

MINUTES

DEPARTMENT OF WATER SUPPLY
COUNTY OF HAWAII
WATER BOARD MEETING

January 25, 2011

Department of Water Supply, Operations Center, 889 Leilani Street, Hilo, HI

MEMBERS PRESENT: Mr. Dwayne Mukai, Chairperson
Mr. Robert Meierdiercks, Vice-Chairperson
Mr. David Greenwell
Mr. Kenneth Kaneshiro
Mr. Delan Perry
Mr. Joe Reynolds
Mr. Milton Pavao, Manager-Chief Engineer, Department of Water Supply
(ex-officio member)

ABSENT: Mr. George Harai, Water Board member
Mr. Bryan Lindsey, Water Board member
Mr. Art Taniguchi, 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. Mark Jernigan
Ms. Denise Jernigan
Mr. Steve Lim, Carlsmith Ball LLP
Mr. Jason Knable, Carlsmith Ball LLP
Mr. John Moore, Palamanui Global Holdings
Mr. Kaimi Judd, Kohanaiki Shores, LLC
Ms. Nancy Burns, P.E.

Department of Water Supply Staff

Mr. Quirino Antonio, Jr., Deputy
Mr. Kurt Inaba, Engineering Division Head
Mr. Rick Sumada, Waterworks Controller
Mr. Daryl Ikeda, Operations Chief
Mr. Keith Okamoto, Engineering Division
Mr. Larry Beck, Engineering Division
Mr. Clyde Young, Operations
Ms. Kanani Aton, Public Information and Education Specialist
Ms. Julie Myhre, Energy Management Analyst

CALL TO ORDER - Chairperson Mukai called the Meeting to order at 10:02 a.m.

STATEMENTS FROM THE PUBLIC:

Chairperson Mukai said that statements of the public would be limited to three minutes, and that Mr. Meierdiercks, acting as time-keeper, would signal that time was nearly up at the two-minute mark and would signal when time was up.

Mr. Mark Jernigan testified regarding his property in Kona.

(The following testimony is verbatim.)

MR. JERNIGAN: I have some photos here I'd like to share with the Board. Sorry, I don't have copies for everybody. Mr. Chairman, members of the Board, thank you for hearing me this morning. I don't wanna be here in front of you any more than you want to see me again. It's just going on far too long. It seems like this never-ending project... To try to figure out why is it never-ending... Am I being punished? It just seems like, I'm being punished. Is it because I was fighting the condemnation so long? And I wonder, and I think back on the words that were spoken at the Kealakehe meeting when we were asking what our rights were gonna be with this easement, how long it was gonna take, and that we were still opposed to the condemnation that had already taken place. In the words of Mr. Pavao, he asked me if I had something against Hawaiians, 'cause I was startled. I says, "What do you mean?" He says, "Well, you must have something against Hawaiians because this is gonna benefit the Villages at La'i'opua, and you're holding it up."

MANAGER-CHIEF ENGINEER: That's not true.

MR. JERNIGAN: I hope that was recorded. I've been holding that comment. In fact, it's been eating on me. I'm sure he probably spoke in haste, but this is like never-ending excuses for this project. First, it was, we're waiting for parts. Then, we're waiting for engineering. Then, we're waiting for parts again. Now, we're waiting for engineering again. The driveway is kind of paved to the top. You can see from the photos that the current pavement is unraveling. There's potholes in it. There's weeds growing through it. There's never been any traffic on the danged thing. The pictures show that. We're having troubles; we never brought up a lot of other issues like our gates being inoperable, and people coming through our property willy-nilly for a year now. And the vegetation that the contractor just knocked down and left, and the pictures depict that. So we get back to the potholes. What causes the potholes? Is it poor quality on the surface? I would say it's probably poor sub-base and poor quality on the surface. So that needs to be looked into, when and if this gets repaired. We have a problem with the drainage on the lower section. Neither one of the dry wells is in a position to receive any water; either the road slopes away from it, or the road level's too high to allow the water to go across, because the road on the lower section was actually raised up over a foot in spots. And then, our survey pins are all missing. We'd like those replaced. They were all the way down the middle of the roadway, separating on the flagpole part going to the upper highway. They were pins depicting which site is which. They're all missing but... We've had on the lower section... We even had a surveyor come in and re-pin our corners, which are out of the scope of the project, that had been wiped out. We just need that stuff taken care of. And I feel like this is all falling on deaf ears. And I'm trying to figure out why. Why me? Why is this taking so long? Corporation Counsel – when we met on the property, she had said that our impact is gonna be minimal. Over a year closure of our driveway is hardly minimal. You know, now the pavement, the half-assed pavement, going to the top is about 200 feet from the highway. Can't there be a temporary stop be put in there, we can get access again? And we can't get large vehicles in and out. Total hardship on us.

MR. MEIERDIERCKS: Time's up. Three minutes.

MR. JERNIGAN: Thank you, Board, for hearing me.

CHAIRPERSON MUKAI: Thank you, Mr. Jernigan. Next, we have Denise Jernigan, representing herself and speaking about the Jernigan property.

MS. JERNIGAN: Thank you for hearing me. And I quote: "My apologies. I lost sight of what was discussed, but I now have reviewed the Minutes from the meeting of September 10, 2004." This is a direct quote from email correspondence from October 3rd of 2006 from Lawrence E. Beck to my husband, Mark Jernigan. So this is how it has gone on seven years now in our correspondence and dealings with the Water Department. My husband's prior email to Mr. Beck was that the Water

Department's written proposal for a tentative agreement for an easement and use, for use and...loss of use, of our property, no way reflected their conversation from 2004. This lack of communication, and miscommunication, I should say, from the Water Department, is what forced us into having two different lawyers that cost us tens of thousands of dollars, trying to define the taking and what was our rights for our property. We were forced by the County to condemnation, and lost the use of our driveway and the only access for large semi-trucks, trailers, that are now stuck on our farm for over a year. Our driveway has been closed for a year now, and we have not heard from the Water Department meeting since November of 2010, when we came to the Kona Board meeting. It was our understanding that the Water Board asked the Water Department to take all the issues down, meet with us, and report back to the Water Board. No meetings with us took place. And from what I've read in the Minutes of the December 2010 meeting, many things were not addressed. And now, the pipe...that the new pipe is to tie into the Māmalahoa Highway was found by the contractor to be at a different place than on the engineered plans, after his rush, rush, rush to finish the job in a few weeks after the November meeting. Originally, we were told the reason they wanted to use our driveway, versus the County's 20 feet of property just to the north of our driveway, was that there would be minimal disruption of our mac nut trees. Just about one year ago, the contractor proceeded to cut down over 120 of our mac nut trees, all on the north side of the driveway and halfway on the south side.

MR. MEIERDIERCKS: One minute.

MS. JERNIGAN: If people would just do what they're supposed to do, just do their jobs right, it might've been all right. But this has not been what everyone, including the Water Department Manager, engineers, contractor, and even Corporation Counsel, had promised to the neighborhood and to us. Our private land is now open to anyone 'cause our gates have been unusable since the start of the construction. The lack of respect for our property and disrespect to us has been appalling. We lost both of our renters in our cottages due to construction delays. This easement, that the Water Department has, destroyed our quiet enjoyment of our property, and appears to be a full taking, as there still is no end in sight. We may lose our coffee trees that need to be planted, with new irrigation pipes that have been delayed because of the construction along the driveway. What I ask now is that the Water Department repair our driveway to proper specifications, take care of the drainage issues... And it doesn't take a rain to discover the drainage issues. Anyone can look at the gullies along the driveway to see the problem. Remove all the rubbish from the trees the contractor knocked down. Repair or replace our two automatic gates destroyed by the contractor, and replace some of the mac nut trees with other tall trees that lined our driveway. Open our driveway by repaving our driveway to Māmalahoa Highway, even if it is temporary. It is not right that you've kept it closed. One month's construction in the appraisal has turned into over one year. It's wrong that this entire project has been handled...from a citizen's and a taxpayer's perspective... This whole process is such a waste of everyone's energy. The contractor's, the County's, the Water Department, the Water Board and ours and our neighbors'. Just do the job right, communicate honestly, and quit making excuses. Thank you.

CHAIRPERSON MUKAI: Thank you.

(Mr. and Mrs. Jernigan left the meeting at 10:08 a.m.)

APPROVAL OF MINUTES:

Chairperson Mukai entertained a Motion to approve the Minutes of the Public Hearing on the Power Cost Charge on December 21, 2010.

ACTION: Mr. Meierdiercks moved to approve; seconded by Mr. Perry. Motion carried unanimously by voice vote.

The Chairperson then entertained a Motion to approve the Minutes of the regular Water Board meeting on December 21, 2010.

ACTION: Mr. Meierdiercks moved to approve; seconded by Mr. Greenwell. Motion carried unanimously by voice vote.

APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA:

None.

ACTION TO MOVE AGENDA ITEMS:

None.

