

## MINUTES

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

July 28, 2009

#### Hilo Operations Center Conference Room

MEMBERS PRESENT: Mr. Riley Smith, Chairperson  
Mr. Dwayne Mukai, Vice-Chairperson  
Mr. Francis Kuailani  
Mr. Bryan Lindsey  
Mr. Robert Meierdiercks  
Mr. Art Taniguchi  
Mr. Milton Pavao, Manager, Department of Water Supply  
(ex-officio member)

ABSENT: Mr. George Harai, Water Board Member  
Ms. Millie Kim, Water Board Member  
Ms. Bobby Jean Leithead-Todd, Director, Planning Department (ex-officio member)  
Mr. Warren Lee, Director, Department of Public Works (ex-officio member)

OTHERS PRESENT: Ms. Kathy Garson, Assistant Corporation Counsel  
Mr. Adelbert Green, Lanihau Properties, LLC  
Mr. James Greenwell, Lanihau Properties, LLC  
Mr. Robert Akinaka, Akinaka & Associates, Ltd.  
Mr. Ernest Baptista (arrived 11:00 a.m.)  
Mr. Cody Baptista (arrived 11:00 a.m.)

#### Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy Manager  
Mr. Keith Okamoto, Acting Engineering Division Head  
Mr. Daryl Ikeda, Chief of Operations  
Mr. Rick Sumada, Waterworks Controller  
Ms. Kanani Aton, Public Information and Education Specialist  
Ms. Julie Myhre, Energy Management Specialist  
Mr. Lawrence Beck, Engineering Division  
Mr. William Yamamoto, Water Service Supervisor II, South Kohala  
(arrived 11:00 a.m.)  
Ms. Helen Cortez-Baptista, Meter Reader II (arrived 11:00 a.m.)  
Mr. Clyde Young, Operations Division

CALL TO ORDER - Chairperson Smith called the Meeting to order at 10:04 a.m.

STATEMENTS FROM THE PUBLIC:

None.

APPROVAL OF MINUTES:

ACTION: Chairperson Smith entertained a Motion to approve the Minutes of the June 30, 2009, Public Hearing on the Proposed Rate Change in the Power Cost Charge. Mr. Meierdiercks so moved; seconded by Mr. Kuailani and carried unanimously by voice vote.

ACTION: Chairperson Smith entertained a Motion to approve the Minutes of the June 30, 2009, regular Water Board Meeting. Mr. Kuailani so moved, seconded by Mr. Mukai 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. 5 (B) JOB NO. 2009-953, WAIMEA WATER TREATMENT PLANT SLUDGE REMOVAL and Item No. 6 (C), regarding JOB NO. 2003-823, CONSTRUCTION OF PALANI ROAD TRANSMISSION WATERLINE MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR.

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

ACTION TO MOVE AGENDA ITEMS:

Chairperson Smith noted a request to move **Item 6 (A)**, First Supplemental Well Development – Lanihau Properties, LLC, West Hawai‘i Business Park, LLC, Palani Ranch Company, Inc., followed by **Item 6 (B)**, Off-Site Improvement Agreement – West Hawai‘i Business Park, ahead of Item 5 (A), Job NO. 2009-955, Lālāmilo Well B Repair. He also asked to move **Item 6 (C)**, Job No. 2003-823, Construction of Palani Road Transmission Waterline Māmalahoa Highway to Palani No. 2 Reservoir, to follow Item 7 (H), Referrals for Executive Session: Water Board of the County of Hawai‘i v. Mark G. Jernigan, et al., Civ. No. 09-1-155K (Circuit Court of the Third Circuit State of Hawai‘i).

The Board approved the changes in sequence by consensus.

NORTH KONA:

A. **FIRST SUPPLEMENTAL WELL DEVELOPMENT AGREEMENT – LANIHAU PROPERTIES, LLC, WEST HAWAI‘I BUSINESS PARK, LLC, PALANI RANCH COMPANY, INC.:**

*(This item was deferred at the 6/30/09 Water Board Meeting.)*

Chairperson Smith said he had a conflict of interest on Items 6 (A) and 6 (B), and asked Vice-Chairperson Mukai to act as Chairperson for the two items.

Ms. Garson noted that the Chairperson's recusal should come *before* the reading of the item.

The Well Development Agreement between Lanihau Properties, LLC, West Hawai'i Business Park, LLC, Palani Ranch Company, Inc., and the Water Board was approved at the Board Meeting on June 27, 2006 and executed on August 22, 2006. Now that the well has been drilled, cased, and tested, Lanihau, West Hawai'i Business Park and Palani Ranch desire to enter into this First Supplemental Well Development Agreement which details the well capacity as well as the requirements to outfit the well and its supporting facilities to obtain the water allocations for their Honokōhau Properties. This First Supplemental Agreement also outlines the allocation of and initial assignment as well as subsequent assignment(s) of equivalent units.

