

**MINUTES**

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

February 25, 2014

West Hawai'i Civic Center, Community Center, Building G, 74-5044 Ane Keohokalole Hwy, Kailua-Kona, HI

MEMBERS PRESENT: Mr. Kenneth Kaneshiro, Chairperson  
Mr. Rick Robinson, Vice-Chairperson  
Mr. Russell Arikawa  
Mr. David Greenwell  
Ms. Brenda Iokepa-Moses  
Ms. Susan Lee Loy  
Mr. Delan Perry  
Mr. Craig Takamine  
Mr. Jay Uyeda  
Mr. Quirino Antonio, Jr., Manager-Chief Engineer, Department of Water Supply (ex-officio member)

ABSENT:

Mr. Warren Lee, Director, Department of Public Works (ex-officio member)

OTHERS PRESENT: Ms. Kathy Garson, Assistant Corporation Counsel  
Mr. Duane Kanuha, Director, Planning Department (*attending National Parks Service presentation*)  
Mr. Jeff Zimpfer, National Parks Service  
Ms. Tammy Duchesne, National Parks Service  
Mr. Jonathan Likeke Scheuer, Consultant for National Parks Service  
Mr. Monty Richards, Hawai'i Conference Foundation  
Mr. John Richards, Hawai'i Conference Foundation  
Mr. Roy Hardy, Commission on Water Resource Management  
Mr. Peter Young  
Mr. Bob Akinaka  
Mr. Aaron Chung  
Mr. Riley Smith, Lanihau Properties, LLC  
Ms. Nancy Cook Lauer, West Hawai'i Today  
Mr. Dru Kanuha, Hawai'i County Council member  
Ms. Karen Eoff, Hawai'i County Council member  
Ms. Jennifer Benck, Attorney for Kahuku Development Foundation  
Mr. Patrick Kubota, Kahuku Development Foundation  
Mr. Alton Kimura, Kahuku Development Foundation  
Mr. Tim O'Connell, USDA  
Mr. Keoki Wilkins  
Mr. George Wilkins  
Mr. John Miller  
Mr. Dennis Newell  
Mr. Ian Lee Loy  
Mr. Brian Brick  
Mr. George Baker

Mr. Carl Carlson

Department of Water Supply Staff

Mr. Keith Okamoto, Deputy

Mr. Kurt Inaba, Engineering Division Head

Mr. Richard Sumada, Waterworks Controller

Mr. Daryl Ikeda, Chief of Operations

Ms. Kanani Aton, Public Information and Education Specialist

Ms. Julie Myhre, Energy Management Analyst

Mr. Jason Killam, Engineering Division

Mr. Kawika Uyehara, Engineering Division

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- 1) CALL TO ORDER – Chairperson Kaneshiro called the meeting to order at 10:02 a.m. The Chairperson introduced the newest Board member, Mr. Craig Takamine. Mr. Takamine gave his background as a lifelong resident of the Big Island, Waiākea High School graduate, and general contractor for the past 10 years. He is married with two children.

- 2) STATEMENTS FROM THE PUBLIC

The following statements are verbatim.

*(Mr. Carl Carlson testified regarding Item 7(A), NATIONAL PARK SERVICE PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA.)*

MR. CARLSON: Thank you, Mr. Chairman, members of the Board. My name is Carl Carlson and I live in Kaloko Mauka. I was born on Maui, but moved to this island in 1968, came to North Kona at the end of '69 to become the Ranch Manager at what was at the time Huehue Ranch. My wife Christine and I have four children, all of whom were born in Kona Hospital, and all live on this island; two here in North Kona. We have six grandchildren, and the older two of school age attend Kamehameha Schools. During my career as a rancher, I've worked with a number of water sources. We have used sources such as catchment, springs, intermittent streams, ponds, County water systems and eventually, water from private wells that we developed. Responsible ranchers understand nature, and protect their land and water resources. Stewardship isn't an aspiration; it's a way of life. Eventually, my career moved from dealing with ranch water systems to planning and development of potable and irrigation systems, and systems for small subdivisions, and eventually resorts. We've developed and operated high-elevation wells for potable water, lower elevation brackish water wells for irrigation or for potable use with desalinization. I've been involved in water quality monitoring in near-shore waters, monitoring of anchialine ponds, and shoreline monitoring wells. Some of my experience in this regard goes back to the early 1970s at Kaloko Pond with Dr. Richard Brock. I present all of this background information to show that I've spent a lifetime working for and caring for water as a resource. I understand how important management of the resource is for providing and maintaining for our community. I was disappointed to see the National Park Service submit a petition to CWRM to declare the Keauhou Aquifer as a Water Management Area. In my opinion, this petition is premature, and isn't necessary to protect and preserve the quality of the water resource in the Keauhou Aquifer. The management and regulatory tools to do so are already in existence, and in place within CWRM. I'm further concerned that the efforts of the National Parks Service seem to seek designation – these efforts are divisive in our community. These actions seem to pit some stakeholders against others. We should advocate for the resource, for its proper management and protection, and we should do so for the benefit of our entire community. You as Board members do that in meeting your mission of providing for and servicing your customers in the community in a responsible manner, now and in the future. It has been represented that designation would be the reasonable thing to do, but that sounds almost too easy. That misstates the impact of designation. Is it reasonable at this time, or is it unreasonable? I believe that designation would be an unreasonable action, and that it would be detrimental

