

MINUTES

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

September 22, 2009

Waimea Community Center, 65-1260 Kawaihae Road, Kamuela

- MEMBERS PRESENT: Mr. Riley Smith, Chairperson
Mr. Dwayne Mukai, Vice-Chairperson
Mr. George Harai
Mr. Francis Kuailani
Mr. Bryan Lindsey
Mr. Robert Meierdiercks
Mr. Art Taniguchi
Mr. Milton Pavao, Manager, Department of Water Supply
(ex-officio member)
- ABSENT: Ms. Millie Kim, Water Board Member
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. Bill Brooks, Planning and Entitlement Consultant, Seascape Development, LLC
- Department of Water Supply Staff
Mr. Quirino Antonio, Jr., Deputy Manager
Mr. Kurt Inaba, 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 District Supervisor II, South Kohala (left meeting at 10:13 a.m.)
Mr. Leonard Midallia, Lead Pipefitter, (left meeting at 10:13 a.m.)
Mr. Roy Miyasaki, Lead Pipefitter, (left meeting at 10:13 a.m.)
Mr. Norris Gonsalves, Pipefitter, (left meeting at 10:13 a.m.)
Mr. Ted Lindsey, Pipefitter, (left meeting at 10:13 a.m.)

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

STATEMENTS FROM THE PUBLIC:

Mr. Bill Brooks, representing Seascape Development, LLC, gave the following statement regarding Item 6 (B), AMENDMENT OF WATER FACILITIES AGREEMENT – SEASCAPE DEVELOPMENT, LLC:

“Item 6 (B) is basically a request from the developer to extend this Water Facilities Agreement for a year, in light of the current economic crisis and the impact on the banking industry (which) has caused the developer to wait until things lighten up a little bit for them to be able to proceed. They definitely have a strong vested interest in the completion of this project, and so they definitely want to move forward, but they need the time line to fulfill their commitment.”

APPROVAL OF MINUTES:

MOTION: Chairperson Smith entertained a Motion to approve the Minutes of the August 25, 2009, Water Board Meeting. Mr. Meierdiercks so moved; seconded by Mr. Kuailani.

ACTION: Motion to approve Minutes was carried unanimously by voice vote.

APPROVAL OF SUPPLEMENTAL AGENDA AND ACTION TO MOVE AGENDA ITEMS:

Chairperson Smith entertained a Motion to approve the addition of Supplemental Agenda Item No. 8 (H), regarding WATER RATE STUDY; as well as to move Item 8 (A), INTRODUCTION OF STATE PIPE TAPPING TEAM CHAMPIONS OF 2009 to the top of the Agenda, followed by Item 6 (B), AMENDMENT OF WATER FACILITIES AGREEMENT – SEASCAPE DEVELOPMENT, LLC. These items were moved ahead of Item 5 (A), JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS, COUNTY OF HAWAI‘I, STATE OF HAWAI‘I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, PW NO. 638.

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

MISCELLANEOUS:

A. INTRODUCTION OF STATE PIPE TAPPING TEAM CHAMPIONS OF 2009:

Mr. William Yamamoto introduced to the Water Board the four members of the Waimea Pipe Tapping Team, the state champions for 2009. The team is comprised of Mr. Norris Gonsalves, Pipefitter; Mr. Ted Lindsey, Pipefitter; team coach Mr. Leonard Midallia, Lead Pipefitter; and Mr. Roy Miyasaki, Lead Pipefitter. They held the individual plaques awarded for posting the fastest pipe tapping time during the annual competition at the American Water Works Association regional conference, held in Honolulu earlier this year.

As state champions, the team will represent Hawai‘i in the national pipe tapping competition at next year’s American Water Works Association conference in Chicago. Mr. Yamamoto noted that this will be the third time that the Waimea team is representing the State of Hawai‘i in the national competition.

Mr. Yamamoto said the Department is fortunate to have these men at the Waimea Baseyard. The Department is also fortunate to have their colleagues at the Baseyard, who strongly support them.

Chairperson Smith noted that members of the team contribute greatly to the community, citing the earthquake relief efforts of team members above and beyond the call of duty.

NORTH KONA:

B. AMENDMENT OF WATER FACILITIES AGREEMENT – SEASCAPE DEVELOPMENT, LLC:

On October 28, 2008, Seascape Development, LLC (“Seascape”) and the Water Board entered into a Water Facilities Agreement for the development, construction and installation of certain improvements and other water transmission-related facilities in the vicinity of the Water Board’s existing Kalaoa Well. Seascape was to also complete the engineering and design work, and assign the same, as well as obtain all necessary permits in accordance with DWS requirements within one year of the executed Agreement.

The current deadline is October 28, 2009. However, the current challenging economy as well as the bank liquidity crisis makes it impossible for Seascape to proceed on the schedule it originally had envisioned. Seascape is proposing to amend the Water Facilities Agreement to extend such submittal deadline to October 28, 2010, an extension of one year. Seascape feels that this new deadline will enable them to meet their obligations in the current economic climate.

Staff has reviewed the Amendment of Water Facilities Agreement and finds it acceptable.

The Manager recommended that the Water Board approve the Amendment of Water Facilities Agreement subject to review and approval by Corporation Counsel.

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

The Manager noted the tight credit conditions in the current economic situation. Seascape is requesting a time extension to the basic agreement, which is for the developer to furnish DWS with plans for the Department to build a tank. DWS paid Seascape for the land, he added. Under ordinary circumstances, DWS would be reluctant to grant such an extension, and would be anxious to build a tank. However, based on the economy and DWS’s finances, building a tank would not be a priority right now. DWS, therefore, has no objection to granting the extension for one year. The hope was that in a year, the economic situation will have improved, and that DWS will be in a position to go ahead with the tank construction.

Speaking of the original contract, Chairperson Smith said he believed the obligation of the developer was to do the engineering design and the environmental assessment, conduct an appraisal and pull the permit. Building the tank itself would be DWS’s responsibility, he noted. He asked at what stage was Seascape in completing its designated tasks.

Mr. Brooks said that the environmental assessment has been completed and submitted. The engineering is about 60 percent completed. The electrical engineering work, done by

contractor Wally Oki, is staged and ready to go, (and any remaining work is nominal). The biggest chunk of cash outflow involves completing the engineering work by Okahara & Associates. Once Okahara & Associates finishes its work, Seascope will be able to give DWS everything it needs to go ahead with building the tank, he said. He noted that the appraisal was done a while back, and the Board had been provided with the appraisal. The only outstanding work is the engineering.

Chairperson Smith asked if the engineering could be done prior to the proposed October 28, 2010 deadline.

Mr. Brooks confirmed this, saying that it was only a matter of coming up with funding to move it forward.

Mr. Taniguchi asked if the engineering work had been halted.

Mr. Brooks confirmed this, saying everything was stopped in the absence of cash flow.

Mr. Taniguchi asked what happens if economic conditions do not improve in the next year.

Mr. Brooks said that within the year, Seascope will have enough time to restructure. He said that Seascope has a much stronger need to have the project go forward than DWS does. Tied to this project, he said, is the water availability of two other parcels that the developer intends to rezone and develop. Without the water availability, the impact on the developer would be millions of dollars. Therefore, Seascope has a strong motivation to make this project happen. The extension would give the developer the time to restructure amid the current banking crisis.