The Manager recommended that the Water Board approve this First Supplemental Well Development Agreement, and authorize either the Chairperson or Vice-Chairperson to execute the Agreement subject to the review and approval of the Corporation Counsel.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Lindsey.

The Manager noted that DWS has been working on this agreement with Mr. Greenwell for some time. This project involves the development of a well above the intersection of Palani Road and Māmalahoa Highway, and it is a win-win situation for everyone concerned, the Manager said. DWS participated to get improvements which included the upsizing of DWS's reservoir. The Manager noted that the developer was required to put in a 500,000-gallon reservoir, and DWS was going to pay the difference to have it upsized to provide more storage for the area. DWS also requested the developer to go in with DWS to do a stainless steel casing, instead of regular casing, with DWS paying the difference between stainless steel and normal casing. The reason for the stainless steel casing is that DWS had changed its standards *after* the Department had approved the developer's plans. This was because DWS found that stainless steel casing is much more durable and longer lasting, and the quality of the water over the years is much better. The Manager noted that DWS required the developer to complete an environmental assessment, which the developer graciously did.

Mr. James Greenwell expressed appreciation to DWS for their cooperation and can-do attitude throughout the brainstorming sessions.

ACTION: Motion carried unanimously by voice vote, with one abstention (Mr. Smith).

**B. OFF-SITE IMPROVEMENT AGREEMENT – WEST HAWAI'I BUSINESS PARK:**

*(This item was deferred at the 6/30/09 Water Board Meeting.)*

Lanihau Properties, LLC, and West Hawai'i Business Park, LLC (WHBP) wish to enter into this "Off-Site Improvement Agreement" (Off-Site Agreement) to provide potable water to the West Hawai'i Business Park Development (WHBP Project), included in their Honokōhau Properties as described in the Well Development Agreement. This Off-Site Agreement describes the allocation of equivalent units and the water system improvements required by WHBP in order to provide potable water to the WHBP Project. The off-site improvements include but are not limited to, a 0.5-million gallon concrete reservoir and transmission mains

adequate to service the WHBP Project. A portion of the project will be serviced by the existing water system adjacent to the WHBP Project.

Upon approval, this Off-Site Agreement is subject to the terms set forth in the Well Development Agreement and the First Supplemental Well Development Agreement.

The Manager recommended that the Water Board approve this Off-Site Improvement Agreement and authorize either the Chairperson or Vice-Chairperson to execute the Agreement subject to the review and approval of the Corporation Counsel.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Kuailani.

The Manager explained that this is a companion agreement to Item 6 (A).

Mr. Meierdiercks asked whether the well will happen regardless of whether the development itself goes through.

The Manager confirmed that the well will definitely happen, because the project is fully bonded and is in proper accordance with DWS standards.

ACTION: Motion carried unanimously by voice vote, with one abstention (Mr. Smith).

At this point Acting Chairperson Mukai relinquished his position, and handed back to Chairperson Smith.

SOUTH KOHALA:

**A. JOB NO. 2009-955, LĀLĀMILO WELL B REPAIR:**

Bids were opened on July 9, 2009, at 2:00 p.m., and the following are the bid results:

<b>Bidder</b>	<b>Amount</b>
<b>Water Resources International, Inc. (Lowest Responsible Bidder)</b>	<b>\$179,215.60</b>
Beylik Drilling & Pump Service, Inc.	<b>\$227,304.00</b>
Derrick's Well Drilling & Pump Services, LLC	<b>\$293,804.51</b>

Project Scope: This project consists of the removal and replacement of the existing oil lube line shaft pump, column pipe, inner column assembly and appurtenances of Lālāmilo Well B.

Project Cost:

1) Low Bidder (Water Resources International, Inc.)	\$179,215.60
2) Construction Contingency (10%)	<u>\$ 17,921.56</u>
<b>Total Construction Cost:</b>	<b>\$197,137.16</b>

Funding for this project will be from DWS's CIP Budget under Deepwell Pump Replacement. Contractor will have 180 calendar days to complete this project. The Engineering estimate was \$475,000.00.

The Manager recommended that the Water Board award the contract for JOB NO. 2009-955, LĀLĀMILO WELL B REPAIR, to Water Resources International, Inc. for their bid amount of \$179,215.60 plus \$17,921.56 for contingency, for a total contract amount of \$197,137.16. It is also recommended that the Board authorize either the Chairperson or the Vice-Chairperson to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel.

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

The Manager explained this is a basic well repair project.

Chairperson Smith asked if the water source was operational at this time.