HĀMĀKUA:

A. **JOB NO. 2007-923, ĀHUALOA WELL DEVELOPMENT – PHASE 2 (PRODUCTION WELL AND 1.0 MG RESERVOIR):**

The contractor, Goodfellow Bros., Inc., is requesting a contract time extension of 224 calendar days. This is the second time extension request for this project. Information on the previous time extension request is detailed below.

Ext. #	From (Date)	To (Date)	Days (Calendar)	Reason
1	8/30/10	2/14/11	168	Delays in receiving drawings from HELCO and changes in electrical design.
2	2/14/11	9/26/11	224	<i>Delays in receiving submittals and review from HELCO for Main Electrical Service Switchgear (MESS).</i>
Total Days (including this request)			392	

The project completion date must be extended due to delays in receiving submittals from the manufacturer, and in obtaining approval from HELCO for the Main Electrical Service Switchgear (MESS) submittals. HELCO's comments on the MESS submittal are currently under review by DWS and its engineering consultant. The MESS equipment cannot be ordered until HELCO's requested changes to the MESS submittals are accepted. It is anticipated that the MESS submittals with HELCO's comments will be reviewed and accepted by the current project completion date of February 14, 2011.

Staff has reviewed the request and finds that the extension of 224 calendar days is justified.

This project is being funded through the American Recovery and Reinvestment Act of 2009 (ARRA). The requested time extension will not affect ARRA funding for this project.

The Manager-Chief Engineer recommended that the Board grant this contract time extension of 224 calendar days to Goodfellow Bros., Inc., for JOB NO. 2007-923, ĀHUALOA WELL DEVELOPMENT – PHASE 2 (PRODUCTION WELL AND 1.0 MG RESERVOIR). If approved, the contract completion date will be extended from February 14, 2011 to September 26, 2011.

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

Mr. Inaba said HELCO is requiring revisions on this project very late in the game. He said that it appears that HELCO has begun to seek revisions *subsequent to* the contractor getting his submittals approved by DWS and the consultant. This also happened with another project that DWS is doing, he said. DWS is doing some investigation to see how the Department can avoid this type of delay in the future, and is looking into whether DWS can work with HELCO to review electrical designs **during** the submittal process. Mr. Inaba said that HELCO does not want to see drawings until *after* DWS or the contractor have approved the drawings, and now, HELCO is providing comments (and seeking

revisions). This kind of kick back from HELCO has not happened in the past, with this type of equipment, Mr. Inaba said. He said he was not sure whether HELCO's procedures had changed.

Chairperson Mukai commented that once DWS issues specifications on a job, those specifications should pass.

Mr. Inaba said in general, that is the case. He said that while DWS knows what components and parts are issued in the specifications, the equipment in question is a special item which is custom-made, and fabricated after the shop drawings are done.

The Manager-Chief Engineer said that conceptually, the drawings show electrical schematics and logic, how the things work, including relays, etc. However, these items do not actually get designed or put into a cabinet until after the submittals are set. Often, there are revisions. Therefore, while conceptually, the drawings depict what is supposed to happen, the individual components sometimes change, he said. HELCO needs to review those components, he said.

Mr. Greenwell asked whether HELCO was questioning DWS's engineers' requirements.

Mr. Inaba said no, he believed that HELCO was looking into adding safety features. HELCO is taking a look at this after the electrical drawings have been approved. In this case, HELCO is adding components to what is medium-voltage equipment, he said. That is the revision that is being kicked back to the contractor, who in turn sends it to DWS to have the consultant look at it. It would have been easier if DWS knew that HELCO needed to review the already-approved submittals, Mr. Inaba said. DWS is now looking into that, and is trying to streamline the process so that DWS is not caught in this kind of delay again. He said that late in the game, HELCO is now sending the electrical drawings back for revision.

Mr. Greenwell asked if DWS Engineering is losing control of the job.

Mr. Inaba said no, it is not a matter of changing the design of how the equipment works; rather, it is a matter of adding a component or two.

The Manager-Chief Engineer said that conceptually, HELCO's revisions will not change how the equipment works; it is just components in the safety features that HELCO wants revised.

Mr. Kaneshiro asked if there are any consequences due to the delay, i.e., any increased costs. He asked if the progress of any other projects is dependent on the completion of this equipment.

The Manager-Chief Engineer said the delays do not affect DWS's ability to fully utilize the Āhualoa project. Right now, DWS has an eight-inch pipe on Āhualoa Road, which will not be able to handle the flow from the well and the tank. DWS currently has a design which the Department plans to advertise for. The delay caused by HELCO will not affect the overall system; DWS still needs a transmission line from Āhualoa down to Honoka'a, which has not yet been put out to bid.

Mr. Kaneshiro said he was glad to hear that DWS is looking into how the operations can be streamlined, so that delays like this do not happen again.

Mr. Inaba noted that the same type of situation has arisen with another project. This kind of issue had not come up with previous projects.

Mr. Meierdiercks asked if this was an issue with new personnel at HELCO, and suggested that if that were the case, DWS should find out who at HELCO was responsible for this type of change.

Mr. Inaba said the other project where the issue arose involved a different person. The way for DWS to avoid such delays in future is through the consultant, he said. The key is to have the electrical

consultant find out what HELCO's requirements are, and when DWS should be getting HELCO to look at the drawings.

Mr. Meierdiercks observed that this project could be delayed for more than a year just because of HELCO. He suggested that DWS might want to get in with HELCO at the design phase, to avoid delays that could set DWS back a year.

Mr. Inaba said that because there are other projects out there, DWS needs to be very aware of the situation.

The Manager-Chief Engineer noted that in this particular instance, DWS had to go to HELCO directly for the off-site service to the site.

Mr. Inaba said that was another project that is currently being worked on. In that case, HELCO told DWS to get the three-phase power along routes that HELCO already has access to. It is going to cost several million dollars because the nearest line that HELCO could tie into was very far away. It involves improving the lines along the Old Māmalahoa Highway, so DWS is working with HELCO to do a shortcut. This involves going through vacant land and providing an easement for HELCO, so that HELCO can bring power directly from makai straight up to the site.

Mr. Greenwell asked if there was a possibility that the power line may not be in place when the 224 days expire.

Mr. Inaba said that may happen. He said this is one site where DWS is also looking at putting in a generator, although it had not been DWS's intent (to run this site on generator). DWS has water flowing through the system now. DWS is still hoping to get power there simultaneously, or soon after, this project is done. There are outstanding land issues, and approvals that need to be obtained, he added. DWS does have, in HELCO's view, an approved route to come up.

The Manager-Chief Engineer noted that the site is very isolated, located all the way up Āhualoa beyond where the forest ends and where the pastures begin.

ACTION: Motion carried unanimously by voice vote.

Chairperson Mukai asked to move up Item 7(A) KOHANAIKI REIMBURSEMENT AGREEMENT, ahead of 6(A) INTER-GOVERNMENTAL AGREEMENT BETWEEN THE STATE OF HAWAI'I – DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE COUNTY OF HAWAI'I – DEPARTMENT OF WATER SUPPLY: REGARDING DEDICATION OF WAIMEA EXPLORATORY WELL.

NORTH KONA:

A. KOHANAIKI REIMBURSEMENT AGREEMENT:

The developer, KOHANAIKI SHORES, LLC (Kohanaiki), is requesting the Water Board to enter into a reimbursement agreement, under which Kohanaiki shall reimburse DWS for preliminary design changes to the new 16-inch waterline that will be installed with the Queen Ka'ahumanu Highway Widening Phase 2 Project. The proposed design changes will help improve the flow of water along Queen Ka'ahumanu Highway in both directions.

The preliminary design will allow for the contractor, Goodfellow Bros., Inc., to establish a cost estimate to determine whether or not the actual construction of the proposed changes can be afforded by Kohanaiki. Should Kohanaiki choose to accept the proposal by the contractor, they will enter into a subsequent agreement with the Board for the proposed work prior.

The Manager-Chief Engineer recommended that the Water Board agree to the Reimbursement Agreement by and between KOHANAIKI SHORES, LLC, and the Water Board of the County of Hawai'i, and that either the Chairperson or the Vice-Chairperson be authorized to execute the document, subject to approval by Corporation Counsel.

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

Ms. Garson noted that the Board had before it the DWS version of the Reimbursement Agreement, with which Kohanaiki had some issues.

The Manager-Chief Engineer gave a summary of what the project entails. The State is improving Queen Ka'ahumanu Highway from Hina Lani Drive to Kona International Airport. As part of the plan, DWS is putting in a bigger water line from Kealakehe Parkway north to the airport, he said. Meanwhile, Palamanui and Kohanaiki have an agreement whereby Palamanui's well up mauka will be feeding water to Kohanaiki, which is on the makai side of the highway. Under the original agreement, Palamanui, which is on the mauka side of the highway, has a well which is to provide water for Kohanaiki also. To provide Kohanaiki with that water, a transmission line was needed to run all the way down Palamanui's development, across Queen Ka'ahumanu Highway into Kohanaiki. Because the state is currently doing the Queen Ka'ahumanu Highway widening from Hina Lani going north, and because DWS put in a water line, it presented a perfect opportunity for Kohanaiki to put in a bigger line to serve its development on the makai side of the highway, the Manager-Chief Engineer said. Kohanaiki's line will come from the end of Palamanui's development going back south along the highway, and into the Kohanaiki property. State Highways Division prefers to work with DWS as a utility, instead of working directly with Kohanaiki. DWS is talking with Kohanaiki to satisfy their needs. Meanwhile, the State will bill DWS, who in turn will be reimbursed by Kohanaiki. That is the basic gist of the agreement under discussion today, the Manager-Chief Engineer said.