Mr. Taniguchi asked who Seascope is, and if they had done other developments here.

Mr. Brooks said Seascope had completed an affordable housing project on Lot One, and the developer had subdivided a 50-acre piece of land into four parcels. One of those parcels has been developed as an affordable housing project. Another parcel was spun off and a second party is creating an affordable rental project there. He said that the other two remaining parcels for which the current project will provide water, will be workforce housing.

The Manager said that Seascope had brought in a plant to produce modular housing, near Costco in Kona.

Mr. Taniguchi noted that the original contract contained a "time is of the essence" clause.

Mr. Brooks said that at the time of the original contract, the developer was even more anxious to expedite things than DWS was. However, that was before the banking industry crash and the corresponding collapse of the economy.

Chairperson Smith asked the Manager to explain why DWS would have only required the developer to design the tank and not to build it.

The Manager said that it was to DWS's advantage for the Department to build the tank. Otherwise, DWS would have given away too many credits. The Department wanted to have the ability to charge the full facilities charge credits. Therefore, it was to DWS's benefit to build the tank.

Chairperson Smith confirmed this, saying that the developer would only be using a portion of the water in the tank, while paying the full facilities charge.

ACTION: Motion to approve carried unanimously, by voice vote.

SOUTH KOHALA:

A. JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, PW NO. 638:

The contractor, Goodfellow Bros., Inc., has requested an 82-calendar day time extension. This request is due to delays beyond the control of the contractor, and consists of 72 calendar days for rain-outs and unworkable conditions, and 10 calendar days for investigating the pending closure of the DuPont Hypalon CSM polymer manufacturing plant.

Burke Industries, the supplier of the Hypalon liner to be used for this project, was required to delay the shop drawing submittal while looking for an adequate alternate source of Hypalon CSM polymer. An alternate source was located, but Burke Industries issued another letter saying DuPont will manufacture enough CSM polymer to meet most, if not all, of the 2009 demand.

Note: There is no additional cost associated with this time extension.

Staff has reviewed the request and finds that the 82 calendar days are justified. This is the first time extension request.

1st time extension – 82 calendar days

The Manager recommended that the Board approve a contract time extension to Goodfellow Bros., Inc. of 82 calendar days for JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, PW NO. 638. If so approved, the contract completion date will be revised from November 9, 2009 to January 30, 2010.

MOTION: Mr. Kuailani so moved; seconded by Mr. Meierdiercks.

Mr. Inaba said rain-outs are the main cause of the delay, and even a small amount of rain makes for unworkable conditions. Of the 82 days requested, 72 days are for rain-outs, he said. The 10 other days are for a delay in confirming that the manufacturer was unable to provide the material that DWS specified.

Mr. Taniguchi asked where the earthquake repairs appear in the Monthly Progress Report.

The Manager said that the repairs are listed there, funded by federal funds.

Mr. Inaba confirmed that the repairs are listed on the last page of the Monthly Progress Report, where special funding is listed.

Mr. Kuailani asked whether the federal funds were a grant or reimbursable.

The Manager said it was reimbursable, although unfortunately not 100 percent reimbursable. The maximum that DWS can be reimbursed is for 75 percent, according to Federal Emergency Management Agency (FEMA) guidelines. The earthquake of 2006 was a declared disaster, so FEMA kicks in, he said. DWS plays by FEMA's rules, and matches reimbursement at 75 percent of the qualifying items. However not all of the items qualify for reimbursement. DWS will get some reimbursement money, he added.

Chairperson Smith said that the rationale is that at the end of the project, DWS will end up with a brand new reservoir that has a higher seismic rating which will improve the overall level of quality and guarantee service in the future.

The Manager said that is why DWS does not get back 75 percent of 100 percent of the cost. There are some mitigation design elements; DWS has to make the reservoir *better than* it was before.

Mr. Inaba confirmed that FEMA pays to get the reservoir back to what it *was*. It is in the best interests of everyone to do some mitigation work, because FEMA will not pay for the same disaster twice (i.e., if a disaster strikes the same place, DWS would not get reimbursed).

Mr. Mukai noted that the 82 days requested was a cushion.

Mr. Inaba said that basically, DWS anticipates further rain-out days, and the 10 days in the request were basically on the so-called "critical path" schedule, involving the liner.

The Manager said he was certain that there would be further extension requests on this project, because of the wet weather conditions up the mountain.

Mr. Inaba said that the contractor was proposing to bring in some imported material to possibly blend. The idea would be to create a material that would allow a little more moisture.

A lengthy discussion ensued regarding the contractor's risk, with delays eating into the contractor's overhead.

Mr. Inaba said that because of that, the time extension will not cost DWS anything. It is costing Goodfellow Bros. because the contractor must bring the specified geotechnical material in and get the moisture content within specifications.

Chairperson Smith said that the contractor changed their design and is bringing in additional material; he asked whether that would mean a change order.

Mr. Inaba said that the Board will soon be seeing a change order that DWS is processing regarding the design. DWS is paying a consultant for this design, and the cost will be deducted from Goodfellow's contract.

Chairperson Smith said that in future write-ups for time extensions, the Department should use the template of a box graph (a "stat format"), to show the history of time extension requests, the reasons given, etc.

Mr. Inaba confirmed that he would use such a template in future write-ups of this nature.

Chairperson Smith wanted write-ups to contain qualifying language, so that contractors are not given blanket approval for a time extension every time they have a problem.

Mr. Inaba said that in this case, the contractor's request for extension explains that the problem lies with the manufacturer of the material (Dupont), not with the actual supplier (Burke Environmental Products). He noted that it was DWS which specified the product.

Chairperson Smith said that DWS's contract was with the contractor, Goodfellow Bros., and not with Dupont.

Mr. Inaba said that Dupont no longer makes the product and there is no alternative product available out there. Therefore, it was not the contractor's fault; they did make efforts to find an alternative product.

Chairperson Smith said he believed it was important to clarify issues like this in the Water Board Minutes, so that if such a case were ever to come up again, the reason that the Water Board approved the 10 days' extension this time was because DWS specified the material and the material is no longer available, and the contractor had to seek alternatives. The way the recommendation was written up made it seem as if it was beyond the contractor's control. DWS's contract is with Goodfellow; not with Dupont. He just wanted to qualify it in the write-up so that contractors who come forward with a problem, (for example, with a pump), cannot use the Goodfellow case as a precedent.

ACTION: Motion to approve was carried unanimously, by voice vote.

NORTH KONA:

A. **NO. 2004-839, KEŌPŪ-PU'UHONUA PRODUCTION WELL AND 1.0 MG RESERVOIR:**

The contractor, Isemoto Contracting Co., Ltd., requests a 74-calendar day time extension. This request is due to additional work requested by the Department for off-site waterline work needed to allow water from this project to feed into the Department's existing distribution system.

Staff has reviewed the request and finds that the 74 calendar days are justified.

This is the **fifth** extension request.