The Manager said no, the water source was shut down, but was part of a well field where there are eight wells. DWS always has a standby well, so that when a well shuts down, another well takes up the slack. Therefore, DWS has standby capacity in this area to serve customers. He noted that this particular well was the original well that was partially funded by the State of Hawai'i when Mauna Lani first started. All of the wells in the well field are inter-connected, he said.

Vice-Chairperson Mukai asked what would happen there if another, additional, well went down.

The Manager said in such a case, DWS would immediately issue a Conservation Notice.

ACTION: Motion carried unanimously by voice vote.

**B. JOB NO. 2009-953, WAIMEA WATER TREATMENT PLANT SLUDGE REMOVAL:**

At the May 26, 2009, Water Board meeting, the Water Board awarded the contract for JOB NO. 2009-953, WAIMEA WATER TREATMENT PLANT SLUDGE REMOVAL to Sweet Water Too, Inc. at the contract price of \$53,437.20. Since the award of the contract, Sweet Water Too, Inc. was notified by the Waste Water Treatment Plant in Waimea that had been accepting the sludge, that they would no longer accept the sludge from DWS's Waimea Water Treatment Plant. Sweet Water Too, Inc. then tried unsuccessfully to find another disposal site for the sludge.

Due to the circumstances stated above, Sweet Water Too, Inc. has requested to withdraw their bid since they are unable to find a location to dispose of the sludge from DWS's Waimea Water Treatment Plant.

The Department recommended that the request to withdraw the award of the contract to Sweet Water Too, Inc. be accepted and the contract for JOB NO. 2009-953, WAIMEA WATER TREATMENT PLANT SLUDGE REMOVAL, be awarded to the next lowest bidder, Bob's Sweetwater Pumping Service, at the contract price of \$91,920.00.

The scope of the project consists of the periodic removal and disposal of sludge from the sludge basin at the Waimea Water Treatment Plant, for a period not to exceed one year.

The Manager recommended that the Board accept the withdrawal of the award of the contract for JOB NO. 2009-953, WAIMEA WATER TREATMENT PLANT SLUDGE REMOVAL from Sweet Water Too, Inc., and award it to Bob's Sweetwater Pumping Service, for their bid amount of \$91,920.00, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel.

The Board was provided with additional information distributed as a Supplemental Agenda Item.

MOTION: Mr. Meierdiercks moved to approve; seconded by Mr. Mukai.

The Manager explained that after DWS awarded the contract, the Department got a letter (attached to the Supplemental Agenda) from the contractor, who reported that he could not fulfill the contract because he had no place to dispose of the sludge. The contractor asked DWS to allow them to do alternative ways of disposing of the sludge. However, DWS declined because this was not part of the original contract documents. Consequently, the contractor had no choice but to ask DWS to cancel the award. The recommendation is asking the Board to cancel the award, and to award the contract to the next bidder. DWS realizes that the difference is approximately \$40,000, but DWS cannot force the contractor to do something after they told DWS they cannot do it.

The Manager explained about the bid bond that the contractor is required to post. If a contractor cannot do the job after an award and they withdraw, the contractor loses the bid bond. The bid bond is what the contractor puts up when they post the bidding documents; it is 5 percent of the bid price. (In this case, it is approximately \$2,600.) The contractor loses the bid bond because he cannot fulfill the contract.

Vice-Chairperson Mukai asked whether the bonding company could be forced to complete the job.

Chairperson Smith said no, this is a **bid bond**, not a performance bond. With capital improvement projects, the contractor has to put up a performance bond when he signs the contract. However, the contractor in this case has not signed a contract yet; he only provided a bid.

The Manager cited the Wailoa Bridge contract as a case when a performance bond kicked in. In that case, the performance bond company had to do the job, because the contract was executed. In the current case, the contract was only awarded; it was not executed. The contractor in this case had not signed a contract.

Mr. Ikeda noted that DWS is doing a sludge drying bed project, and once that project is completed late this year or early next year, there will no longer be a need to haul sludge. Therefore, it might not come to a \$40,000 difference in price.

The Manager noted that the bid bond was not an arbitrary thing; it is stipulated in the Hawai'i Revised Statutes.

Chairperson Smith noted that in this case, there were two people bidding on taking the same sludge from the same location, delivering the sludge to the same treatment plant. One person who has the low bid is told that he is no longer allowed to dispose of the sludge there, while the other person who has a bid twice as high is still allowed to dispose of the sludge in the same place. He acknowledged that DWS has to follow procurement laws, but it does not seem right. The Department, he believes, does not have an option here: it has to pull the bid bond and hold onto it. However, DWS needs to scrutinize the successful bidder and make sure there is documentation in the files that confirms that he has a legal right to dispose of the sludge at that facility.