Ms. Garson said that Kohanaiki's development is trying to tie in to the State's improvements. However, the State did not want to deal with Kohanaiki. Instead, the State said that DWS should suggest a change order that includes some of Kohanaiki's improvements. Kohanaiki seems to like that idea, whereby DWS would front the money to have the design work done on Kohanaiki's behalf, she said.

The Manager-Chief Engineer said the Reimbursement Agreement calls for Kohanaiki to reimburse DWS for whatever the Department needs to do to put in the water line that satisfies Kohanaiki's needs on Queen Ka'ahumanu Highway, where the State is doing its widening project.

Mr. Reynolds asked what assurance DWS has that Kohanaiki can pay the Department whatever the amount turns out to be.

The Manager-Chief Engineer said it would be through a formal, binding agreement.

Mr. Reynolds noted that binding agreements often are not carried out. He asked where the money was, and would there be bonds to ensure that DWS gets its money back from Kohanaiki. He quoted a passage from item number 7 of the Agreement that said: "...to establish a cost estimate to determine whether or not the actual construction of the proposed changes can be afforded by Kohanaiki." He asked why DWS would want to get into an agreement with somebody who later might decide he cannot afford it, while DWS will have already shelled out the money.

At this point, Mr. Lim, Kohanaiki's attorney, stepped in with his presentation on the agreement. He noted that the water agreements under discussion involved both the Palamanui project and the Kohanaiki project. He said the Shores at Kohanaiki is the official name of the Kohanaiki project. He said the Reimbursement Agreement involved a very small portion of the entire project, and he referred to this as "the tip of the tail of the dragon." DWS, Palamanui and Kohanaiki have been working with a 1999 water agreement and a 2007 amendment to the 1999 agreement, Mr. Lim said. Since then, many

changes have occurred, with new owners, new DWS staffers, changes to the Palamanui and Kohanaiki projects, etc. Since then, the Department of Transportation (DOT) has undertaken its Queen Ka'ahumanu Phase 2 widening project. The Reimbursement Agreement in question today is between Kohanaiki and DWS, whereby the Water Board will allow Kohanaiki to work through DWS, who will agree to pay only for the design costs for the new Additional Facilities during the Queen Ka'ahumanu widening project, Mr. Lim said. The specific design is not available yet, but the ballpark costs for the total package is estimated at \$570,000.00. It could run up to \$1 million, depending on the design details, Mr. Lim said. Goodfellow Bros., Inc., the DOT's contractor for the widening project, has given the \$570,000.00 estimate to Kohanaiki, he said. Therefore, this request today for a Memorandum of Understanding (MOU) is to ask the Water Board to authorize Kohanaiki to agree to reimburse DWS for the costs of design only, which is estimated at 10 percent of the whole project, (i.e., \$57,000.00.) Mr. Lim, addressing Mr. Reynolds's question, said that today he had asked his client, Kohanaiki, to deposit the \$57,000.00 with DWS, so that the Water Board would authorize DWS to ask DOT to go ahead with the design work. He said that if in the end, the improvements are "in-box" or more, and Kohanaiki may decide not to go ahead and would have the option to pull the plug on the project, Mr. Lim said. However, at least, the design costs (\$57,000.00) for this additional work would have been paid for, and neither the Water Board nor DWS would be out any money. Mr. Lim said that good progress has been made in talks with DWS, and Kohanaiki would like to continue that progress. Mr. Lim said for that reason, Kohanaiki is asking the Water Board to approve this MOU concept, noting that he and Ms. Garson have been talking about potential amendments to this MOU. Kohanaiki's proposed amendments are in Exhibit 4, in the second version of the MOU. This section is red-lined. The original DWS version was tying in the Additional Facilities under discussion as a requirement for the Shores at Kohanaiki, to do as part of the water agreement. That is one of the big issues under dispute, Mr. Lim said. In question is *what portion and how much* should really be Kohanaiki's, versus how much should be DWS's, Mr. Lim said. That is driven by engineering size and other factors. These are very big problems that are not going to be solved today, he said. That is why Kohanaiki is requesting the Water Board to approve *in concept* that Kohanaiki can enter into an MOU for reimbursement. Kohanaiki would be willing to deposit 10 percent of the estimated cost with DWS before the Department asks DOT to do the design work. This means that at least DWS would have that money in its pocket. The MOU that Mr. Lim drafted and upon which he would work with Ms. Garson is designed to preserve the parties' legal positions on the water agreement. The big questions will not be solved today or in the near future, Mr. Lim said. However, Kohanaiki wants to continue working with DWS on making it happen for both Palamanui and the Shores at Kohanaiki. Turning to the package of documents he distributed to the Board today, Mr. Lim drew the Board's attention to Page 2, Paragraph 2 of the 2007 agreement, entitled "The Amendment of Subparagraph 4.1.1.b." The big difference of opinion, in terms of the interpretation of the agreement between DWS and Kohanaiki, is that DWS believes that Kohanaiki is supposed to extend the water line down from Palamanui, down the hill to Queen Ka'ahumanu Highway, then south all the way to the Shores at Kohanaiki project, Mr. Lim said. Kohanaiki's position is that Kohanaiki is supposed to follow the words of the agreement, which says that Kohanaiki extends "the pipeline from the storage tanks down to and along Queen Ka'ahumanu Highway through State land if available, to the DWS water system on Queen Ka'ahumanu Highway." Mr. Lim said that was a direct quote from the agreement. He said there is a span of area that is not very clear under the agreement, and Kohanaiki is still willing to negotiate that issue with DWS in terms of cost sharing. He expresses hopes that could be worked out in the end.

Mr. Meierdiercks asked if it was basically Kohanaiki's responsibility to get down to Queen Ka'ahumanu Highway.

Ms. Garson said that was not a disputed issue.

Mr. Lim confirmed that Kohanaiki is supposed to take the water line down to and along Queen Ka'ahumanu Highway to the DWS water system on Queen Ka'ahumanu Highway which, at the time of the 1999 and 2007 agreements, was existing at the Kona International Airport.

Mr. Meierdiercks said that everybody then is clear that it is Kohanaiki's responsibility with *Palamanui*, and DWS has nothing to do with that.

Mr. Lim confirmed that Kohanaiki had agreed to that officially.

Mr. Meierdiercks said that essentially, the issue the Board is dealing with today involves the Queen Ka'ahumanu widening, and DWS already has a system agreed to with DOT that is going in at Queen Ka'ahumanu Highway, which does not include the needs of Kohanaiki. He asked if his understanding was correct.

Mr. Lim said no, in the submittal that Kohanaiki had given the Board, on the very last page there is a shaded area that says that this is the proposed system that is going in without the Additional Facilities. He said it says: "The existing 12-inch main shall serve customers mauka of the new highway and the new 16-inch main shall serve customers makai of the new widening highway."

Mr. Meierdiercks asked whether the system that DWS has going in now is a 12-inch.

Mr. Lim said the system that DOT has already approved is a 16-inch.

The Manager-Chief Engineer confirmed that DWS already has a 12-inch in place. DWS will now *add* a 16-inch.

Mr. Lim said it is a very complicated system, whereby DWS wants to inter-connect and change service elevation. Kohanaiki said they had a 262- and a 363-elevation system, so DWS is going to switch off various projects. DWS has needs from the Natural Energy Laboratory of Hawai'i Authority (NELHA) and the Kona International Airport, that are already more than the system can handle. Therefore, DWS is trying to do these inter-connects that will allow DWS to better service all of the projects, Mr. Lim said.

Mr. Meierdiercks said that the 16-inch will improve service and inter-connect with the existing 12-inch.

The Manager-Chief Engineer confirmed this, saying the 16-inch will add capacity to DWS's capability.

Mr. Meierdiercks asked whether DWS will have to increase the size of the 16-inch.

Mr. Inaba said no, this will modify the way the system will flow. He said there is a short section of pipe sizing. Kohanaiki's system is coming to the north end of the system, and DWS is aiming to modify how the water will flow from the existing system south. The source that Kohanaiki will be bringing in is from the north end of the system. There a very short section dealing with the system, within the scope of the Queen Ka'ahumanu Highway project, he said.

Mr. Meierdiercks asked whether this entailed a size increase of the piping, from 16-inch to whatever.