to our community. Thank you for the opportunity to appear before you, and I'd be happy to try to answer any questions you may have. Thank you.

CHAIRPERSON KANESHIRO: Thanks, Carl. Okay, next we have Riley Smith, who's gonna speak on the NPS petition.

*(Mr. Riley Smith, representing Lanihau Properties, testified regarding Item 7(A), NATIONAL PARK SERVICE PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA.)*

MR. SMITH: Good morning, Chair Kaneshiro and Water Board members. My name is Riley Smith. I think each of you should have a copy of my testimony, so you can follow along as I read it. I'm the President of Lanihau Properties, and am providing testimony concerning Item No. 7(A) on today's Agenda. For your information, I am also the CEO for the combined family enterprise that includes Palani Ranch, with pastures of about 10,000 acres mauka in the Hōlualoa area. We have been stewards of lands in North Kona since the early 1900s, and we used to own the entire ahupua'a of Honokōhau, which included the portion that was sold to the federal government for the Kaloko-Honokōhau National Park. I understand that the National Park Service is providing a presentation to the Water Board at today's meeting. I would like to share my thoughts from last week's County Council meeting, where the National Parks Service also made a presentation. I attended the County Council's site visit to the Kaloko-Honokōhau National Park, which later reconvened as part of the Council's Committee on Agriculture, Water and Energy Sustainability. At this meeting, Jonathan Scheuer, who is a consultant to the National Parks Service, who will be speaking to you later today, Paula Cutillo, who I do not believe is here...she's a Ph.D/Hydrologist for the National Park. Tammy Duchesne, their Superintendent, was asked by Council member Valerie Poindexter, whether the National Park Service has shared their water quality with the other Kona stakeholders – land owners, developers and County agencies. They said they did. This is not true. Jeff Zimpfer, who's also a staff member NPS Environmental Protection Specialist, was at this County Council meeting, who's also present today, and I think he's part of your presentation. As a member of the Kona Community Development Plan, Action Sub-Committee, Sub-Committee on Water, I along with Chair Ken Melrose met with Jonathan Scheuer, Paula Cutillo, Sallie Beavers, Jeff Zimpfer, and former Superintendent Kathy Billings on January 16, 2013. We met on various water issues for over two hours. During this meeting, I asked the National Park representatives for access to their water quality data that they have collected at the Park since 2008. Ms. Cutillo's response was, "We have two ongoing studies being conducted. Delwin Oki's work for USGS, that should be completed in 2014. Also a Geochemistry/Isotopic analysis that is being jointly funded by USGS/CWRM that should be done in 2013. Data that was collected since 2008 is still being checked for quality assurance/quality control, and should be released for public use at some time in the future." I questioned why it takes over five years for the NPS to "calibrate" their data. Ms. Cutillo said it takes a long time. For your information, when Lanihau conducted our Environmental Assessment for our Palani Well in 2009 – and this is a system that we're finishing up now that we intend to dedicate to the Department of Water Supply this summer that will enable you to extract less water from the Kahalu'u Shaft and have more sources in North Kona that are closer to your customer base. When we submitted that Environmental Assessment in 2009, the National Park Service submitted an 11-page comment letter on May 7, 2009. My consultants...which included Ron Terry, who's a Ph.D... prepared a 33-page reply to the National Park's comments. The testimony that was provided included scientific studies from Tom Nance of Water Resource Engineering, Steve Montgomery, a biologist who's a Ph.D, Steve Dollar, who's also a Ph.D...We submitted our 33-page response on October 5, 2009, four months after they submitted their 11 pages to us. This Environmental Assessment required that the Water Board be the accepting agency for this document; it was accepted by the Water Board later in October, 2009. So we met the obligations of the environmental disclosure process in a timely manner. My point is that it is not fair that a private landowner is required to be responsive to public comments, and publicly-funded agencies can take over six years, and still not share information that was obtained through government resources.