The Manager said that when you read the letter from the low bidder, you know that something is going on. However, the only legal thing that DWS can do is to follow the procurement code.

Chairperson Smith said it would be very helpful to have a letter or some other documentation from the owner of the facility to show that he is authorizing that sludge can be disposed of there, to alleviate any confusion that may arise later if there is a problem.

ACTION: Motion carried unanimously by voice vote.

#### NORTH KONA:

- A. **FIRST SUPPLEMENTAL WELL DEVELOPMENT AGREEMENT – LANIHAU PROPERTIES, LLC, WEST HAWAI'I BUSINESS PARK, LLC, PALANI RANCH COMPANY, INC.:** (Moved to the top of the Agenda earlier)
- B. **OFF-SITE IMPROVEMENT AGREEMENT – WEST HAWAI'I BUSINESS PARK:** (Moved to the top of the Agenda earlier)
- C. **JOB NO. 2003-823, CONSTRUCTION OF PALANI ROAD TRANSMISSION WATERLINE MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR:**  
(Moved earlier to follow Item 7 (H at Chairperson's request.)

#### MISCELLANEOUS:

##### A. **ENERGY PERFORMANCE PROJECT:**

Ms. Myhre reported on two ongoing projects involving energy efficiency improvements:

- Energy performance contract: Ms. Myhre is working to hire a consultant, and is currently writing a scope of the position. She expects to hire the consultant by early 2010.
- Lālāmilo Wind Farm agreement between DWS and the State Department of Land and Natural Resources (DLNR): Ms. Myhre provided a handout on the history of the wind farm, beginning in 1984 with an agreement between DWS and a third party,

involving 2.3 MW of power at a 20% discount rate. In that year, DWS and DLNR entered a land lease at the Lālāmilo site which expires in December 2010. In 1987 a third party sold the wind farm to HELCO, and in 1995, a road facilities maintenance fund was established in lieu of a discount. In 1999, proceeds from excess energy were to be split among DWS, HELCO and DLNR under an agreement which terminates in 2035. The expiration of the lease in December 2010 is spurring discussion on what DWS should seek to gain regarding the wind farm, especially vis a vis HELCO's plans to re-energize the wind farm, which has deteriorated over the years. The wind farm currently is not generating any significant amounts of power, Ms. Myhre noted. DWS is looking into how the Department can benefit from the potential reduced energy costs from a re-energized HELCO wind farm. Over the next several months, DWS will be meeting with HELCO officials to determine what each side wants. She noted that she and Mr. Young have met with HELCO operations staff recently, and the Manager will meet next Monday (August 3) with HELCO president Jay Ignacio. These discussions will be part of DWS's efforts to develop a plan to present to DLNR when negotiating an extension of DWS's current land lease.

A discussion ensued on various parties approaching DWS to pursue alternative energy sources.

The Manager said that while DWS is always interested in alternative energy, as a government entity, DWS must follow state procurement code. To make use of a third party situation, DWS must go out with a full-on Request for Proposals (RFP), in compliance with procurement code. DWS has not taken the step to find out if the parties wanting DWS to pursue alternative energy are sincere enough to justify DWS going to the expense of an RFP. The Manager said that while Ms. Myhre made the Lālāmilo wind farm/land lease arrangement sound simple, in fact it was considerably more complicated. The reason is that DWS is dealing with the state (DLNR), which may want other people to bid on the land lease, and the state will want the best price. DLNR may not necessarily agree to extend the lease to DWS. Meanwhile, there is the issue of DWS sub-leasing the land to HELCO, and the issue of buying power back from HELCO (and at what rate), he noted. There are many variables in the mix that DWS still needs to resolve, he said.

Chairperson Smith noted that the Board had visited the wind farm a year or so ago, and it resembled a bone yard, with turbine parts strewn around. He characterized the arrangement for DWS as a "sandwich lease," where DWS was leasing state land from DLNR, and had a third-party agreement that allowed someone else (not HELCO originally) to do the wind farm. Eventually, HELCO ended up owning the wind farm. He noted that because it was on state land, the third party was able to negotiate an agreement with DWS, because DWS is a government agency. Now DWS has a current lease with DLNR, and DWS is pursuing a possible venture with HELCO to use the site. HELCO owns the assets, i.e., the wind turbines on the site. HELCO is envisioning retro-fitting by putting in new technology to feed power into the grid. Right now, DWS's agreement with HELCO runs to 2035. He noted that typically when someone does a wind project, they want to look at an asset-ownership horizon of 50 years. HELCO is looking at the year 2060 or thereabouts to depreciate and amortize their investment. The Chairperson said that it was important to understand all of the hurdles involved, especially because it is on state land. DWS needs to do an Environmental Impact

Statement, and DWS needs to be very cautious so as not to enter into a sole source agreement with HELCO, because they are a private business.