Mr. Inaba said that actually, it is a new pipe that DWS would have proposed to put in anyway. DWS is agreeing that it should be over-sized, only for that short section, to come into the system. The bulk of the agreement is to modify the way DWS had intended to utilize the 16-inch, and to allow Kohanaiki to switch the direction of flows and utilize the 16-inch portion, that runs from the 280 tank at the airport south to Kohanaiki's property. The initial intent was to have the entire 16-inch line at the 363 elevation flowing water into that tank, which would then supply the airport and NELHA. This new arrangement would allow, for this portion, for a 12-inch and a 16-inch going north from the 363 elevation to Kohanaiki's property. At that point, Kohanaiki would connect to the 16-inch off of the airport tank, but end up with *two* 12-inch (because there is an existing 12-inch from the tank already.) Therefore, there are two 12-inch in Queen Ka'ahumanu Highway up to a certain point. Kohanaiki would have that section with two 12-inch feeding into the 280 tank. DWS would be agreeable to have Kohanaiki reverse

the flow in the 16-inch into NELHA, where the biggest use is, to improve the system. In this way, DWS can just about meet the criteria for flow in the pipe, based on DWS standards, Mr. Inaba said.

Mr. Meierdiercks asked whether the agreement in question today is for the change of design only.

Mr. Inaba said that while it does not necessarily entail adding water lines, it *does* mean that DWS would be interconnecting at a different location. He confirmed that this agreement involves design only. If the agreement is approved, DWS would give the State the go-ahead to authorize the State's contractor to work on the design. The contractor would get a firm quote to DWS, because it is a design-build contract. The firm quote would be relayed to Kohanaiki, who then would have to come up with a subsequent agreement to allow the contractor to go ahead with the improvements.

The Manager-Chief Engineer noted that one of the biggest issues is that DOT will not let its contractor work with Kohanaiki. If DOT would work directly with Kohanaiki, DWS would not be involved and Kohanaiki could just do it on their own, he said. However, DOT refuses to work directly with Kohanaiki.

Mr. Inaba said he believed it is because it would affect the base contract, which is a prior agreement with DWS. DWS's contract would be affected, he said. Mr. Inaba said he believed that DOT viewed the entire agreement with DWS, and decided that any modification to the agreement should come from DWS.

Mr. Greenwell asked whether there were any formal restrictions on where the Palamanui water can go.

Mr. Inaba said Palamanui's use of their portion of the water is going to be just to the land that Palamanui is developing.

The Manager-Chief Engineer told Mr. Greenwell that in the initial agreement that DWS had back in 1999, the water was meant to serve either Palamanui or Kohanaiki. The water is reserved to both Palamanui at the top and Kohanaiki on the bottom. The well's capacity is for those two projects, and back in 1999, DWS had 10 percent of the water.

Mr. Inaba said that under the current agreement, Palamanui/Kohanaiki are going to do a new source at 33 percent. Mr. Inaba said that the system is limited to what DWS would consider the 363 system, which can serve down to Hina Lani, along Queen Ka'ahumanu Highway. The system does not necessarily allow the water to flow further south, he said.

Chairperson Mukai asked Ms. Garson what legal issues the Board should be concerned about.

Ms. Garson said that in this situation, DWS should be taking no risk at all. She said that Mr. Reynolds had hit the issue right on the head. This arrangement is solely for the benefit of Kohanaiki, and there should be no risk on DWS's part regarding getting reimbursed, she said. Ms. Garson and Mr. Lim have a difference of opinion as to who is going to eventually contribute to what. With some of the modifications that were proposed, it appeared that Kohanaiki was even reserving their right on reimbursement for the design work. Ms. Garson said she was unhappy about that. From the Department's standpoint, it is okay so long as there is no risk for DWS and it poses a convenience. However, DWS seems to be stuck in the middle between Kohanaiki and DOT. It would be good to work with all concerned and end up with a win-win situation, but *not* at the expense of DWS. That, Ms. Garson said, is basically what she is concerned about.

Mr. Meierdiercks asked for confirmation whether there were still unresolved issues.

Ms. Garson said yes, regarding the reimbursement.

Mr. Meierdiercks asked whether the Board should defer this Item, or approve this existing agreement.

Mr. Lim said there is a time constraint.

Mr. Meierdiercks asked whether the Board should defer this, and give the parties more time to work on the agreement.

Ms. Garson said the time pressure was coming from the State, as to when they want their change orders processed.

Mr. Lim said there is a deadline for change orders, so Kohanaiki today is requesting that the Water Board approve the MOU *in concept*. He said he believes all of the parties agree on the concept, and it is just a matter of writing it up.

Mr. Inaba said the deadline is really to avoid a more expensive change order, which would happen if the change order goes in late. It is a timing issue with the contractor, he said.

Ms. Garson said that Kohanaiki *could* just deal with their own thing past the deadline. That would pose an expense to Kohanaiki. She reiterated that the time issue has to do with the State and the submitting of change orders. If DWS is going to work with Kohanaiki, it would be best to meet that change order deadline. Ms. Garson said that the Board needs to start with the first presumption that this is something the Board wants to do, and that there is a time limit on it.

The Manager-Chief Engineer suggested changing the Recommendation to say that the Board agrees *in concept*. An agreement that is approved by Corporation Counsel and DWS would be brought back to the Board later.

Ms. Garson agreed that the Board can approve an agreement *in concept*. This would mean that the Board conceptually agrees with allowing the change order to take place with some sort of reimbursement to DWS, and that Kohanaiki is being added in to the State and DWS's project. Ms. Garson said that that she and Mr. Lim could then work out language involving reimbursement which poses no risk to DWS.

Chairperson Mukai noted that in the agreement, it says "reimbursement of *construction* costs." He said that DWS does not have any obligation regarding construction costs. He said the wording was in item Number 4 of the submittal.

Ms. Garson said no, there is no question that the parties are far away from agreeing to construction costs. Under discussion here are only the design costs.

Mr. Lim agreed that this agreement only involves design. When the construction cost estimate comes in, Kohanaiki will come back to the Board to agree on Kohanaiki's reimbursement of the construction costs. It will be the same scenario, he said. Kohanaiki will get the construction cost estimate for the final design from the contractor, and then Kohanaiki will decide whether they can afford it or not. The parties will negotiate if there is any cost share, and then come back to the Board with an agreement for approval. Summing up, the current Reimbursement Agreement is just the tip of the tail of the dragon; this will get Kohanaiki in the door without them going through the expense of a change order later on.

Mr. Perry said that if the idea of "in concept" involves no financial risk to DWS, he personally would not have a problem.

The Manager-Chief Engineer said that DWS would work with Kohanaiki to try to accomplish what they need to do along Queen Ka'ahumanu Highway, with no financial risk. DWS should not have to be paying for something that Kohanaiki needs to do.

Chairperson Mukai said that he has no problem with assisting Kohanaiki with the design phase. His understanding is that the estimated cost for design is going to be deposited with DWS, so DWS will bear no risk.

Ms. Garson said that the depositing of the design cost with DWS only came up today.

Chairperson Mukai said that in the initial phase, which is the hurdle the Board needs to get over today, there does not seem to be any financial risk to DWS.

Ms. Garson said that there is no risk so long as the design cost is not more than the amount Kohanaiki deposits with DWS.

Chairperson Mukai suggested coming up with verbiage to shield DWS from such a risk.

Mr. Lim said that Kohanaiki will commit to deposit a minimum of \$57,000.00 prior to DWS authorizing DOT and its engineers to proceed with the detailed design. Kohanaiki does not expect that the design cost is going to be much more than \$57,000.00. However, Kohanaiki will commit to pay that overage also. If the contractor comes back and says it will cost Kohanaiki \$1.2 million to do it, Kohanaiki may decide not to do it, and all of the design work will be stopped. In that case, Kohanaiki will go back to the original plan.

Mr. Meierdiercks asked if the Recommendation's wording can stay pretty much unchanged.

Mr. Reynolds said no, the Recommendation would need to be amended to put in the words "in concept" and include the \$57,000.00 as a deposit. This would be an Amendment to the Main Motion. He suggested that the first sentence of the Recommendation should say: "It is recommended that the Board agree to the Reimbursement Agreement in concept between..." He asked Ms. Garson if that was correct.

Ms. Garson confirmed this. She continued the wording to read: "...and that Kohanaiki be required to deposit a minimum of \$57,000.00 prior to the submission of a change order."

AMENDMENT TO THE MAIN MOTION: Mr. Meierdiercks moved to amend the Main Motion; seconded by Mr. Perry.

Chairperson Mukai asked that the Amendment to the Main Motion be restated.

Ms. Garson read: "It is recommended that the Water Board agree to a Reimbursement Agreement in concept, and to include the minimum of \$57,000.00 be deposited with the Department of Water Supply prior to the submission of a change order by DWS to the State. The agreement shall be by Kohanaiki Shores and the Water Board, and that either the Chairperson or the Vice-Chairperson be authorized to execute the approval of the document, subject to approval by Corporation Counsel and the Manager-Chief Engineer of the Department of Water Supply."