Ext. #	From:	To:	Calendar Days	Reason for Time Extension
1	8/19/2008	11/18/2008	91	Process building permit
2	11/18/2008	6/3/2009	197	Deepwell motor and pump manufacturing, shipping, testing
3	6/3/2009	7/10/2009	37	Clean and bail well
4	7/10/2009	9/30/2009	82	HELCO and Hawaiian Tel work
5	9/30/2009	12/13/2009	74	<i>Additional off-site waterline work</i>
Total Days (including this request):			481	

The Manager recommended that the Board approve a contract time extension to Isemoto Contracting Co., Ltd., of seventy-four (74) calendar days from September 30, 2009 to December 13, 2009, for JOB NO. 2004-839, KEŌPŪ-PU‘UHONUA PRODUCTION WELL AND 1.0 MG RESERVOIR.

MOTION: Mr. Meierdiercks so moved; seconded by Mr. Kuailani.

Mr. Beck showed the location of the well on the overhead projector.

The subdivision where the well is located was receiving water at a lower off-site location through a meter on their private system. The higher line from that location remained DWS’s, through the completion of the well. What was *not* included in the original contract was the off-site connection.

Chairperson Smith said that this off-site waterline work was additional work that DWS requested of Isemoto; it was not included in the original contract.

The Manager said that the additional work was aimed at making DWS’s operations more efficient.

Mr. Inaba said that the off-site connection is basically letting water into DWS’s system.

Mr. Mukai asked if this site was planned or an oversight.

Mr. Inaba said it was an oversight to the original plan, because DWS lost track of the fact that the connection stopped below the site, to feed the subdivision’s system. The connection was something that DWS could have done. However, because the waterline would not have been in use all this time, DWS at the time did not want to take on the waterline. Instead, DWS let the subdivision take their meter at its current location. In other words, DWS did not do that connection at the mauka location.

Chairperson Smith noted that the only time that DWS extends the completion date of a project is when the work that is impacted is along the “critical path” of the project. Therefore, if a delay involves something that is not in the critical path and does not affect the completion date, then DWS would not necessarily issue a change order. By requesting this extension, DWS is saying that the 74 days are along the critical path, the Chairperson said.

Mr. Inaba confirmed this off-site waterline work was strictly for DWS's benefit -- otherwise, the water would not get into DWS's system.

Chairperson Smith noted that it was the most efficient way to get this work done, rather than to go out to bid and have a completely different contract.

Mr. Harai asked the Manager if DWS grants an automatic extension in cases that are close to completion.

The Manager replied that if, in the Department's judgment, the actual lion's share of work is completed and if the Department can make use of it, DWS considers the project finished, although the contract has not closed out and payment may occur sometime later. In such a case, DWS would not ask the Board for an extension.

ACTION: Motion to approve carried unanimously, by voice vote.

B. AMENDMENT OF WATER FACILITIES AGREEMENT – SEASCAPE DEVELOPMENT, LLC:

(This item was moved ahead of Item 5 (A) JOB NO. 2007-043, CONSTRUCTION OF THE WAIKOLOA RESERVOIR NO. 2 EARTHQUAKE REPAIRS, COUNTY OF HAWAI'I, STATE OF HAWAI'I, FEMA-1644-DR-HI, FIPS NO. 001-UVKJ8-00, PW NO. 638.)

SOUTH KONA:

A. TRANSFER OF 25 KSA II EQUIVALENT UNITS OF WATER – TAX MAP KEY 8-1-008:004:

The Department has received a request from Ms. Sharilyn Shields, with West Hawaii Excavating, Inc., on behalf of Robert E. and Amy Hagen Cowell, to transfer 25 water commitments attached to Tax Map Key Parcel 8-1-008:004, formerly owned by Timothy and Sheryl Dernback, to the Amy Hagen Cowell Trust, the current owner of TMK Parcel 8-1-008:004.

The 25 units originated with the Kona Source Agreement II (also known as KSA II), under which DWS gave water commitments to landowners who helped invest in source water development.

The Manager recommended that the Water Board approve the transfer of water commitments for twenty-five (25) equivalent units from the former owners, Timothy and Sheryl Dernback, to the current owner, the Amy Hagen Cowell Trust.

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

The Manager explained that these units were gotten from the KSA II agreement years ago. This agreement allows for transfers of water commitments with Water Board approval, he said.

Mr. Inaba said the ownership of the parcel in question is changing hands.

The Manager pointed out that it is not a different property, and the transfer is of no consequence to DWS as far as the Department's ability to serve.

Chairperson Smith asked why was there a clause in the agreement that stipulated Water Board approval of a change in ownership, if the same amount of water is being used to service the parcel. He wondered why it would be a discretionary matter for the Water Board.

The Manager said the reason was that a previous Water Board requested DWS to bring everything back to the Board, and this was covered in the KSA II agreement.

Ms. Garson said it was good to keep the Water Board informed of where water units are going, and thought it was a matter of monitoring of the transfer of water rights.

The Manager said that the Water Board years ago expressed a desire to DWS that the Board approve every transfer. For that reason, DWS, in every agreement it writes, includes a clause that says that the terms of the agreement cannot be changed without Board approval.

Ms. Garson cited an instance years ago when somebody tried to transfer water units and someone else came in and objected, saying they felt those units were theirs.

The Manager suggested that the Board give DWS the discretion to approve transfers when the units stay with the same property. The rationale is that when the units only change *owners* (but stay with the same property), such transfers should be handled administratively.

Chairperson Smith said the developer puts up the money and takes all of the risk. The developer pays for the units and thereby owns the units, so the Water Board should not have to comment on utilization of that water, he said. He agreed that such transfers should be handled administratively by DWS. For the Board to be involved would imply that the Board could deny such transfers. In the case of a transfer, the water stays with the parcel, he noted, and therefore nothing changes operationally for DWS. He asked if there was anything in the Annual Report that gives a summary of the allocation of water units.

The Manager said that only recently were such disclosures required by DWS. He said that the water units stay with the land, and if the ownership changes, the discretion on transfers should be up to DWS administration.

Chairperson Smith said he agreed with this.

The Manager suggested an Agenda item for next month's Water Board meeting which would give DWS discretion to handle certain types of transactions administratively, such as transfers. Chairperson Smith asked DWS to give the Water Board the criteria for transactions that could be handled administratively.

Mr. Meierdiercks said that using the word "transfers" was incorrect, because there is no actual transfer if the water commitments stay with the property. He suggested wording along the lines of: "The water commitments would stay with TMK Number such-and-such."

The Manager said it was basically a re-assignment of ownership.

Mr. Meierdiercks said that would not go through the Water Board in any case; the water commitments are to that TMK (parcel) specifically, regardless of who owns it.

The Manager noted that once DWS does an allocation, the water does not move with the homeowner; it stays with the land.

Chairperson Smith asked if the wording of the recommendation should be amended.

Mr. Meierdiercks suggested that the recommendation should read: "The commitments attached to TMK such-and-such will remain the 25 (equivalent units) as originally stated, or as was previously." Therefore, there was no change, except for the owners.

Mr. Inaba said he believed that the owners in this particular case wanted DWS to have matters handled officially like this.