The Manager said he shared the same concerns. In this instance, DWS already has a lease, with an option to extend. DWS has a current agreement with HELCO that was approved many years ago; that is the only reason that DWS is allowed to keep talking with HELCO. The lease with DLNR gives DWS an option to extend the land lease, and meanwhile DWS has its current agreement with HELCO. If DWS does not take the option to extend the lease with DLNR, DWS theoretically would have to exit the agreement it currently has with HELCO. It is a very complicated situation; if it were not for these existing agreements, DWS could not do what it is doing, he said.

Ms. Myhre observed that the land lease can be extended another 29 years; not 50 years.

The Manager said DWS is very interested to see what HELCO proposes and what kind of discounts DWS can obtain. A while back, DWS was told that HELCO cannot legally give DWS a discount on electrical usage. Instead, HELCO set up a road maintenance fund so that DWS could enjoy some kind of discount. Under this arrangement, money was coming into the fund for DWS.

Chairperson Smith said that DWS really has a “sandwich lease” here. DWS pays approximately \$6,000 a year to DLNR to lease the land, but the Manager questioned whether this was consistent with DWS’s core mission, which is to be in the water business. He questioned whether it was in keeping with DWS’s mission to have a sandwich lease with DLNR to allow a private utility company to do a wind farm. He worried about the liability exposure to DWS, with 80 wind turbines on the land using lubricants and other diesel products. If something were to happen to that land, DWS would be sandwiched in between, and the exposure would lie with DWS. If DWS extends the lease, the Department should get a Phase I ESA (Environmental Site Assessment) to make sure the land is clean and to ensure DWS has no exposure going forward. He repeated that DWS’s core mission is to provide water to its customers; and if DWS’s entire benefit out of the deal with HELCO is the maintenance of the two-mile long road from Puakō, then it may be time to rethink whether the deal is worth it for DWS.

The Manager said he entirely agreed; he did not think DWS should have gotten into this situation in the first place. Under the circumstances, DWS is stuck with it. The Manager noted that DWS had spent part of the road maintenance fund to do an ordnance survey because ordnance had been discovered on the land a while back. If DWS cannot come to terms with DLNR, DWS will not enter into this kind of situation again. If DWS does enter into a third-party situation again, DWS will find the land itself and will only buy power. The Department will not get into the land business, because that is not in keeping with DWS’s mission, he said.

The Chairperson clarified that it is a “sandwich lease” because the lease is between DWS and DLNR, but there is someone else (HELCO) in there sub-leasing from DWS.

The Manager said that the reason DWS originally went into the lease was because DWS was being offered a 20 percent discount on electrical power from the third-party provider. In the

beginning, HELCO was not there, and the intent was for the third party to maintain and operate the wind farm.

Vice-Chairperson Mukai asked whose responsibility is it to clean up the land, if DWS does not renew the lease.

The Manager said that the agreement with HELCO specifies that part of the transmission, switch boxes and gear remain DWS's, while the actual hardware may go back to HELCO. In short, it is a messy situation, he noted. If DWS renews the lease, it would make sure through negotiations that the terms with HELCO are attractive to the Department. He noted that currently DWS is getting no discount on power from HELCO. DWS wants to make sure it gets a benefit from HELCO, but if not, DWS will not take the option to renew the DLNR lease. However, DWS will still be stuck with its agreement with HELCO, so in such a case DWS will want to find a way to exit the agreement with HELCO without incurring a penalty. The entire situation is far more complicated than what is shown on the flow chart from Ms. Myhre, he concluded. DWS is not in the power business, he said.

**B. 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.

Ms. Garson said that the Board should take the two dedications separately.

**1. FIRST AMENDMENT TO LICENSE EASEMENT NO. 722:**

Subdivision Application No. 2004-0217B

Lālāmilo Housing Phase I East Subdivision

TMK: (3) 6-6-004:012

EWO NO.: 2007-005 (East)

Owner/Licensor: State of Hawai'i, Department of Hawaiian Home Lands

No. of Lots: 18

Zoning: RS-10

Final Inspection Date:

(TBA)

Facilities Charge: \$73,440.00

Date Paid: 7/15/09

Water System Cost:

(TBA)

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 to approve; seconded by Mr. Kuailani.

Mr. Okamoto said the Board should defer this item, because the project is not yet completed; the final inspection date and total water system cost are to be announced.

Mr. Mukai then rescinded his Motion to approve; Mr. Kuailani rescinded his second.

ACTION: Mr. Kuailani moved to defer; seconded by Mr. Taniguchi, and carried unanimously by voice vote.