I also understand that the National Park Service has not provided information to other stakeholders in the region, including the Department of Water Supply and the Kohanaiki project. As you may know, the Kohanaiki project is required to conduct regular water sampling from their on-site wells in order to monitor quality. My understanding is that data is shared with the National Park Service, yet the National Park Service has yet to reciprocate and provide similar information back to their adjacent landowner. So, I question the accuracy of their statements that they share their water quality data, since they haven't. And I'm still waiting for six years for them to share it with me. I'm available if you have any questions. If not, thank you very much.

CHAIRPERSON KANESHIRO: We also received a statement on the NPS petition from Nancy Burns. I understand she's not here, and so we're gonna note it in the record.

3) APPROVAL OF MINUTES

The Chairperson entertained a Motion to approve the Minutes of the January 28, 2014, Water Board meeting.

ACTION: Mr. Greenwell moved to approve; seconded by Mr. Arikawa and carried unanimously by voice vote.

4) APPROVAL OF ADDENDUM AND/OR SUPPLEMENTAL AGENDA

The Chairperson entertained a Motion to approve Supplemental Agenda Item 5(A), VEHICLE BID NO. 2013-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY.

ACTION: Mr. Arikawa moved to approve; seconded by Mr. Perry and carried unanimously by voice vote.

Ms. Lee Loy asked that Item 7(A), NATIONAL PARKS SERVICE PRESENTATION ON ITS PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA be handled next.

7) NORTH KONA:

A. NATIONAL PARKS SERVICE PRESENTATION ON ITS PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA:

Ms. Tammy Duchesne, Superintendent of the Kaloko-Honokōhau National Historical Park and Pu'uhonua-Honokōhau National Historical Park, introduced Mr. Jonathan Likeke Scheuer, a Ph.D. scientist who is working with the NPS on the petition issue.

Mr. Scheuer noted that he had distributed copies of his Power Point presentation today to the Board, with some copies also available to the public. Mr. Scheuer said for the past couple of decades, his professional career centered on water resources issues, particularly as they relate to the Native Hawaiian community and its concerns. He noted that he briefly worked with Board member Mr. Robinson at Kamehameha Schools. He said that he has been working with NPS on water resource issues since 2011.

Mr. Scheuer said that he wanted to fully acknowledge Mr. Carlson's earlier comment that some people view what NPS has been doing as disruptive and divisive in the community. Mr. Scheuer said that he knew that some people feel that way. It has not been NPS's intention to do so, he said. He said that NPS fully appreciates that the issues that NPS is raising are far outside the day-to-day business of the Water Board and the Department of Water Supply (DWS). He said that NPS is grateful to DWS for its kindness and dedication in its interactions with NPS. Turning to Page 2 of the presentation, he said that the missions of DWS and NPS meet, but do not overlap. Mr. Scheuer said that DWS's mission is to provide

customers with an adequate and continuous supply of safe drinking water in a financially responsible manner, in compliance with relevant standards; DWS also assists the development of water systems in areas not served. On the Big Island this last part of the mission is a huge challenge, he said. He said the core mission of the NPS is to preserve natural resources unimpaired for future generations. Mr. Scheuer said that the missions of DWS and NPS do not overlap, but sort of meet, on the issue of water in Kona.

Page 3 of the presentation dealt with three things, he said. The first is the significance of water at Kaloko-Honokōhau National Park, the second is an overview of Hawai‘i water law, as a context for understanding the third thing: what designation is. Mr. Scheuer said that designation is something that the audience may not be familiar with, because no area on the Big Island has ever been designated. Mr. Scheuer said he wanted to talk about the petition that NPS filed, and how NPS thinks it might relate to DWS’s operations.