ACTION: Amendment to the Main Motion carried unanimously by voice vote.

ACTION: Main Motion as amended carried unanimously by voice vote.

(Messrs. Lim, Knable, Moore, and Judd and Ms. Burns left the meeting at 11:00 a.m.)

SOUTH KOHALA:

A. INTER-GOVERNMENTAL AGREEMENT BETWEEN THE STATE OF HAWAII – DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE COUNTY OF HAWAII – DEPARTMENT OF WATER SUPPLY: REGARDING DEDICATION OF WAIMEA EXPLORATORY WELL:

The Water Board approved an inter-governmental agreement between the Department of Land and Natural Resources (DLNR) and the Department of Water Supply at the September 28, 2010, Water Board meeting. However, the State is requesting changes to subject agreement.

(This Item was deferred from the December 21, 2010, Water Board meeting.)

Ms. Garson asked that the item be deferred to the February 22, 2011, Water Board meeting.

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

MISCELLANEOUS:

A. DEDICATION OF WATER SYSTEMS:

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

1. CANCELLATION OF EASEMENT

Grantor/Seller: Water Board of the County of Hawai'i

Tax Map Key: (3) 7-3-051: 060 portion

2. LICENSE EASEMENT NO. 752

For Water Meter Purposes: (Target and Safeway Stores)

Licensor: State of Hawai'i Department of Hawaiian Home lands (DHHL)

Tax Map Key: (3) 2-2-047: 072 portion

E.W.O.: 2011-003

Facilities Charge: \$319,000.00 Date Paid: 01/12/2011

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

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

Mr. Inaba asked that the Tax Map Key (TMK) on the Cancellation of the Easement be corrected. There are two TMKs: (3) 7-4-026:033 and (3)7-4-008:047. To clarify, Mr. Inaba said that the property in question was an easement reserved for water line purposes for future development. However, the installation of the water line was done through the subdivision's roads, and therefore DWS does not need the easement anymore. The water line was put in an area that is bordering the back of the property, he said. The property is in Kona View Estates.

MOTION: Mr. Meierdiercks moved to amend the Main Motion, to correct the TMK numbers. Mr. Perry seconded.

Chairperson Mukai noted that the TMKs were way off from the original one.

Mr. Inaba said there was a subdivision subsequent to the agreement, which added the second TMK. Where originally there was one TMK, now it is actually two TMKs involved in the cancellation of the easement.

ACTION: Amendment to the Main Motion carried unanimously by voice vote.

ACTION: Main Motion as amended carried unanimously by voice vote.

B. REPORT OF AD HOC FINANCE COMMITTEE:

The Water Board's Ad Hoc Finance Committee Chairperson, Mr. Taniguchi, has been investigating the three focus areas (DWS's policies on credit card use, cash control and vehicle take-home), which encompass the scope of the Committee's work. At this meeting, the Committee may do the following:

- Discussion/action on vehicle take-home policy.
- Discussion of DWS's cash handling procedures and proposed changes.

Chairperson Mukai said that there would be no report today because Mr. Taniguchi was in Japan and thus unable to attend today's meeting. He said a report will be made next month.

C. PROPOSED AD HOC COMMITTEE FORMATION:

A proposed Ad Hoc Committee on Energy had been requested by Board member Delan Perry.

Mr. Perry said it might be a bit premature, but he was interested in seeing an ad hoc committee deal with some of the issues that come up, if the Board approves DWS's Energy Policy. He said he liked the idea of a group of Board members giving input. He said he never quite worked out with the County Council exactly what the Board's position is, and said that the Board does not want to manage DWS. He said there is room for extra input from Board members to target energy and the economics thereof.

The Manager-Chief Engineer said that he appreciates the interest in an ad hoc committee. He said he was not sure how Mr. Perry wanted to handle it, but at every Board meeting, the Energy Management Analyst presents information to the Board, for all of the Board to hear. If there is anything that Ms. Myhre presents that creates a controversy or sparks more than normal interest, then perhaps an ad hoc committee can be established. He said that the establishment of an ad hoc committee without any specific reason would not be useful to the Board. He did not know what purpose would be served by forming an ad hoc committee on energy as a whole. That was just his opinion, the Manager-Chief Engineer said.

Chairperson Mukai said that in all of the years he has served on the Board, the Ad Hoc Finance Committee is the only ad hoc committee that has been formed. He also served a previous term on the Board and there was no ad hoc committee during that time, he added. The only time that the Board creates an ad hoc committee is when there is a specific issue that needs to be addressed. The reason that the Ad Hoc Finance Committee was formed was because of a major problem, and because the Board wanted to take an in-depth look at DWS's take-home vehicle policy and cash handling procedures. The Board worked with the County's Legislative Auditor. In this case, there were issues that were in serious need of oversight. That is the reason that ad hoc committees are formed. An ad hoc committee is formed for a specific purpose, and once that purpose is addressed, the ad hoc committee dissolves, the Chairperson said. An ad hoc committee is not a continuous organization. He expressed hopes that the Ad Hoc Finance Committee will disappear before the end of the year, with all of its focus issues addressed and its purpose fulfilled. He stressed that forming the Ad Hoc Committee is to address something that needs addressing.

Ms. Garson agreed. Under the Sunshine Law, an ad hoc committee is meant to investigate a matter relating to the official business of the Board. The ad hoc committee's scope of investigation must be defined, and the ad hoc committee must have a specific purpose. An ad hoc committee can meet outside of a regular Board meeting to do its investigations, and for that reason, its scope has to be defined.

Chairperson Mukai asked Ms. Garson how the Board should proceed.

Ms. Garson said that as the Board hears the Energy Management Analyst Update, if there are any items that call for further investigation, Mr. Perry can again propose that an ad hoc committee be formed to address that specific area.

Mr. Perry asked whether energy itself was not a sufficiently specific area.

Ms. Garson asked whether it meant an exploration of alternative energy sources such as wind or hydro-power.

Chairperson Mukai said an ad hoc committee has to have a finite end result; it should not be open-ended or live on continually. An ad hoc committee is basically formed for a purpose, and once its purpose is served, the ad hoc committee ends. That, the Chairperson said, is his understanding of how it works.

ACTION: Mr. Reynolds moved to table the matter until after the finalization of DWS's Energy Policy. Mr. Perry seconded. Motion to table carried unanimously by voice vote.

D. HELCO RELEASE AND TERMINATION AGREEMENT – LĀLĀMILO:

A Release and Termination Agreement for the Lālāmilo Windfarm is needed to terminate the June 30, 1986, Power Purchase Agreement between Department of Water Supply and Hawaii Electric Light Company, Inc. (HELCO). There is no budget amount for this project.

The Manager-Chief Engineer recommended that the Board approve the Release and Termination Agreement for the Lālāmilo Windfarm, and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents, subject to approval of Corporation Counsel.

Ms. Garson asked that the Item be deferred until the February 22, 2011, meeting.

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

E. ENERGY MANAGEMENT ANALYST REPORT:

The following areas were covered:

- DLNR Lease Application status
- DWS's Green Initiatives
- DWS's Draft Energy Policy Statement – Discussion and possible adoption of Energy Policy Statement

Regarding the DLNR Lease Application status, Ms. Myhre said that the land agent for the Big Island has met with the Attorney-General on the Notice that will go to the Land Board for the Lālāmilo lease. The recommendation was that an Environmental Assessment (EA) be prepared for this project, because the last EA was done a long time ago, back in 1984. The Land Board's next meeting is on February 11, 2011, and the hope is that the Land Board will review the lease application that day, and approve it *in concept*. That would mean that DWS would have access to the land to do the actual EA, and to maintain anything that needs maintenance there. Once the EA is completed, DWS will go back for a formal lease approval.

Regarding the Green Initiatives, Ms. Myhre said she had added an At a Glance section for the Board's convenience. She did an analysis on costs per 1,000 gallons, how many kilowatt-hours, how many customers, etc.

Chairperson Mukai asked about Ms. Myhre using statistics dating prior to 2009 regarding energy use. He asked Ms. Myhre if she had any numbers from 2008.

Ms. Myhre said she did have numbers from 2008.

Chairperson Mukai assumed that the numbers were higher in 2008.

Ms. Myhre confirmed that DWS used more energy in 2008 than DWS used in 2010.

Chairperson Mukai said he would like to see the 2008 numbers, to provide a contrast with the numbers for 2009 and 2010. A layperson would look at the 2009 and 2010 numbers and not see much difference. However, numbers from 2008, from a time before DWS decided to carefully watch its energy use, would provide a sharp contrast, he said. He assumed that the usage in 2008, compared with usage now with controls in place, would show a significant difference. Now that DWS has these controls in place, the Department's energy use is running at a pretty efficient level, he said.

Ms. Myhre confirmed that the energy use is tied into consumption. Because of the consumption decreasing, there is going to be less energy use, and it is not going to provide a full picture of how much energy, she said.

Chairperson Mukai acknowledged this.