Mr. Meierdiercks noted that the recommendation says "former owners (Timothy and Sheryl Dernback), to the current owner, the Amy Hagen Cowell Trust," so it means commitments from somebody to somebody else, not to the property. Therefore, the recommendation should read: "The commitments under TMK 8-1-008:004 should remain with that parcel, no matter who the owners are, and non-transferable," he said. He did not think it should be "transfers from that property, to some other property."

The Manager suggested that the DWS recommends to the Water Board to **reassign** ownership of the commitments, because the owners own the land, and not use the word "**transfer.**"

Chairperson Smith said he wanted to be sure that whatever the Water Board votes on is in compliance with the KSA II water agreement, which was previously agreed on by the Board. He asked Ms. Garson what the Motion should say.

Ms. Garson suggested using the word "**assignment.**"

Chairperson Smith said okay, instead of using the word "transfer," the word of choice would be "assignment." He asked if the Board would need to amend the Motion.

Ms. Garson confirmed this.

ACTION ON AMENDED MOTION: Mr. Meierdiercks moved to amend the Motion to replace the word "transfer" with the word "assignment" of water commitments for 25 equivalent units from the former owners, Timothy and Sheryl Dernback, to the current owner, the Amy Hagen Cowell Trust and add "for the specific TMK, 8-1-008:004." Mr. Mukai seconded, and Amended Motion carried unanimously by voice vote.

ACTION ON MAIN MOTION: Main Motion, as amended, carried unanimously by voice vote.

Chairperson Smith asked to have an item on next month's Agenda that clarifies what categories of matters should be handled administratively, rather than by Board action.

Mr. Harai asked the Manager if he would be submitting a whole list of items that DWS would wish to handle administratively.

The Manager confirmed that he would submit a list of categories.

MISCELLANEOUS:

A. INTRODUCTION OF STATE PIPE TAPPING TEAM CHAMPIONS OF 2009:

(This item was moved to the top of the Agenda.)

B. 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. GRANT OF EASEMENT AND BILL OF SALE

Subdivision Application No. 2007-000677

Rodillas Subdivision

Grantor: Francis H. and Martha A. Rodillas

TMK: (3) 2-5-040:018

E.W.O. 2009-047

No. of Lots: 2

Zoning: FA-2A

Final Inspection Date:

(TBA)

Facilities Charge: \$5,500.00

Date Paid: 09/10/09

Water System Cost:

(TBA)

The Manager recommended that the Water Board accepts 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. Meierdiercks moved to approve; seconded by Mr. Kuailani.

Mr. Inaba reported that final inspection took place on September 16, 2009, but he did not have the final cost.

The Manager noted that the final cost was around \$70,000, and that it was for a family partition in which only one additional lot was created.

Chairperson Smith asked if there was any conflict of interest involved here, since one of the owners works for Corporation Counsel. He asked if this was only an individual exercising the right to subdivide and get water, etc.

Ms. Garson said that was correct, and confirmed there was no conflict of interest.

ACTION: Motion carried unanimously, by voice vote.

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

Mr. Ikeda noted that at the previous Water Board meeting, the Board had approved a 45-day extension, running to October 6, 2009. The two mini-cargo vans are in California right now, and will be leaving California next week with arrival in Hilo on October 7. Upon arrival, the vans will get license plates and final touches such as lights. Therefore, the actual delivery date of the vans to DWS will be October 9, 2009, three days after the extension deadline. Acknowledging that there was no write-up in the Agenda making a recommendation, Mr. Ikeda requested that the Board approve a further extension of 14 days just in case anything happens.

Chairperson Smith said that because the request was not agendized, the Board cannot vote on it today.

Mr. Meierdiercks said the item regarding the vehicles is on the Agenda today, and it would only be a matter of extending by two weeks.

Chairperson Smith said that the Agenda only says that the Department will provide an update on the location of the vehicles, which have arrived on U.S. soil.

The Manager said that the update is that the vehicles will not be delivered until three days after the 45 days' extension, and therefore DWS is requesting that the Board approve an additional two weeks.

Chairperson Smith said he did not have a problem with DWS saying that the contract is substantially complete, but he did not think that the Board could vote on it because it was not agendized for decision-making.

Mr. Harai said that that was what he meant when he earlier spoke about a contract which is substantially complete; that an extension would not require Board action in such a case. He wondered why in such a case that DWS would have to ask for Board discretion for an extension.

The Manager said that in this case, DWS needs to have Board approval because the contractor had not fulfilled the terms of the contract, and because the Chairperson had signed the contract, the Manager has no authority to change the contract.

Mr. Kuailani asked when the arrival date was.

Mr. Ikeda said it was three days after the deadline for the 45-day extension.

Mr. Kuailani asked if there was time to approve a further extension at the next Board meeting (on October 27, 2009).

Mr. Ikeda said no, because the arrival date is October 9, 2009.

MOTION: Mr. Meierdiercks moved to extend the deadline on the 45 days' extension for another 14 days. (*Note: There was no second.*)

Ms. Garson said that the Board is allowed to amend the Agenda *if the matter is not of significant public concern*. Ms. Garson noted that it is discretionary as to what constitutes a matter of significant public importance.

Mr. Meierdiercks said he believed that it was important that the Department gets the vehicles.

Chairperson Smith noted that the contractor will be in default of his agreement.

Ms. Garson said that would be another consideration, although she did not think there was a provision for liquidated damages in the contract. This would merely be a breach of contract, and then with whatever damage DWS could prove, the Department could see what it could get. For example, in the case of a need to repair the vehicles and thereby need to rent ones, the contractor could be asked to pay for the rental. Those costs would be recoverable. By granting the contractor an extension, DWS would basically be giving up the right to damages, if there are any.

Chairperson Smith mentioned last month's discussion regarding the Department's exposure involving the other vendors who did not get the contract, who might claim they could have delivered on time and complain about DWS letting the contractor get by without consequences.

Ms. Garson said there were two options. If the Board does allow the extension, it gives up the right to go after the contractor for the delay, or the Board can move to amend the Agenda in order to grant the extension. The Board could wait to see if the contractor actually delivers the vehicles on October 9, and *then* do an extension when it would be after the fact.

Chairperson Smith expressed the desire to go after the contractor for the delay, asking for options such as windshield guards, a CD player or tinted windows. He believed that if the Board approved an extension today, it would lose that leverage. He suggested doing nothing today, and instead had DWS go back to the contractor and see what the Department can get.

Mr. Mukai agreed with the Chairperson that the Board should not amend the Agenda to extend the deadline. Basically at issue is a breach of contract, and so DWS should play it by ear and wait to see when the contractor actually delivers the vehicles and in what shape the vehicles come in. He did not want to lose the option of going after the contractor, if something else pops up.

Chairperson Smith said DWS should have the contractor tint the windows.

The Manager said that would not be desirable because the vehicles will be used by meter readers.

Mr. Harai noted that the contract says, "barring no delays by Matson." He said that the vehicles could be delayed by another couple of weeks.

Mr. Ikeda said he would provide another update at next month's Board meeting.

Chairperson Smith noted that there was a Motion on the floor.

Mr. Meierdiercks said there was no second, and was willing to let the Motion die.