**2. GRANT OF EASEMENT AND BILL OF SALE**

Subdivision Application No. 03-000148

Grantor: Ki'ilaie Farms Subdivision

TMK: (3) 8-5-006:020, 027, 031 & 032 and 8-5-007:009, 014, 020 & 021

E.W.O. 2008-012

Lots: 50 and 5 Road Lots

Zoning: A-5a

Final Inspection Date:

(TBA)

Facilities Charge: \$341,900.00

Paid: 6/08/2007

Water System Cost:

(TBA)

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 to approve; seconded by Mr. Kuailani.

The Manager offered additional information on this project which was completed yesterday (July 27, 2009). The final inspection date was on July 27, 2009 and the water system cost is \$1,278,913.32.

ACTION: Motion carried unanimously by voice vote.

**C. MONTHLY PROGRESS REPORT:**

No discussion.

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

Mr. Sumada responded to a question the Board had asked at the June 30, 2009 Water Board meeting regarding Work in Progress. He explained that the general ledger number is a lot higher because it includes \$11 million in projects by Operations (not CIP); these are projects different from Engineering. The general ledger list also includes \$27 million in construction projects that DWS will be closing, he noted. Those were the big differences between the general ledger list and the Engineering list, he said.

Mr. Taniguchi asked if, for 2010, the Department was projecting the same on the Power Purchase. He asked if it was break-even for the income and expenses.

The Manager confirmed this, and reported that he and Mr. Sumada had taken another look at the Power Cost and found that it had remained the same, at \$1.83. Therefore, the Department decided that there was no justification to come back to the Board to adjust the Power Cost this time around. He said that whenever there was a difference, the Manager would come before the Board to ensure that the Department stays current.

Chairperson Smith asked at what threshold the Department would want to initiate a change.

The Manager said that he and Mr. Sumada were looking at a change of around 5 cents.

Vice-Chairperson Mukai said he would feel more comfortable if a policy were in writing to put the threshold as a percentage -- versus 5 cents.

The Manager suggested that it might be better to report to the Board exactly what the Power Cost is every month, and let the Board decide what to do. He noted that the only problem with that would be the timing of the Public Hearing, which is stipulated by statute.

Chairperson Smith agreed that the Department should report the number to the Board so that the Board can make a decision on whether to change the Power Cost or leave it as it is. He asked that Mr. Sumada put the number into the Monthly Financial Statements every month, so that the Board can decide on whether to authorize the Department to go ahead with the Public Hearing process. In that way, the burden will be on the Board, and not on the Department, he said.

The Manager confirmed that Mr. Sumada will report the Power Cost number to the Board every month.

E. **WATER RATE STUDY:**

No discussion.

F. **MANAGER'S REPORT:**

The Manager provided an update on the following:

- 1) Update on use agreement on KIC wells: Ms. Garson reported that Kamehameha Investment's attorney, Steve Lim, had contacted her with a proposal. The Manager said that Mr. Lim is supposed to send DWS documents, but so far KIC has not talked with DWS on the specifics of the proposal.
- 2) Palani Road Transmission Project: This was to be covered following Item 7 (H).
- 3) Kona Water Round Table: About 80 people attended, including Chairperson Smith. The topic was injection wells. The Manager noted that unfortunately toward the end of the session, the discussion veered off the main topic, to the problems with *sewer* injection. The organizers of the session agreed that the Water Round Table should stick to the subject of water, and not wander into areas outside of everyone's purview of expertise. Chairperson Smith commended the Round Table as being a good forum for learning, where rational, scientific information is offered. The Manager thanked Ms. Aton for helping organize the forum, which will take place every three months. Ms. Aton thanked Palamanui for sponsoring the July Round Table, and noted that Lanihau Properties will sponsor the next one. (Date and venue to be announced.)
- 4) Sustainability/Energy/Green Team update: Ms. Myhre showed a chart on how the Green Team and the Mayor's Energy Initiative "cross-pollinate." Ms. Myhre, who belongs to both the Green Team and the Mayor's Energy Advisory Commission, noted that the first meeting of the Advisory Commission takes place on Friday, July 31 at 10:00 a.m. at the Office of Aging. She reported that the newly-hired Energy Coordinator for the County will run the meeting. Ms. Myhre is a liaison between the Green Team and the Commission. She is currently preparing a summary of DWS's vehicle fleet fuel use during the past fiscal year, which will provide statistics

on all of the districts. Chairperson Smith asked if the Green Team and the Commission planned to present measurable findings. Ms. Myhre said the Green Team was preparing a report card on its many activities, including recycling and transit.