Mr. Scheuer turned to Page 4, showing the cover of the Spirit Report and its cover letter. He explained that in the late 1960s and early 1970s, Native Hawaiians in the community, particularly the Kona Hawaiian Civic Club, became concerned about development plans for the coastline near Kaloko. They lobbied then-Rep. Patsy Mink to get national park status protection for the area. A commission was appointed in the early 1970s to produce a report on whether or not this area deserved national park status. The Spirit Report they produced is 40 years old this May. The report said that this area is worthy of protection as a national park, and ruled that the area should be managed in an ahupua‘a context (i.e., focusing on everything around). The report said that attention should be paid to water, which is crucial to the future of this area. Congress created the National Park in 1978, and the law that created it stipulated that the park should be managed the same as any other national park, under the same federal laws. Among those laws that apply to Kaloko-Honokōhau National Park and every other park involve the idea of unimpairment, meaning to prevent harm from happening so that resources will be there for future generations. The law that created the park also stipulated that the park should be managed in accordance with the Spirit Report’s recommendations. He said that is what NPS has tried to do since the park’s inception.

Page 5 shows some of the water resources that are of significance in the park: wetlands, fish ponds, the near-shore environment, and anchialine pools, which Mr. Scheuer said are really windows into the aquifer.

Page 6 shows a thermal image, with the blue and green in the picture representing fresh water. That is fresh water coming in from the coastline through the Park resources, into the near-shore environment. (He noted that there is no *surface* water that flows in this area, except during major storm events.) That cold fresh water creates estuarine-like conditions (i.e., like a river mouth), which are good for the species that live in the park. Those species, which include opae, mullet, etc., depend on the continued flow of abundant cold, clean, fresh water.

Page 7 shows Ali‘i O Lani Hale, the home of the Hawai‘i Supreme Court and the former home of the Kingdom’s Legislature. He used the photo to segue into a discussion of Hawai‘i water law, some of which dates back to Kingdom laws, practices and court decisions, as well as Hawai‘i Constitutional provisions and statutory laws, and more recent Hawai‘i Supreme Court decisions. The easiest way to think about the evolution of Hawai‘i water laws over the past 160 years is that they have gone in a circle, Mr. Scheuer said. Land was privatized during the Great Mahele from 1848 to 1852, with the aim of the Legislature and the King being to help the Kingdom’s subjects. They believed that private *land* ownership would help the people. However, the Mahele was explicit in not privatizing water, he said. Before the Mahele, the King owned all of the property in Hawai‘i in trust for everyone’s use, Mr. Scheuer said. With the Mahele, land was privatized, but water was not. Mr. Scheuer said the King considered water as a public trust resource from which everyone should benefit. However, after the Mahele, Hawai‘i saw the growth of large ranches and plantations, with increasing economic and political power wielded by the plantation interests. A series of court decisions in Hawai‘i, beginning in the late Kingdom period through the Territorial period, treated water as private property; people could buy and sell water rights. This ended up taking away water from local communities, including Native Hawaiian communities. The view of water as private property

prevailed until the early 1970s, when local people such as William Richardson, a part-Hawaiian, were back on the Hawai'i Supreme Court. The view of water changed back to where it was seen as a public trust, Mr. Scheuer said. In 1979, Hawai'i's Constitutional Convention proposed a series of amendments which reaffirmed that water is a public trust, and these amendments were ratified by Hawai'i voters. The amendments stipulated that within a year, a Water Commission must be created, as well as a Water Code. However, it took nine years for the Legislature to agree to a Water Code.

Page 8 of the presentation shows the seven sitting members of the board of the Commission on Water Resource Management (CWRM). Mr. Scheuer said CWRM has had a mixed history as trustees of the water trust. He noted that most of the Commission's cases have been litigated, and the Commission has lost in every case on its initial decision. Mr. Scheuer said that this was mostly because the Commission did not take full responsibility and did not take enough care in managing the public's interest in water, rather than private commercial interests in water.

Turning to the reason it took nine years for the Legislature to agree to a Water Code, Mr. Scheuer said that one of the main reasons involved a dispute in Maui County over the designation of the 'Īao Aquifer. The County opposed designation, seeing it as a loss of home rule because it would mean that the State would have permitting authority in their area. Therefore, Maui fought over how the Water Code would be passed, he said. The resulting Maui Compromise set up a dual system of water management in Hawai'i. In undesignated areas, the State would passively manage water, but the State would not actively manage water. Only in designated areas would the State take an active role in making sure that there is a balance between public trust interests and other interests in water, Mr. Scheuer said.