Chairperson Smith asked if there was a second. Hearing no second, the Board had only an Item here for an update. He noted that the Board was not inclined to take action today, but said it was good to know that there was the ability to vote for an amended Agenda, provided there were six Board members present.

Ms. Garson said the Board needs to be very careful on amending Agendas, because the Office of Information Practices (OIP) is very strict about rules regarding the changing of Agendas. She noted that in the County Council, the OIP objected to adding Executive Session items despite the fact that the public cannot even participate. OIP said no, such items are still of *significant public interest*. Therefore the Board needs to use that option very sparingly.

D. ENERGY MANAGEMENT ANALYST UPDATE:

Ms. Myhre had an update on DWS's Lālāmilo Wind Farm negotiations with HELCO.

DWS is meeting monthly with HELCO to discuss points on the Department's current contract with HELCO. DWS's goal is to decide by December 2009 whether to extend the Department's lease with the Department of Land and Natural Resources (DLNR), where HELCO's Lālāmilo Wind Farm is located. The next meeting with HELCO is next week. Meanwhile, the Department is working to establish a team of DWS operations staff and external resources such as the County's energy coordinator, who is providing guidance on County and state rules and plans on energy preparedness and energy independence. She noted that the lease on the DLNR property expires in December 2010.

Chairperson Smith asked what would be the best possible outcome by the time that the lease expires.

The Manager said that DWS is seeking a discount from HELCO, in whatever form it takes, for the power necessary to run eight of DWS's wells in Lālāmilo, because of the proximity to the wind farm. The Public Utilities Commission (PUC) has a ruling that HELCO cannot discount DWS's rate; it is illegal for HELCO to do that. However, in lieu of that discount, HELCO set up a road maintenance fund. DWS wants to somehow get some kind of benefit that is comparable to a discount, in exchange for DWS to get the DLNR lease renewed for HELCO. The alternative would be to walk away from the lease and let HELCO get the lease.

Chairperson Smith wondered what DWS can accomplish over the next 15 months or so.

The Manager said DWS hopes to reach an agreement with HELCO to give DWS a discount.

Chairperson Smith said that there is nothing that HELCO can do on the wind farm site that will generate electricity in 15 months. If HELCO intended to do anything there, HELCO would have gone through meteorological and other studies.

The Manager said that he realized that the only thing that will happen is that DWS has an agreement, so that when HELCO does the wind farm again, DWS will get the benefits. The sooner DWS gets an agreement, the sooner HELCO can plan their improvements at the site.

Ms. Garson moved to stop the discussion, saying that the topic of the Lālāmilo Wind Farm was not agendaized. Such topics should be listed in the Agenda, which is posted as a public notice, she said. She suggested that the items be placed on next month's Water Board Agenda.

Chairperson Smith asked Ms. Myhre to address the likely outcome in December 2010 in her report next month on the Lālāmilo Wind Farm.

Mr. Kuailani asked Ms. Myhre if she had a report on the Mayor's Energy Commission.

The Manager suggested that Mr. Kuailani wanted to get updated on the Mayor's Energy Task Force and the Green Team.

Ms. Myhre said she got an update on the last Energy Commission meeting from the County's new Energy Coordinator, Mr. Bill Rolston. The Commission is forming into a number of sub-committees: utilities, transportation, water and waste water, etc.

Ms. Myhre said she is working with the federal Environmental Protection Agency (EPA) on planning an EPA energy workshop on energy sustainability and renewable energy practices in Hawai'i County. The Hawai'i County workshop is expected to take place in January 2010. (There will be workshops on Maui and Kauai as well.) Representatives of water departments, private water suppliers, public and private waste water plants, etc. will be invited to the all-day workshop held by the EPA. EPA plans to do an energy audit of County facilities, and give a presentation at this workshop.

E. **MONTHLY PROGRESS REPORT:**

The Manager offered to show the Board members any water facility on the island, to help familiarize them with locations that come up in Agenda items.

Mr. Kuailani asked whether DWS is putting anything on the Middle Road in Kona that the County is building.

The Manager said DWS is not committing to anything there. However, there is a private developer who is working with the County to put in a big waterline on a portion of that road, to service their future development.

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

Mr. Taniguchi asked about the decrease in investments, noting that investments decreased by \$12 million (\$12,777,529.00) due to liquidation of investments to pay for construction projects normally funded by water sales.

The Manager said that on DWS's funding for CIP projects, when the Department awards projects with monies committed, it takes away from what has been invested.

Mr. Sumada said that normally, DWS generates water sales to fund CIP reserves, which DWS uses to pay for construction costs. That has not happened in the past couple of years, he added.

The Manager said, for the Board's information, there is a section in the Hawai'i Revised Statutes that says that DWS is allowed to put in up to 15 percent of revenues into CIP, but no more than 15 percent.

Mr. Taniguchi said his second question was, for the rest of the projects that DWS has, it appears that DWS has \$40 million not being invested. He asked if DWS is properly funded, or is DWS going to use bond funds to be positive next year.

The Manager said Mr. Sumada is working with the County to allow the County to do a \$30 million bond float for DWS. He noted that the Board had approved this.

Mr. Sumada said the Board approved \$40 million.

The Manager said that DWS was going for \$30 million; Mr. Sumada had worked backwards to see what DWS would feel comfortable with as far as debt service, and translated that into the bond amount. As a result, DWS is going for a \$30 million bond, for which DWS has projects lined up already.

Mr. Taniguchi asked if the projects that the Department is going to start with the bond float would be adequately funded. He asked if DWS would have to still take money from investments.

Mr. Sumada said that DWS has about \$7 million available to fund projects right now, and when the \$30 million becomes available, the CIP projects will be adequately funded.

Mr. Taniguchi noted that water sales have been going down year to year.

Mr. Sumada said investments will continue to go down until water sales improve.

The Manager agreed, saying DWS will be continuing to take money from the investment fund to do construction.

Mr. Sumada said that when DWS gets the \$30 million bond proceeds, it will increase the investments that DWS has.

Mr. Taniguchi asked if DWS will draw the bond proceeds all at once.

Mr. Sumada said that it is DWS's policy to draw it all at once; however, DWS will probably draw it down in increments.

G. POWER COST CHARGE UPDATE:

A Public Hearing on the Power Cost Adjustment Clause was held today. The Public Hearing Notice was published in the Hawai'i Tribune-Herald and in the West Hawai'i Today on August 31 and September 2, 2009.

The Department's power cost charge (PCC) formula allows updating of the PCC as often as every two months. The PCC was changed to its present \$1.83 per 1,000 gallons effective July 1, 2009. The Power Cost Adjustment for August 2009 was **\$1.68** per 1,000 gallons.

The Manager recommended that the Water Board approve the proposed cost of the Power Cost Adjustment to **\$1.68** per thousand gallons based on the August 2009 calculations, effective the first day of the month after the proposed establishment of the rate by the Water Board.

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

Chairperson Smith noted that there was no public input during the Public Hearing held earlier. He asked Mr. Sumada if he had an update on any adjustments or modification to the \$1.68 under consideration.