The Manager-Chief Engineer said that the Department could show the Board the cost per 1,000 gallons, and that should provide a good comparison because it would show the actual difference in the actual energy, taking away the fact that consumption has dropped, measuring per 1,000 gallons.

Chairperson Mukai said that would be okay. He asked about DWS's plans to install several possible hydro-generators within its system.

Ms. Myhre said this depended on whether DWS could get money from a grant that DWS applied for.

Chairperson Mukai asked how many hydro-generators, in a perfect world, could possibly be put in place, assuming that DWS has grant money.

The Manager-Chief Engineer said it might be hard to give a number, because DWS would put in hydro-generators wherever DWS has transmission lines – and DWS has transmission lines all over the island. Therefore, it would be tough to come up with a number. He noted that DWS cannot put hydro-generators where there are distribution systems, because flows are always variable. DWS puts hydro-generators on transmission lines where flows are constant. It is most beneficial to put a hydro-generator on a transmission line where DWS has nearby facilities which can use the power generated. When DWS sells power back to HELCO, DWS does not get nearly as much of a benefit as the Department does when DWS uses the power itself, the Manager-Chief Engineer said. The key question is whether DWS can use the power. Perfect examples of this are the Kahalu'u Shaft and the Waimea Treatment Plant, where DWS uses all the power it produces. In the case of Hina Lani, DWS sells power back to HELCO, from which DWS gets some benefit, but not as much.

Chairperson Mukai, noting that Kahalu'u Shaft saves DWS \$100,000.00, asked how much that hydro-electric system cost. He said he knows that DWS is trying to get grant money so that it does not need to dig into its own coffers.

Ms. Myhre said it cost about \$460,000.00.

Chairperson Mukai expressed surprise, and said he got the idea.

The Manager-Chief Engineer said that the payback period for that hydro-electric system would have been four years if it had been DWS's own money.

Chairperson Mukai said he just wanted to know how much it cost, but four years is too many years for payback.

The Manager-Chief Engineer said that actually, four years is a really good payback period.

Ms. Myhre moved on to the draft Energy Policy Statement. The history on this is that DWS had a consultant provide a copy of the draft that is before the Board, which has been used by other water utilities. Recently, Ms. Myhre has been involved in monthly Environmental Protection Agency (EPA) webinars on energy savings. In the course of that, Ms. Myhre has gotten feedback from the EPA and their consultants on the draft Energy Policy Statement. She asked the Board if they had any comments for improvement of the Statement.

Chairperson Mukai commented on the second line of the Statement that says: "DWS continues to significantly reduce energy..." He suggested removing the word "continues," and instead put in "continually strives to significantly reduce energy..." or use the word "continuous." He also commented on No. 1 in the Goals in which says: "Lead other Departments in the County of Hawai'i." One possible suggestion would be "To be the leader in the County of Hawai'i in fostering energy..." versus "(Lead) the Departments." He said it was just semantics, but it sounded more pleasant to him.

Regarding the Chairperson's first comment, Mr. Reynolds said he assumed that there was a reason for putting in "continues to strive to significantly..." Regarding the word "significantly," Mr. Reynolds asked whether the reduction right now was, in fact, significant. He asked whether it was possible to show that the reduction was significant. Otherwise, it would just be political talk, Mr. Reynolds said.

Chairperson Mukai said that was the reason he wanted to add that language in, because the reduction is not measurable.

The Manager-Chief Engineer agreed that the Chairperson's wording was a better way of putting it.

Mr. Reynolds asked Ms. Myhre whether she had statistics.

Ms. Myhre said that aside from what is in her Green Initiatives report, she is measuring as much as she can as to how much energy DWS can use at each site. The amount varies, she added.

Mr. Reynolds asked how Ms. Myhre measured it.

Ms. Myhre said she measured it by kilowatts, and by costs per kilowatts.

Mr. Reynolds asked what the reduction was since DWS started measuring.

Ms. Myhre explained that the amount of energy used varies with consumption, the type and size of motor, how efficient the motor is, etc. She said she does not analyze the data down to that level, but the data is available. Ms. Myhre said she *does* have how much energy that DWS is producing, the type of generators, etc.

Mr. Reynolds compared it to a person buying energy-efficient appliances for his home. Most people do that, but like most people, Mr. Reynolds said he does not keep track. All he knows is that HELCO's bill keeps going up. He said he didn't mean to be humorous, but the problem is that HELCO's rates continue to rise, so even if he is using less energy, he still ends up paying more. He asked how Ms. Myhre measures this, so that it is possible to tell people how much DWS saved in terms of kilowatts or whatever. This would be without regard to the dollar figure, because it is clear from last year to this year, there has been a significant percentage of increase in HELCO's rates.

The Manager-Chief Engineer said that is why he mentioned earlier that the true measure would be kilowatts per 1,000 gallons served.

Mr. Reynolds agreed.

The Manager-Chief Engineer said that measuring kilowatts per 1,000 gallons served would take into consideration everything, such as leak detection. The more leaks DWS repairs, the fewer kilowatts per 1,000 gallons billed to customers.

Chairperson Mukai said the reason for his suggestion on the verbiage was that it was not measurable. At some point, DWS will get to where it is super-efficient on energy use. To have the Statement say "...continues to strive to significantly reduce..." DWS may hopefully reach the point of maxing out in efficiency and cannot reduce energy use any further, he said. The Chairperson said that is why he likes the words "continue to strive."

The Manager-Chief Engineer agreed that the words should be "continue to strive."

Ms. Garson asked whether the Chairperson wanted to keep the word "significantly" in there.

Chairperson Mukai said it was just a suggestion, and the Department might want to come back to the Board with a revised Statement. He said this was still the formulative stage.

Ms. Myhre said the suggestion from the EPA was also to include the County of Hawai'i Resolution on Sustainability as a reference, to signify DWS's agreement with it and show solidarity.

Mr. Reynolds asked whether the Board wanted to adopt the Statement as amended today, or hold off until the February Board meeting.

The Manager-Chief Engineer said he would prefer that the Department clean the Statement up and bring it back to the Board. There is no rush in adopting it, he added.

Mr. Reynolds said okay, it would be taken up again at the next meeting.

F. **PROFESSIONAL SERVICES AGREEMENT:**

An amendment to the Service Contract for the Furnishing of Microbiological Potable Water Quality Testing and Chemical Potable Water Quality Testing (On an As-Needed Basis) is needed. It is budgeted under the Department's operating and maintenance budget.

Budget Amount for FY 2011: \$100,000.00

The Manager-Chief Engineer recommended that the Board approve the service contract amendment as well as ratify the original contract, and that either the Chairperson or the Vice-Chairperson be authorized to sign the document, subject to approval of Corporation Counsel.

MOTION: Mr. Reynolds moved to approve; seconded by Mr. Kaneshiro.

Mr. Okamoto said he had just distributed one more addition to the proposed change order to the contract.

Chairperson Mukai noted with approval that it involved Chromium 6.

Ms. Garson said that the initial contract had already been executed, but she had asked Mr. Okamoto to come back to the Board with the contract and the change order. The reason, she said, was that there was some ambiguity in a former Resolution that the Board had passed, regarding what kind of contracts can be executed by the Department. The Resolution was kind of ambiguous about micro-biological testing, so Ms. Garson made Mr. Okamoto come back to the Board for ratification of the contract, and the change order at the same time. She suggested that at a future date, the Board could discuss what the Board meant by the Resolution. She did not put a line item in the Agenda for it this time.

The Manager-Chief Engineer noted that there is a bill in the Legislature regarding testing for Chromium 6. If the bill passes, it may force DWS to do a lot more extensive Chromium 6 testing than what is being proposed here today.

Mr. Okamoto said it was Senate Bill 17. The bill comes on the heels of what the EWG Group found, with Honolulu coming in second in the nation for Chromium 6 levels. Senate Bill 17 proposes to establish a very low threshold for Chromium 6, following the lead of California's Public Health Code. The difference between California's Public Health Code stipulations and the proposed Senate Bill is that the California version is a public health code that is not really enforceable. The proposed Senate Bill has language in it to make it an enforceable standard. Mr. Okamoto said he understands that the only way that DWS can meet the standard is by extensive treatment such as reverse osmosis. He said he believes the Hawai'i State Department of Health, in conjunction with the Honolulu Board of Water Supply, is preparing some kind of testimony on the bill.

The Manager-Chief Engineer said one of the concerns is that some of the things are hard to measure, because they so small.

Mr. Okamoto confirmed this, saying that the bill is talking about .02 parts per billion, or 20 parts per trillion. He said there is no scientific basis, as far as he knows, involved in setting this number as a safe amount. Honolulu just got its own testing results back (following the EWG report). Honolulu's sampling showed levels of 4 parts per billion, or 200 times the .02 parts per billion in the Public Health Code.

Mr. Greenwell asked whether one of the options is for reverse osmosis to get rid of the Chromium 6.

Mr. Okamoto said yes, if the law requires that.

Mr. Greenwell said reverse osmosis would be astronomical.