Designation is covered by an entire section of the Water Code, Mr. Scheuer said. There are eight criteria that CWRM must look at when considering designation; if one or more of the criteria is met, CWRM must designate. However, Mr. Scheuer said that *even if none of the criteria were met, designation could still be mandated*. He cited the introductory language of the Water Code: "When it can be reasonably determined, after conducting scientific investigations and research, that the water resources in the area may be threatened by existing or proposed withdrawals or diversions of water, the Commission shall designate the area for the purpose of establishing administrative control..." Mr. Scheuer said that when talking of designation, it is this process where CWRM ultimately decides whether or not the Commission feels that the resources in the area *may* be threatened.

Mr. Scheuer noted that all of Oahu, except for the Wai'anae Aquifer, is designated as a Ground Water Management Area. The entire island of Moloka'i is also designated as a Ground Water Management Area, as is the 'Īao Aquifer on Maui. On Moloka'i, the designation was mostly driven by the concerns of Native Hawaiians and Hawaiian Homesteaders, Mr. Scheuer said. There is also one Surface Water Management Area, on Maui.

Mr. Scheuer said that while designation is a complex issue, in essence the only difference between a designated area and an undesignated area is that a designated area requires one additional permit, to be obtained from CWRM. Right now, if someone wants to put in a well in an undesignated area, one must get two permits: a Well Construction Permit and a Pump Installation Permit. These permits are reviewed for engineering purposes, to ascertain whether the proper licensing was obtained, whether the pump was tested, etc. For a designated area, you also need to fill out a **Water Use Permit** application. The application asks questions such as the following:

- Is the proposed use of the water consistent with the County Land Use Designation and Zoning for the parcel?
- Is the proposed use of water in the public interest?
- Is the proposed use reasonable? (Mr. Scheuer said this essentially means: Is it efficient? Are you proposing to irrigate turf grass at ten times the rate of water of any other user similarly situated in the State, or are you being an efficient user of water, using the least amount possible?)

- Are you affecting the rights of water to the Department of Hawaiian Home Lands (DHHL)?
- Are you impacting other additional users?

Mr. Scheuer said that the Water Use Permit is not issued by staff the way that Well Construction and Pump Installation Permits are issued; the Water Use Permit is issued by the Commission on Water Resource Management at a public meeting. That is the one additional permit that is required in a designated Ground Water Management Area.

Mr. Scheuer, showing a map of the Big Island's aquifers, pointed to the Keauhou Aquifer, which is the focus of the NPS petition. He said that no other aquifers are involved in the petition; what NPS is asking has nothing to do with any of the other areas of the Big Island.

Addressing the impact of designation on DWS, Mr. Scheuer said there is very specific language in the State Water Code regarding designation and its relationship to County Boards and Departments of Water Supply. He quoted Section 174C-48(b) of the Water Code: "In its regulation of water resources in designated water management areas, the Commission (of Water Resource Management) shall delegate to the County Boards of Water Supply the authority to allocate the use of water..." He said in other words, DWS has to get a permit just like anybody else gets a permit. Because most of DWS's water uses are domestic uses of the general public whereby the public uses the water in their homes, these are public trust uses. DWS gets its permits, and then distributes the water within the system. CWRM does not dictate to DWS how that happens; it is specifically delegated to DWS under the Water Code. Mr. Scheuer said he did not want to diminish or give the impression that that there is nothing complicated about designation. He acknowledged that there are some legitimate concerns that the Water Board might have about the designation process. One of the more significant concerns came up last week when the Manager-Chief Engineer was asked at the County Council about water agreements that the Department has issued with private parties in the Keauhou area. Some of the Council members were concerned about how designation might affect those water agreements. Mr. Scheuer said that the Manager-Chief Engineer said that if it got to the point that nearly all of the water was allocated – while DWS had committed to deliver water to somebody else – and CWRM declined to allow development of that new water source, DWS might be subject to litigation. Mr. Scheuer said he thought that it is good to consider what DWS's future commitments are, and how to make sure that those commitments do not get DWS into trouble. He said that it needs to be ensured that there is sufficient water for development, as well as for protecting public trust interests, before DWS is committed to things that are not available.