Mr. Sumada said that the \$1.68 is the recalculation of the Power Cost Charge; that includes the activity from June 2009 to August 2009 (three months of activity combined to get the \$1.68 figure.) He confirmed that \$1.68 is the rate DWS is looking at now.

Chairperson Smith said because the new rate has to be published in the next week or so, the Board would need any information from HELCO that might change the rate.

The Manager said the September figures are not available, but the Power Cost Charge is expected to go up, amid rising gas prices.

ACTION: Motion carried unanimously by voice vote.

The Manager said that the new rate of \$1.68 will go into effect on October 1, 2009.

Chairperson Smith asked Ms. Aton to issue a public notice on the new Power Cost Charge, as well as a notice to DWS customers.

H. WATER RATE STUDY:

The Department selected RW Beck to conduct a five-year rate study and is seeking approval of a contract totaling \$94,700. A budget of \$100,000 was set aside for the rate study in Fiscal Year 2010. The contract provides for the following tasks:

Task 1 – Request for information, \$5,400.

Task 2 – Develop revenue requirements, \$17,500.

- Task 3 – Prepare cost of service analysis, \$12,600.
- Task 4 – Develop rate options, \$15,700.
- Task 5 – Water Board workshop and Public Hearings. \$27,000.
- Task 6 – Draft and final reports, \$15,800.
- Task 7 – Hawaii excise taxes, \$700.

If the contract is approved, RW Beck and the Department will commence with Tasks 1–3 (October 2009–January 2010).

RW Beck will present the results of their revenue requirements and cost of service analyses to the Water Board, and seek input for providing three (3) rate options for the Water Board to consider (February 2010).

The Water Board selects which of the three rate options to take to public hearing (March 2010).

RW Beck returns to provide technical support for the selected rate option at public hearings in Hilo and Kona on consecutive days (April 2010).

Water Board approves final rates for implementation July 1, 2010 (May 2010).

Draft reports will be provided to the Water Board for their review and approval. Final reports will be provided to the Department after rate implementation.

Important Contract Assumptions:

- 1) RW Beck will not make any changes to the rate structure currently in place. In other words, the three rate options they will provide will continue to incorporate the 4-block rates, standby, power cost charges, and separate agriculture rates.
- 2) RW Beck will not analyze the Department’s facilities charges, as any changes in these rates require the Department to conduct a “needs assessment” estimated at \$46,800.

The Manager recommended that the Water Board approve a contract with RW Beck to conduct a water rate study in the amount of \$94,700, and that the Chairperson or Vice-Chairperson be authorized to execute the contract subject to approval by Corporation Counsel as to form and legality.

Chairperson Smith noted that the Board had received a Supplemental Agenda handout on this Item.

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

The Manager said that Mr. Sumada has been in contact with RW Beck, after having gone through the proper procurement process to select RW Beck as the consultant. Mr. Sumada has listed Tasks 1-7, which come to a total of \$94,700. There were assumptions in there that the Board has to agree with, i.e., basically that the rate structure remains in place and that DWS is not going to tamper with the four-tier schedule and that the blocks will stay the same. If DWS changes that, the price will go up drastically. The Department felt that the current tier system in place is working really well; it is a *punitive* structure because the more you use, the more you pay. This is pretty much how all of the water industries handle it. Therefore, the assumption was that the rate structure should remain in place. The other assumption is that RW Beck is not going to analyze the Facilities Charge, because that is not part of the price.

To analyze the Facilities Charge would have cost an additional approximately \$50,000, which DWS did not budget for. At some point in time, DWS may have an innovative way of taking a second look at the Facilities Charge. Basically what the \$94,700 will pay for is options for the Board to consider (and select one option), and then hold a Public Hearing following the timeline posted here. If everything goes according to plan, DWS can have the rates in place by July 1, 2010. He confirmed that the \$94,700 was only to do the rate study.

Chairperson Smith said the rate study would be the basis for the Board to makes its decision in trying to adjust rates.

The Manager said that according to the contract, RW Beck will provide the Board with **three** options.

Referring to Task 7, Chairperson Smith asked why the Hawai'i Excise Taxes would be \$700 for a contract of \$94,000.

Mr. Sumada said that RW Beck said that it was for out-of-pocket items.

Chairperson Smith said it was RW Beck's responsibility to follow the state tax laws, noting that DWS contracts stipulate compliance with all County, state and federal laws.

The Manager confirmed that the \$94,700 will cover everything that RW Beck needs to pay.

Mr. Taniguchi asked if RW Beck does a comparison of DWS rates with the other counties.

The Manager confirmed that the previous rate studies compared Oahu, Maui, and Kauai with DWS.

Mr. Mukai noted that the reason that DWS is doing the water rate study was that the previous study by RW Beck anticipated increasing water consumption, which did not come to pass, amid the trend toward "green" initiatives, etc.

The Manager said that the rate study was needed now because the current water rates are not working for DWS, because DWS cannot put away anything at all towards CIP. So obviously, the current rate structure is not functional, he said.

Mr. Lindsey asked how long the rate structure has failed to function the way it was supposed to.

The Manager said it was at least the past two or three years.

Mr. Sumada said that the previous rate study was in 2001 (covering 2001-2005). The rates that are in place now were put in place back then.

The Manager noted that Hawai'i County has probably the highest rate in the state, due to the make-up of the Big Island. Unlike Oahu, Maui, and Kauai, the Big Island has spot

populations, with separate water sources for each area. Therefore, the cost of service for Hawai'i County customers is much higher than the other islands. The make-up of the island is a legacy from the plantation days when the island was made up of individual communities. Geological factors present another challenge in providing water service here, he added.

ACTION: Motion carried unanimously by voice vote.

I. **BUDGET STATUS AND PROPOSED ACTIONS:**

The Department provided the Board with a handout showing its FY10 Budget Analysis.

Responding to a request from the Board at last month's meeting, Mr. Sumada explained the Budget Analysis, which included a projected budget shortfall in FY10 of \$507,500, with total anticipated savings listed as \$449,480.

Chairperson Smith asked how DWS was planning to make up the difference of \$58,020.

Mr. Sumada said that the biggest item, \$200,000 for projected water sales shortfall due to declining consumption, could decrease. He noted that in computing that amount he had used consumption for May and June, but when he looked at July and August, consumption improved. There was a difference between the two amounts, but he did not have the figures on hand.

Chairperson Smith said that in achieving a balanced budget, the projected shortfall amount should be offset or exceeded by anticipated savings.

The Manager confirmed that it should be balanced directly, but DWS looked at what the Department could do in terms of savings, and make adjustments throughout the year to make up the difference.

Chairperson Smith acknowledged that it was a moving target. He asked that DWS provide the Board with updates on the Budget every two months. He asked about the item listing \$23,000 for Corporation Counsel reimbursement.

Mr. Sumada said that it was for reimbursement to the County for Ms. Garson's services.

The Manager said that DWS had volunteered to pay for Corporation Counsel's services through an agreement, believing that it was fair and equitable. He said DWS was very fortunate that Ms. Garson is the Corporation Counsel attorney serving DWS.

Chairperson Smith asked what EUTF (mentioned in item 6 on the projected shortfall list) means.