- 5) Employee of the Quarter presentation: The Manager commended the honoree, Ms. Helen Cortez-Baptista, Meter Reader II in Kohala District, for her sunny personality and helpful attitude, along with her legendary cooking. Her supervisor Mr. Yamamoto introduced Ms. Cortez-Baptista, her husband Ernest and son Cody. Mr. Yamamoto then read hearty endorsements written by her co-workers at Waimea Baseyard, including one that compared her to a “star shining bright for DWS.” Ms. Cortez-Baptista, who has been with DWS for 13 years, shows dedication and leadership at work, as well as devotion to community activities including the Boy Scouts and Honoka‘a High School’s Robotics Team. The crowning touch came when Mr. Yamamoto likened Ms. Cortez-Baptista to a many-faceted diamond. Ms. Cortez-Baptista modestly credited the good leadership at Waimea Baseyard for creating a happy working environment.

Following the presentation, Chairperson Smith asked for an update on the Kawaihine Reservoir issue.

Ms. Garson asked to put the topic on the Agenda for the August 25 Water Board Meeting as an Executive Session.

Chairperson Smith asked that an update on the matter be included in the Agenda as a regular item.

Vice-Chairperson Mukai asked for an update on the HWWA ’09 Conference in October in Keauhou.

The Manager said DWS had sent out the Save the Date notice, and the Department is currently finalizing the Agenda, the speakers, food, registration packets, etc.

Chairperson Smith noted that he had emailed the Manager to ask whether Board Members’ participation would be covered by the budget.

The Manager said that it was the Chairperson’s prerogative to decide who among the Board would be covered.

Chairperson Smith said that because DWS was hosting the conference this year, it was important that all of the Water Board be invited to represent the County and DWS, if the budget can support it.

The Manager said that DWS would invite the entire Board, and send information on per diems according to district.

#### G. **CHAIRPERSON’S REPORT:**

Chairperson Smith had no report.

**H. REFERRALS FOR EXECUTIVE SESSION: WATER BOARD OF THE COUNTY OF HAWAII v. MARK G. JERNIGAN, ET AL., CIV. NO. 09-1-155K (CIRCUIT COURT OF THE THIRD CIRCUIT STATE OF HAWAII)**

The Water Board had anticipated convening an executive meeting regarding the foregoing matter, pursuant to Section 92-5(a)(4), for the purpose of consulting with Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities and/or 92-5(a)(3) to deliberate concerning the authority of persons to negotiate the acquisition of public property, or during the conduct of such negotiations.

Ahead of Item 7 (H), below, Ms. Garson said the Chairperson should seek a Motion to go to Executive Session.

MOTION: Mr. Mukai so moved; seconded by Mr. Taniguchi, and carried unanimously by voice vote.

At this point, Chairperson Smith called a five-minute recess at 11:23 a.m., during which the room was cleared of all but the Board, the Manager and the Secretary.

The Executive Session began at 11:29 a.m., and ended at 11:53 a.m.

Chairperson Smith entertained a Motion to approve the recommendation as discussed in Executive Session.

MOTION: Mr. Meierdiercks so moved; seconded by Mr. Kuailani, and carried unanimously by voice vote.

**6. (C) JOB NO. 2003-823, CONSTRUCTION OF PALANI ROAD TRANSMISSION WATERLINE MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR:**

(Moved earlier to follow Item 7 (H).

Bids were opened on July 23, 2009, at 2:00 p.m.; and following are the bid results:

<b>Bidder</b>	<b>Amount</b>
CTS Earthmoving, Inc. ( <b>Lowest responsible bidder</b> )	\$11,325,033.80*
Goodfellow Bros., Inc.	\$11,436,090.00
Isemoto Contracting Co., Ltd.	\$13,142,650.00
Jas W. Glover, Ltd.	\$16,860,100.00
Ledcor Construction Hawai'i, LLC	Non-responsive

\*As corrected.

Project Scope: This project involves furnishing and installing one 2.0 MG and one 1.0 MG concrete reservoir; two pressure reducing valve stations; three inlet control stations; 24", 20" and 16" transmission water lines; paved access roads; electrical system and equipment; drainage; fencing and required site work.

Project Cost:

1) Low Bidder (CTS Earthmoving, Inc.)	\$11,325,033.80
2) Construction Contingency (8.83%)	<u>1,000,000.00</u>
<b>Total Construction Cost</b>	<b>\$12,325,033.80</b>

Funding for this project will be from a previous participation with the County in a General Obligation Bond issue.

Contractor will have 700 calendar days to complete this project.

The Engineering estimate was \$15,700,000.00.