ACTION: Motion carried unanimously by voice vote.

Chairperson Mukai suggested that Mr. Okamoto come back if necessary to give an update on the Chromium 6 situation.

G. POWER COST CHARGE:

A Public Hearing on January 25, 2011 at 9:45 a.m., immediately preceding this regular Water Board meeting, took testimony on raising the Power Cost Adjustment to within a range of between \$1.75 and \$2.50, from the current Power Cost Charge of \$1.75. The approved rate will be effective on the first day of the month after the establishment of the rate by the Water Board.

Chairperson Mukai noted that the Board is currently looking at a proposed rate somewhere between \$1.75 and \$2.50.

Mr. Meierdiercks asked whether the December Power Cost was \$2.00.

Mr. Sumada confirmed this.

Mr. Meierdiercks asked whether the January Power Cost would be available in time for the Public Hearing in February.

Mr. Sumada confirmed that it would be available at that time.

H. WATER RATE STUDY:

The Board reviewed proposed water rate increases prepared by R.W. Beck, and schedule public hearing(s) to give the public an opportunity to comment on the proposed increases.

Mr. Sumada noted that the Board will have received copies of a letter that Mr. Sumada got from R.W. Beck. He said this is just something for the Board to look at, to compare with what current rates are.

Mr. Sumada said he is in the process of putting together the Fiscal Year 12 Budget, and he expects to be done by early February. The Budget will indicate the amount of revenues that DWS is projecting, and whether or not those revenues are going to be adequate to fund operations. Mr. Sumada suggested that the Board wait until Mr. Sumada gets those figures compiled before making a decision on what level of rate adjustments to make, beginning FY12.

Chairperson Mukai agreed that it was a good idea; there was no sense in jumping the gun. He said that Mr. Sumada would be coming back to the Board after finalizing the FY12 Budget, which will show what adjustments need to be made to the water rates.

I. **MONTHLY PROGRESS REPORT:**

No discussion.

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

Mr. Sumada noted that the auditors from Accuity LLP would be at the February 22, 2011, meeting to give their presentation on DWS's FY10 results. The report will be included in the packets that will be mailed to the Board ahead of next month's meeting in Kona.

Chairperson Mukai said the Board should be prepared for a long meeting next month.

K. **MANAGER-CHIEF ENGINEER'S REPORT:**

The Manager-Chief Engineer provided an update on the following:

- 1) Palani Road Transmission Waterline Project – The Manager-Chief Engineer said that the project engineer would check with the inspector regarding the concerns raised earlier in the meeting. The Manager-Chief Engineer reiterated that he did not say and never would say what Mr. Jernigan alleged earlier. Mr. Inaba said that the Department found that the pipe was not in the same location as initially thought (nor as included in the plans). Therefore, it is being redesigned. The Department in the meantime asked the contractor to reopen Mr. Jernigan's driveway while the redesign (and any new bidding) goes forward. Apparently, the contractor did go back and put in a temporary pavement as a driveway for the Jernigans. The Department will have the inspector go back and check. Chairperson Mukai asked about the Department allegedly having promised at the November Board meeting to meet with the Jernigans. (Mr. Jernigan said earlier that no one had met with them since the November meeting.) The Manager-Chief Engineer said that at the November meeting, DWS said the Department would have the *contractor* go up and fix things that he was supposed to; one of the concerns then was what Mr. Jernigan said was the unraveling of the paving that the contractor installed without DWS's inspection. Mr. Inaba said that when he went to the site, the condition of the paving was adequate to remain in place temporarily until the contractor finishes the project. DWS looks at it as a temporary pavement that is not something that the contractor would necessarily have to replace. DWS personnel drove the entire driveway all the way to the top, and the temporary paving is not unraveling. There are some ruts on the edges from the runoff, but that is about it. The Manager-Chief Engineer said DWS is on top of it, and does not want to be open to allegations that the Department has done nothing. DWS wants to get these problems resolved as soon as possible. Mr. Meierdiercks said that the concerns raised at the November meeting were indeed addressed and were covered in the December Minutes. It is on record that these concerns were covered at the December meeting. Mr. Meierdiercks noted that the Jernigans just added a few more concerns this morning. DWS will follow up on those concerns and report back to the Board on the progress. Mr. Meierdiercks said that while this is a project that the Board has approved, it is under the *Department's jurisdiction* and it is for the Department to deal with these problems directly. The public gives statements to the Board, and the Board notes those issues that the public brings up, but it is the Department that deals

with the concerns. These concerns are noted for the record, Mr. Meierdiercks added. Mr. Meierdiercks heard from DYK, Inc., that complained to him that the general contractor, CTS Earthmoving, Inc., had not paid them on time despite DYK having submitted their submittals to CTS. Mr. Meierdiercks asked the Department to check on CTS not keeping up with its payments to DYK. Mr. Inaba said the Department had followed up on that issue last week, and DYK has come up with an agreement for partial payment from the general contractor.

- 2) Hawaiian Ocean View Estates Project (including a report on the findings of the Legislature's Investigative Committee) – The Manager-Chief Engineer said that he and Mr. Inaba had gone to Honolulu to attend the final meeting of the Investigative Committee. Representative Herkes expressed surprise to see them there, yet Rep. Herkes had invited Ocean View resident Mr. Don Nitsche to the meeting. The Manager Chief-Engineer and Mr. Inaba testified regarding the progress of the project, etc. The contractor is currently working on the well site; the pipeline is all installed, and the contractor is now working on the fill station. The project is moving along on all fronts now that all of the permits have been obtained. The Manager-Chief Engineer mentioned a recent article in (the January 15, 2011) edition of the Hawai'i Tribune-Herald, regarding the project and the Investigative Committee's report. The article contained inconsistencies, and in response the Manager-Chief Engineer drafted a letter which Chairperson Mukai edited. The Manager-Chief Engineer said there were two things that he wanted to assure the Board. One is that DWS wants more than anyone to complete this project, and is doing its utmost to finish it. The other thing involves the report's questioning of DWS's standards: DWS has standards that have stood the test of 50 years' experience, with regard to the type of materials that DWS uses. DWS does not use plastic pipe, as espoused in the report, because such material cannot withstand rough lava and other conditions prevalent here. The Manager-Chief Engineer took issue with the article's implication that progress on the project has only been made because of the Investigative Committee. The project has moved forward since Day One, but the public could not perceive visible signs of progress during the design phase, and could only see things happening once the construction phase began. The Manager-Chief Engineer said everyone is pleased that this *visible* progress is being made. Chairperson Mukai noted that in Item 2 of the report, there is mention of an agreement between DWS and the Ocean View community on the ongoing operation of the fill station; he suggested that DWS should start communications on this early. The Manager-Chief Engineer said that a while back he had told the Board that the Board would need to decide at some point whether DWS will accept the dedication of the system if the County gives it to DWS. The second issue is whether the Board will establish a special rate for the Ocean View area, because the well is 2,000 feet in elevation. The Manager-Chief Engineer took issue with the report's allegation that the project was done improperly because there was no formal agreement between DWS and the County. Corporation Counsel has pointed out that the County Charter says that DWS is under the direct supervision of the Mayor, who has the authority to tell DWS what to do. Therefore, it is a false statement to say that an agreement is necessary; it is not necessary. The Manager-Chief Engineer reiterated that DWS is doing everything possible to get the project done quickly.
- 3) 2011 Water Board Schedule – Revised with new Kona venue from May 2011 – The Manager-Chief Engineer said that the schedule has been revised to show that the Board will be meeting in the new Kona Civic Center's meeting room (from **May** 2011) for its Kona meetings. This will save DWS a lot of money, which otherwise would be spent on renting meeting space at Royal Kona Resort. The Kona Civic Center facility, as County property, is free, the Manager-Chief Engineer said. *Please note: The February 22, 2011 Water Board meeting will be held at the Royal Kona Resort, Resolution Room.*
- 4) Public Relations and Education Specialist Update – Ms. Aton noted that the letter to the editor mentioned earlier had still not appeared in the newspapers, Hawai'i Tribune-Herald and West Hawai'i Today. The reason for the delay could be due to fact-checking by the papers, she said.