The Manager said it stands for Employer-Union Trust Fund, the medical benefits employees receive. He noted that this amount may also change, with the Governor seeking to decrease the amount that government employers contribute, and to increase the amount contributed by the employee. The shortfall may drop, if the Governor's plan goes through.

Chairperson Smith noted that union negotiations are out of the County's hands.

The Manager noted that the Governor had actually gone on the news that morning to say that unless one of the four County mayors sides with her on the union negotiations, the Governor will not be able to do what she wants. He said the key was how strong the four mayors are going to stay, relative to the Governor's wishes, because the Governor needs one of the mayors to get a majority. Right now, it is a stalemate and no one knows what will happen.

Chairperson Smith said that is because of the way collective bargaining is set up. It takes five votes to generate a statewide change. The Governor herself has four votes and each mayor has one vote; she needs to get just one of the mayors to side with her. This time, the four mayors have grouped together to oppose her as a bloc. He believed that the choices are either that all four mayors wind up agreeing with her on the union negotiations, or none of them agree with her.

The Manager said the interesting thing is that never before has the state gotten a union contract that is different from the counties. That may happen, too, he said.

J. **MANAGER'S REPORT:**

The Manager provided an update on the following:

1. Update on use agreement on KIC wells -- Still waiting to hear from KIC.
2. Palani Road Transmission Project -- Construction to start soon; just waiting for permit from Department of Health. On litigation, property owner filed a motion for reconsideration, and counter-claimed against DWS. Ms. Garson moved to dismiss; a hearing is set for October 13.
3. Hawai'i Water Works Association (HWWA) '09 conference update -- Registration is moving slowly but steadily, and it is expected that DWS will reach minimum attendance (for food and catering) of 75 people.
4. Use of lobbyists by City and County of Honolulu Board of Water Supply – DWS has not hired lobbyists in 12 or 13 years; DWS has in-house staff to testify to the Legislature on DWS's behalf. This item arose after a news article regarding City and County of Honolulu's Water Department hiring a lobbyist to the tune of more than \$1 million.

5. DWS financial daily receipts procedures – Mr. Sumada explained that there are two cashiers in the Hilo office, which has two payment windows. Walk-in customers give their account numbers, how much they will pay, how they will pay, and a receipt is generated for the customer. All payments go through the cash register. With a credit card transaction, the credit card is swiped and another receipt is generated for the customer to sign (i.e., they get a second receipt). There are about 150 walk-in customers a day, although most DWS customers mail their payments, with 500-1,000 mailed payments a day. The two cashiers open all of the envelopes, sort the contents, record payments, post the payment in the billing system and summarize everything in a daily cash packet. Each cashier opens a stack of mail that includes stubs from the top portion of the water bill and a check. The stubs and checks are added up with the checks ending up in the daily deposit, which is taken to the bank by one of the Controllers. The stubs are accumulated into the cash packet that DWS keeps on file. The Manager noted that Mr. Sumada has found a fast way to provide online bill payment, amid tremendous public demand for such a service. This online payment system will be presented to the Board next month, because it would have to be approved by the Chairperson. Mr. Sumada said the website, called Hawai'i Information Consortium (HIC), is the one that the state uses to take general excise tax payments, etc. HIC would take DWS's billing information and put it on the website, and allow the customer to log in and choose how to pay (by credit or debit card), and how much they want to pay. HIC would accept the payment and forward it to DWS. The website assesses fees, and the question is: who pays? DWS would absorb the credit card fee of 2.25 percent and the customer would pay \$2.50 per credit card transaction and \$3.50 for using a debit card. That can be changed, Mr. Sumada noted, with DWS possibly absorbing all the fees or the customer absorbing all the fees. That would be up to DWS. The Manager said DWS currently absorbs the 2.25 percent credit card fees on walk-in customers, so DWS would absorb that fee on the Internet, but not the \$2.50 transaction fee. Mr. Kuailani asked if customers can pay by phone, using a credit card or by check. Mr. Sumada was not sure how it would be done by check, but DWS's limitation is that there are only two cashiers who have to do the mail and take walk-in payments. The cashiers are the only ones who can take payments. Chairperson Smith said the Board would need to consider whether providing the online service would free up DWS staff, as well as ensure a higher rate of collections and fewer bad debts, etc. The Manager said the Department is looking at providing this in an effort to provide the best service to our customers, in light of numerous requests to allow online payments. Mr. Meierdiercks asked DWS to get the bank to provide direct deposit as a way of making payments. The Manager said DWS can look into direct deposit. Mr. Sumada said DWS would provide the Board with a copy of the agreement with HIC at next month's Board meeting.

6. Status of filling Water Board vacancies – An application to fill the current vacancy in Puna has been forwarded to the Mayor's Office. The Manager has spoken to Managing Director Mr. Bill Takaba about this vacancy, and about the two upcoming vacancies in Hilo and Kohala as of January 2010.

On a separate topic, Mr. Harai said his district's Councilperson, Ms. Brenda Ford, had written a letter to ask him about getting a fire hydrant next to Mr. Harai's house in McCoy Subdivision. According to her letter, Ms. Ford had written to the Department of Public Works about it about six months ago, but nothing happened. A discussion ensued on whether DWS

rules would allow fire hydrants in the subdivision. The Manager said an Item on this subject would be placed on next month's Agenda.

K. **CHAIRPERSON'S REPORT:**

Chairperson to provide comments and/or information relating to the following matters of concern to the Water Board:

Discussion/Action regarding establishing an Ad Hoc Finance Committee --

Discussion/action included the creation of the committee, the scope of the matters to be investigated by the committee, and the selection of the members of the committee.

Ms. Garson suggested that the Board move to establish an ad hoc finance committee, with the scope to be decided today.

MOTION: Mr. Mukai so moved; seconded by Mr. Lindsey.

Chairperson Smith said that part of the reason for going through this process is that Ms. Garson had counseled the Board that the ad hoc finance committee needs to have a specific purpose (scope) and a specific time frame. The committee will be able to discuss only the items that the Board approves today.

Ms. Garson said the time frame was not that important; the main thing is the scope of the matters to be investigated.

Chairperson Smith noted that the three items for the **scope** the Board had discussed so far were:

1. To review and recommend policies and procedures for the review and approval of (credit card) expenses of DWS personnel;
2. To review and approve the procedures regarding cash control;
3. To review and approve the vehicle take-home policy.

Ms. Garson suggested that instead of the word "approve," it should be "review and recommend the establishment of policies and procedures regarding those three items".

Chairperson Smith said that the procedure would be that the ad hoc committee, that can have up to four members, would meet among themselves. The committee would make their recommendations at a Water Board meeting, and the Board can discuss the recommendations. The Board can vote to either accept, modify, etc.

Ms. Garson confirmed this, and said the time frame would be three meetings. At the first meeting, today, there would be the establishment of the committee and its scope. Then at some point, whenever the committee is ready, they can come back to the Water Board with a report. However, they cannot take action at that second meeting. There would have to be a *third* meeting, at which time the Board can take action.

Chairperson Smith said that what the Board could do today is identify three items for the scope, and at the next meeting, report on one of the three items. The items can be taken by the Board periodically, because some items may require more research or information.