The Manager recommended that the Water Board award the contract for JOB NO. 2003-823, CONSTRUCTION OF PALANI ROAD TRANSMISSION WATERLINE MĀMALAHOA HIGHWAY TO PALANI NO. 2 RESERVOIR to CTS Earthmoving, Inc. for their bid amount of \$11,325,033.80 plus \$1,000,000.00 for construction contingency for a total contract amount of \$12,325,033.80. It is also recommended that the Water Board authorize either the Chairperson or the Vice-Chairperson to sign the contract, subject to review as to form and legality of the contract by Corporation Counsel.

Ms. Garson requested that the recommendation be amended to include add that: "award of the contract be contingent upon the Department of Water Supply acquiring the right to cross the Jernigans' property."

Chairperson Smith entertained a Motion to approve the amended recommendation.

MOTION: Mr. Mukai moved to approve as recommended by Corporation Counsel; seconded by Mr. Kuailani, and carried unanimously by voice vote.

Chairperson Smith asked how long the bidder is required by statute to honor the bid.

The Manager replied that it was 60 days, subject to the bidder's agreement with DWS to extend.

Ms. Garson confirmed this, saying that the bidder is only obligated to hold his price for 60 days.

The Manager noted past precedents where bidders held their prices longer than 60 days, at DWS's request. He said that in this case there was one non-responsive bidder, who did not submit certain documentation required by the bid documents. The Manager also explained the asterisk next to the words "as corrected" in the bid results. Initially, the raw bid results

showed CTS Earthmoving, Inc. as the third lowest bidder, but after DWS staff did the math throughout the proposal, they found that there were errors, and CTS Earthmoving, Inc. emerged the lowest bidder. Therefore, the Department is now recommending that the Water Board awards to CTS Earthmoving, Inc., as amended by legal counsel. The Department is proposing a roughly 8.83 percent contingency, at \$1,000,000.00. The Manager believed that because of the size and magnitude of this project, that contingency is justified. He noted that the Department has been working on this project for three or four years. The project, he said, would greatly improve the situation in Kona by allowing DWS to bring mauka water through a transmission system down makai. The project would allow DWS to cut back on pumping from Kahalu'u Shaft, and as a result the water quality would improve, especially along Ali'i Drive.

Chairperson Smith ascertained that this project just crosses Palani Road, and does not run parallel to Palani Road.

The Manager confirmed this, saying that the project stays away from Palani Road because of traffic congestion.

Chairperson Smith said the only impact on Palani Road would be construction traffic and when the project crosses the highway. He confirmed that there was no need for the Water Board to set a time limit on its contingent approval of the award because the award is based on when Corporation Counsel can resolve the easement issue with the Jernigans.

The Manager believed the only issue would be whether the contractor would be willing to hold his price longer than the required 60 days.

Chairperson Smith said that with the next lowest bidder, Goodfellow Bros., Inc., only \$10,000 off, it was likely that CTS Earthmoving, Inc. would be willing to hold his price for a while. Regarding the correction of CTS's bid, he confirmed that their bottom line was off, but when DWS went back and checked their math, DWS made the corrections and CTS Earthmoving, Inc. turned out to be the low bidder.

The Manager confirmed this, saying that Mr. Okamoto has the documentation on hand, as well as on file.

Chairperson Smith just wanted to make sure, in case a protest arises. He observed that Ledcor Construction Hawai'i, LLC, the non-responsive bidder, was supposed to submit documents but failed to do so. Therefore, their bid had to be thrown out.

The Manager said that Ledcor's bid packet was much thinner than the bid packets of the rest of the bidders.

Chairperson Smith noted that Ledcor, which does work in Kona, should know the rules.

The Manager said that the bid documents were very clear on what was required; there was no question about what bidders should have had.

Chairperson Smith asked about the consultant for this project.

The Manager said the consultant was Akinaka & Associates.

Chairperson Smith commented that these were good prices, coming in 20 percent below the Engineering estimate.

ACTION: Motion carried unanimously by voice vote.

Chairperson Smith asked that when there is a special event such as an Employee of the Quarter award, to have a better venue for lunch, rather than bringing in lunch.

ANNOUNCEMENTS:

1. Next Meeting:

The next Meeting of the Water Board will be held on August 25, 2009 at 10:00 a.m. at the Royal Kona Resort, Resolution Room, 75-5852 Ali`i Drive, Kailua-Kona.

2. Following Meeting:

The following meeting of the Water Board will be held on September 22, 2009 at 10:00 a.m. at Waimea Community Center, 65-1260 Kawaihae Road, Kamuela, HI.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

ACTION: Chairperson Smith called for the Meeting to be adjourned. Mr. Kuailani so moved; seconded by Mr. Taniguchi; and carried unanimously by voice vote. Meeting adjourned at 12:03 p.m.

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Senior Clerk-Stenographer

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

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