investment Corporation (KIC). He indicated that Mr. Inaba had spoken with Mr. Francis Kauhane. Mr. Inaba indicated that other than the numbers that were worked out again, other than what is involved with the language of the agreement, which is what staff had concerns about, the total project cost for the KIC development is approximately \$31 million to \$32 million. It involves three wells at a minimum of four storage tanks. Oversizing costs are approximately \$11 million for DWS. The amount of water KIC would get out of this is a little bit more than the capacity of one of the wells so there would be a need for three wells to have adequate backup. The Manager indicated that this information still has to be relayed to KIC.
- 2) The Manager provided a status of the Palani Road Transmission Waterline project. The Department is acquiring the easements, which are very important. This is another project that will enhance water quality in Kailua. Mr. Lawrence Beck stated that just in terms of getting easements, you have to get appraisals and survey. The Department has had appraisals done on two of the easements it is trying to acquire from private individuals, and he is waiting for responses to them. Chairman Goya commented about the need to see a Land Agent in the 2008 budget.
- 3) The Deputy Manager provided a status of the Public Information and Education Specialist. Fifteen names were screened from a pool of applicants. Interviews will be within the next couple of weeks or so. To interview that many applicants will take some time. Interview questions are being finalized.
- 4) The Manager provided a status of the Automatic Meter Reading project. The manufacturer met with staff and will work things out for future installations to go smoother. The method of reading the meters is fantastic.
- 5) The Manager asked Mr. Ikeda to provide a status of the Waimea Clearwater Reservoir Repair. Mr. Ikeda reported that the Department is now in the process of getting divers to fix the cracks that were found after the robotic inspection was done. When the report comes in, the Department will decide what is needed to fix the cracks.
- 6) The Manager provided a status of the Mauna Lani Wells. The existing well went down. Mauna Lani has agreed to release their second backup well to this Department; however, the Department is surviving without it. There is an issue with water because the first pump the

Department borrowed broke down in two months, so they want to ship that one back to the manufacturer to make sure the same problems are not in the pump the Department has now.

- 7) American Water Works Association (AWWA) National Conference - please get registration information to staff to meet the March 30, 2007, deadline. (Chairman Goya also mentioned the AWWA Hawaii Section conference coming up May 23 to 25, 2007.)

#### **H. EXECUTIVE SESSION**

Mr. Smith moved that the Board enter into Executive Session for the following reasons:

1. Pursuant to Section 92-5(a)(8), Hawaii Revised Statutes, as amended, for the purpose of deliberating and making a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state law. More specifically, H.R.S. 103D-303(d), 103D-303(f) and Hawaii Administrative Rule §3-122-58 require that the contents of proposals be kept confidential until the posting of the award. Therefore, the proposals and the Department's recommendation will be discussed in executive session; and also regarding the following, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (HRS), as amended, for the purpose of consulting with its attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.
2. Request to the Water Board from the Office of the Corporation Counsel for a waiver of the attorney-client privilege to publish on the Corporation Counsel website certain privileged written opinions previously given to the Water Board.

Motion was seconded by Mr. Mukai and carried unanimously by voice vote.

(The Board entered Executive Session at 12:40 p.m. and ended at 1:00 p.m.)

#### **ACTION ON NORTH KONA, JOB NO. 2005-880RFP KAHALU'U SHAFT BY-PASS HYDROELECTRIC PROJECT AT THE KAHALU'U SHAFT:**

Mr. Masuda suggested that the Board simply approve Item 6(A) recommendation of the Department of Water Supply as referenced to JOB NO. 2005-880RFP, KAHALUU SHAFT BY-PASS HYDROELECTRIC PROJECT AT KAHALUU SHAFT.

ACTION: Mr. Mukai so moved; seconded by Mr. Smith and carried unanimously by voice vote. (Mr. Harai was not present for the vote.)

#### **ACTION ON REQUEST TO WATER BOARD FROM OFFICE OF CORPORATION COUNSEL FOR WAIVER OF ATTORNEY-CLIENT PRIVILEGE TO PUBLISH CERTAIN WRITTEN OPINIONS PREVIOUSLY GIVEN TO THE WATER BOARD:**

Mr. Masuda informed the Board that if it moves to approve the request to release these opinion letters that they be for each individual one by date. If the motion is to reject or disallow the request for release of the Board's waiver, then they may be rejected all at once.

ACTION: Mr. Smith moved that the Board disallow the request for release of the opinion letters; seconded by Mr. Wilkins and carried unanimously by voice vote. (Mr. Harai was not present for the vote.)

I. **CHAIRMAN'S REPORT:**

None.

**ANNOUNCEMENTS:**

1. **Next Meeting:**

The next meeting of the Water Board will be on April 24, 2007, 10:00 a.m., in the Waimea Community Center (adjacent to the ball park); Kamuela, Hawai'i.

Chairman Goya indicated that the May 22, 2007, Water Board Meeting should be held in Hilo.

**STATEMENTS FROM THE PUBLIC**

None.

**ADJOURNMENT**

ACTION: Mr. Smith moved for adjournment of the Meeting; seconded by Mr. Wilkins and carried unanimously by voice vote.

(Meeting adjourned at 1:07 p.m.)

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Secretary

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