Ms. Garson said this was correct.

Chairperson Smith said that to comply with the Sunshine Law, up to a maximum of four committee members (or as few as just one person) could come up to DWS to get information or discuss. This would enable the committee to discuss the information, understand it, and make recommendations to the Board outside of the Water Board meeting.

Ms. Garson said this was correct; but she did not understand why the committee would want just one person to do the information-gathering. What the Board is trying to do is to establish a committee to permit an interaction, she said.

Chairperson Smith said that Mr. Taniguchi, who would be chairing the committee, would only be allowed to interact with members of his committee (not non-committee Board members.)

Ms. Garson confirmed this, saying the ad hoc committee would not be permitted to interact with non-committee Board members outside of the Water Board meeting. She mentioned that there is intense public scrutiny of the County's compliance with the Sunshine Law, especially regarding serial communications. She noted that the Manager's status as an ex-officio Board member (albeit a non-voting member) could become an issue. Under a strict interpretation of the Sunshine Law, the Manager would be counted as a Board member when the ad hoc committee sought information from him. The issue would be what constitutes "permitted interaction." The Sunshine Law does not distinguish between an ex-officio Board member and a regular Board member. Therefore, to be cautious and conservative, Ms. Garson considers the Manager as one of the Board members.

Chairperson Smith said that if the Board wanted four members to be on the ad hoc committee, the committee would be restricted from communicating with the Manager, but presumably could go to Mr. Sumada or the Deputy Manager for information.

Ms. Garson confirmed this.

Chairperson Smith said that, therefore, if there were four members on the ad hoc committee, they would not be permitted to communicate directly with the Manager.

Ms. Garson said if she were going to be really conservative, she would be concerned that serial communications could take place, assuming that Mr. Sumada, for example, would speak to the Manager. Amid the intense scrutiny, it would be better to be conservative in interpreting the Sunshine Law.

AMENDED MOTION: Mr. Mukai moved to amend the Motion to mention the three areas of the committee's scope.

The Manager said it would also be necessary to identify the committee members.

Ms. Garson confirmed this; noting that according to the Agenda, the Board was to do the following:

- To establish an ad hoc finance committee;
- To decide on the scope of the matters to be investigated;
- To select the members of the ad hoc committee.

The Board would be able to vote on all three things at once, she said.

Chairperson Smith summarized that the Board would want to establish the ad hoc committee; set the scope specifically to look into the policies and procedures on cash control, credit card policies, and vehicle take-home policies; and the selection of the committee members. The total number of permitted members is four persons, he added. He said that Mr. Taniguchi, who has a financial background, should be the committee chairperson. He believed that Mr. Mukai should be on the committee because he is likely to be the Chairperson of the Water Board next year. That would leave two more persons to select.

The Manager noted that Ms. Garson was saying three persons total because of the serial communications issue with the Manager.

Chairperson Smith said that the committee could exclude the Manager from discussions.

The Manager said that it would still be a serial communications issue.

Chairperson Smith said that the Manager could delegate to Mr. Sumada to make decisions on his own and not ask the Manager.

The Manager said he did not want anyone to make decisions without informing him.

Ms. Garson said that decision-making would happen at the Board level. The ad hoc committee would be gathering information, as well as making reports and recommendations.

Mr. Mukai said in a scenario where the ad hoc committee would urgently need to communicate with the Manager, one of the ad hoc committee members could resign his position to allow the Manager to be on the committee.

The Manager said the one ad hoc member could just not attend, and would not have to resign.

Mr. Taniguchi said the other possibility is for the ad hoc committee to not meet together.

Ms. Garson said in any case, they would be going back to tell the other members.

Mr. Mukai said that if the Board decides to have four ad hoc committee members, they would just be obliged not to talk to the Manager. Mr. Mukai proposed that if something specific comes up that must be discussed with the Manager, one ad hoc committee

member should resign and not take part in discussions on the matter. In that case, the three remaining members would be in, and the fourth members would walk away.

The Manager said the only concern is the Sunshine Law; if the ad hoc committee members want to talk to him, all that the members need to do is have one person not attend.

Ms. Garson said that then those members would not be able to go back and tell the one member what was said, because that would be serial communications.

Mr. Meierdiercks proposed having three people on the ad hoc committee.

Chairperson Smith asked which Board members would be interested in serving on the ad hoc committee, aside from Mr. Taniguchi and Mr. Mukai.

Mr. Meierdiercks suggested that the Chairperson could be on the ad hoc committee to the end of the year when his Board term ends, and then another Board member could be selected to replace him.

Chairperson Smith asked if Mr. Kuailani, Mr. Meierdiercks, or Mr. Lindsey were interested in being on the ad hoc committee.

Chairperson Smith acknowledged Mr. Lindsey, and confirmed that the members would be Mr. Lindsey, Mr. Taniguchi, and Mr. Mukai. He asked if everyone on the Board understands the Sunshine Law.

AMENDED MOTION: Mr. Mukai moved to amend the Motion on the floor to include the scope of the committee's work to include policy on cash control, credit card use, and take-home vehicles.

Ms. Garson said the wording should include "To review and recommend policies and procedures regarding cash control, credit card use, and take-home vehicles."

Mr. Mukai expressed consent to Ms. Garson's recommendation.

AMENDED MOTION: Mr. Mukai continued with his Amended Motion, to say that the ad hoc committee would be comprised of Mr. Taniguchi, Mr. Lindsey, and Mr. Mukai.

Mr. Kuailani asked if the ad hoc committee would be funded for a meeting room and mileage.

Ms. Garson said no, there would be no funding; the ad hoc committee's purpose is to investigate, gather information, and report back to the Water Board at its regular meeting.

Chairperson Smith asked if there was a Second to Mr. Mukai's Amended Motion.

ACTION ON AMENDED MOTION: Mr. Kuailani seconded the Amended Motion. Motion was approved unanimously by voice vote.

Chairperson Smith said that Mr. Taniguchi would chair the ad hoc committee. He asked that next month's Agenda have an item under Miscellaneous as "Report by Ad Hoc Finance Committee, with the assumption there would be a committee report to the Board next month.

ACTION ON MAIN MOTION AS AMENDED: Main Motion as amended was approved unanimously, by voice vote.

Ms. Garson suggested that the item in next month's Agenda should pinpoint which of the three areas of the scope would be reported on, and suggested that Mr. Taniguchi let the Secretary know what item it would be.

Chairperson Smith said the Agenda item should list all three tasks, to enable the committee to report if they are ready to do so.

ANNOUNCEMENTS:

1. **Next Meeting:**

The next Meeting of the Water Board will be held on October 27, 2009, at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo.

2. **Following Meeting:**

The following meeting of the Water Board will be held on November 24, 2009, at the Royal Kona Resort, Resolution Room, 75-5852 Ali'i Drive, Kailua-Kona.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT:

Chairperson Smith called for a Motion to adjourn. Mr. Kuailani so moved; seconded by Mr. Taniguchi, and approved unanimously by voice vote. The Meeting adjourned at 12:13 p.m.

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 Shirota, Secretary, at 961-8050 as soon as possible, but no later than five days before the scheduled meeting.

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

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