On DWS's conservation initiatives, Ms. Aton said that there is a rebate program funded through the Public Utilities Commission (PUC) that offers \$50.00 rebates for water-efficient clothes washers. DWS has a strategic conservation aim for water-poor areas where it is expensive to produce water. However, for DWS, conservation is a double-edged sword amid a downturn in water consumption, which adversely affects DWS's revenues. DWS is in a quandary whether to promote the rebate program, through DWS's billing, to areas that use a lot of water and where water is expensive to produce, while not promoting to *all* of DWS's customers. Regarding DWS's 2011 calendars, DWS cut production in half amid financial constraints. Ms. Aton said that one side of the calendar served as an advertisement of DWS's available rental space at Waiākea Office Plaza. The calendars customarily also provide DWS contact numbers and acts as a reminder to customers to pay their water bill. The Department cut back calendar distribution to walk-in customers at the baseyards and the payment window; 188 calendars were available to these customers, she said. Ms. Aton reported that her next Water Education for Teachers (WET) workshop would be held this Saturday, with support from the Kauai Department of Water Supply. The Project WET initiative looks at a long-term vision of conservation, she said. Ms. Aton noted that Mayor Billy Kenoi had requested all Cabinet members to attend his State of the County speech this Thursday in Kona and Hilo. Ms. Aton reported that the Department's Emergency Communications Preparations are now in Phase 2, with 51 members of the Department signed up to receive emergency communications through email, home or mobile phone services. This list of people will be input into a database and integrated into Civil Defense's software. (Phase 1 of this program, already completed, involved compiling a list of personal contact information for all Division heads and their emergency points of contact, onto a single spreadsheet for the Manager-Chief Engineer, Deputy and Division heads.)

- 5) Upcoming HWWA and AWWA conferences – The Keauhou Beach Resort has been selected among four Kona hotels to host the 50th annual HWWA conference from October 12-14, 2011. The theme is under discussion, and will be put to an email ballot by staff. Ms. Aton said she is hopeful that the Department of Health (DOH) will kick in its usual grant, which last year was the full \$25,000.00 grant amount. Mr. Inaba said that DWS will need to contact DOH to see where the grant opportunities are this year. DOH has grants available for specific topics, he said. DWS has always included DOH in the program, giving DOH-sponsored speakers virtually a full day so that DOH can justify the grant monies to the conference. The Manager-Chief Engineer said DWS probably will not know about the grant until DWS formulates the programs and gives it to DOH for review, and then DWS will make any necessary changes. Regarding the AWWA conferences, the AWWA Hawai'i Conference is normally held on Oahu sometime in May. The national AWWA conference this year will be held in Washington, D.C., beginning on June 12, 2011. The Board is budgeted to send three members to the Washington conference, the Manager-Chief Engineer said.
- 6) Employee of the Quarter -- The Employee of the Quarter for the 4th Quarter of 2010 is Mr. Garret Okui, Pipefitter. Mr. Okui injured his back several years ago and in the meantime has been positively doing light duty work in DWS's Hilo storehouse, updating DWS standards, etc. He was unable to attend today's meeting, so Mr. Okui's supervisor will present him with his plaque and trophy, Mr. Ikeda said.

L. MANAGER-CHIEF ENGINEER'S COMPENSATION:

The Manager-Chief Engineer said that given the status of the economy, he did not think it was appropriate to consider additional compensation for the Manager's position at this time. He asked that the Item be taken up again in July once the new Budget is in place.

Chairperson Mukai said the Board could table this Item. He asked if the Deputy was in agreement with the Manager-Chief Engineer's statement.

The Manager-Chief Engineer confirmed that the Deputy concurred.

Chairperson Mukai said that the Item would be tabled until further notice.

M. CHAIRPERSON'S REPORT:

Turning to Board members' attendance at the national AWWA conference, Chairperson Mukai said that three positions were appropriated, based on the Board's travel guidelines. Eligibility to attend is based on position held on the Board, committee position and seniority of tenure. Based on the guidelines, the three people were the Chairperson, Vice-Chairperson Meierdiercks and Mr. Taniguchi, who heads the Ad Hoc Finance Committee. Mr. Meierdiercks is unable to attend, so the next person in line is Mr. Lindsey. However, no word has been received from Mr. Lindsey. If Mr. Lindsey is unable to attend, the next person on the list is Mr. Reynolds, Chairperson Mukai said. Mr. Reynolds said he did not want to go. Chairperson Mukai said that according to the guidelines, members who decide not to attend the national conference or who were unable to go, will be offered a spot at the Hawai'i AWWA conference on Oahu from May 2-5, 2011. Chairperson Mukai asked how many positions were authorized to go to the Oahu conference.

The Manager said the Department would check to see how many positions were authorized.

Chairperson Mukai said that members who travel to the national conference will not be going to the state conference, and attendance at the state conference will also be based on position held and tenure on the Board. Although all of the members have received copies of the travel policy, the Secretary has additional copies available on request.

N. DISCUSSION WITH CORPORATION COUNSEL REGARDING COUNTY COUNCIL CHANGES TO HAWAI'I COUNTY CHARTER, CHAPTER 29:

Ms. Garson said there was no need to hold an Executive Session because the County Council passed the Water Use and Development Plan via ordinance last Thursday. She noted that prior to the Council meeting, a Council member had proposed last minute changes to the Chapter 29 of the Hawai'i County Code regarding setting policy for the Department of Water Supply. Ms. Garson and DWS staff testified against the amendment, and the amendment failed. Ms. Garson said that she had had to put this Item on today's Agenda in case the amendment passed, to determine what course of action the Board wanted to take. Now that the Water Use and Development Plan has been adopted, the next step is to go to the State, Ms. Garson said.

O. CLAIM BY JERRY YAHIKU RE: CLAIM 10-0071 – DATE OF INCIDENT: DECEMBER 2, 2010:

The Water Board had anticipated the need to convene an executive meeting, closed to the public, regarding the foregoing matter, pursuant to HRS Sections 92-4 and 92-5(a)(4), for the purpose of consulting with the Water Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities.

ACTION: Mr. Meierdiercks moved to go into Executive Session, seconded by Mr. Reynolds, and carried unanimously by voice vote.

The Executive Session began at 12:13 p.m., and the regular meeting reconvened at 12:15 p.m.

ACTION: Mr. Meierdiercks moved to approve Corporation Counsel's recommendation, seconded by Mr. Perry, and carried unanimously by voice vote.

ANNOUNCEMENTS:

1. Next Meeting:

The next meeting of the Water Board will be held on February 22, 2011, at 10:00 a.m. at the Royal Kona Resort, Resolution Room, 75-5852 Ali'i Drive, Kailua-Kona, HI. (This meeting will be preceded by a Public Hearing on the Power Cost Charge at 9:45 a.m.)

2. Following Meeting:

The following meeting of the Water Board will be held on March 22, 2011, at 10:00 a.m. at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

Mr. Kaneshiro asked if the Chairperson would be appointing an ad hoc committee to look into the format of the Manager-Chief Engineer's Performance Evaluation Form.

Chairperson Mukai said that a Board member could volunteer to come up with a proposed format, or the Board could form an ad hoc committee to do so. He added that he was not sure if he wanted to form a committee.

The Manager-Chief Engineer noted that the evaluation form was originally obtained from Kauai, which had very little changes made by the Board.

Ms. Garson suggested either discussing the evaluation form during next month's Chairperson's Report, or agendaizing it as a separate Item.

Chairperson Mukai suggested putting the Item on the March 22, 2011, Agenda, noting that there was going to be a full plate for the February Agenda.

Mr. Kaneshiro said the Board should include the Manager-Chief Engineer in the reformatting of the evaluation form, to have the Manager-Chief Engineer's agreement upon what criteria he is evaluated and what goals he should have.

Mr. Reynolds noted that he had asked where the job description for the Manager-Chief Engineer could be found in writing.

The Manager said that the job description is in the County Charter.

Mr. Reynolds asked if there were any other place that the job description could be found. Normally, if the Board were seeking a new Manager-Chief Engineer, there would be a job description so that applicants can know what they needed to do, assuming that the job was open to outside applicants.

The Manager-Chief Engineer recalled that there was a job description published when the Manager-Chief Engineer was selected in 1995. He said the Department could research it.

Mr. Reynolds said that with most jobs, the job description was one of the criteria used to determine whether the person is succeeding in what he is attempting to do.

Ms. Garson said the topic of the job description could be taken up during the Board meeting in March. Hopefully, there will be more information to share at that time, she said.

Mr. Perry said he had attending the opening of the new Legislative session, where Senator Josh Green told him that the Legislature had appropriated money for a well in Kona. The appropriation had been stuck and had remained on the Governor's desk, but Sen. Green told him he wanted to see the Kona well appropriation go forward. Mr. Perry did not have details on the well, but he said that Sen. Green told him he wanted to see the water utilized if the funds are appropriated or distributed by the Department.

Mr. Inaba said that DWS was in the process of writing a request to the Governor.

Ms. Garson suggested putting an Item regarding the Kona well on the February 22, 2011, Agenda.

The Manager-Chief Engineer noted that DWS had not received money from the Legislature in 15 years or so. He said he did not know what Sen. Green was referring to, but added that monies may have been appropriated but never released.

Mr. Inaba agreed that the funds had not been released; DWS must make a request.

Mr. Perry said that with a new governor, the monies could actually be released.

Chairperson Mukai asked Mr. Inaba to give the Board an idea of what DWS is requesting at the February 22, 2011, meeting. Changing the subject, the Chairperson reminded the Board to submit their financial disclosure statements to the Secretary no later than January 31, 2011.

STATEMENTS FROM THE PUBLIC:

None.

ADJOURNMENT

Chairperson Mukai adjourned the meeting at 12:22 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 Jollimore, 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.