Regarding how designation might affect DWS, one thing is clear in Hawai'i law: the public trust in water applies statewide; it applies in designated areas and in undesignated areas, Mr. Scheuer said. He noted that CWRM only manages water, and only gets involved in permits for designated areas. He said that several years ago, Hawai'i County voters passed a Charter amendment that took the public trust language from the Hawai'i State Constitution, and incorporated it into the County Charter. Mr. Scheuer said the language essentially said that just like the State of Hawai'i has public trust obligations to national resources, the County and all of its agencies do as well; therefore, there is a duty on the part of all County agencies and decision-makers to take into account the public trust interest in resources before making decisions about them. He noted litigation such as Kelly v. Oceanside Partners, in which the County issued permits that caused mudflows that contaminated the reef; the plaintiff claimed that the County failed to fulfill its public trust obligations by issuing those permits. He said that while the County claimed that it was the State that had public trust obligations, the judge ruled that the County, as a subdivision of the State, had those obligations, too. He also cited a case on Kaua'i involving a private water bottler bottling water from an old plantation system, selling the water as Kaua'i Springs Water. The Kaua'i Planning Commission, when asked to issue the bottler additional permits, raised questions about whether public trust interests and Native Hawaiian rights were being harmed.

Mr. Scheuer said it was just his opinion, but if Keauhou Aquifer remains undesignated for years or decades, DWS and the Water Board will have an obligation to start weighing the public trust impacts vis a vis the Department's need to provide water for its customers. There is a lot of analysis and duties involved in that, he said. He said that CWRM knows how to advance these public trust impacts, which is something that would actually allow DWS and the Water Board to focus on the Department's core business mission, which is *not* determining public trust impacts. He said that public trust impacts are not within the background or training of DWS or the Water Board. Instead, it is how to efficiently manage a water system and prevent breaks, Mr. Scheuer said.

Mr. Scheuer completed his presentation by noting that the NPS petition was filed in September 2013, and CWRM in October 2013 decided to wait until new studies are done by the University of Hawai'i and the U.S. Geological Survey (USGS). As noted earlier by Mr. Smith, one study is an isotope study, and the other is a modeling study. The results will not be issued until September 2014. CWRM wants the chance to evaluate the study results, and voted to defer any further action on the NPS petition until December of this year. Mr. Scheuer said he viewed the delay as a gift; he is grateful to the people who have testified here today, and to all of the people in attendance at all of the recent hearings. He said this delay is a good chance to talk story, and hopefully reach some common ground. He said that if NPS has done anything to make people feel like NPS is not listening or is being purposefully divisive, this delay is a chance to clear the air and talk about what everybody here cares about: the sustainability of water in Kona, for productive use, for new development, for domestic users, as well as for the protection of the natural environment.

Ms. Iokepa-Moses said that Mr. Scheuer gave a beautiful presentation. However, she noted that Mr. Smith had asked the NPS questions in his testimony earlier, in hopes of getting information to help him decide whether to support the NPS petition. She said that Mr. Scheuer did not give him any information. The talk-story is a two-way conversation, and when someone asks Mr. Scheuer a question, that person expects Mr. Scheuer to answer that question. Ms. Iokepa-Moses said she did not see that happening here; she saw a beautiful presentation, but she did not hear any answers to Mr. Smith's questions. She said that the National Park is itself a trust; it is a part of everyone. Mr. Smith is as important as the NPS. If the NPS were asking question, it would expect an answer, and vice versa. She asked Mr. Scheuer to address that.

Mr. Scheuer thanked Ms. Iokepa-Moses for her comments, and wished that Dr. Paula Cutillo, who handles data-gathering issues for the NPS, were in attendance. Mr. Scheuer said he was very gratified to hear Mr. Smith's testimony, specifically regarding the data he was asking for. NPS has three monitoring wells within the park; some of the wells take continuous data on chlorides as well as other things. The processing of the raw data goes to a different branch of the National Parks Service, the Inventory & Monitoring program (known as I & M). Mr. Scheuer agreed that it was unacceptable that it is taking so long for the data to get processed and made available. He said there is an absolute commitment to share that data. He acknowledged that people have recently been saying that NPS is not sharing all of its data. He attested that he and his colleagues have tried to share all of the available data. He said that the data that Mr. Smith is looking for is not in his colleagues' hands; they are not legally allowed to release the data yet. Turning to Ms. Iokepa-Moses's comment about talking story, he said everybody can improve at listening and talking story. Mr. Scheuer said that when the data in question comes in, he hopes that the data will show that there has been no impact so far on the Park's resources. He said he really hopes that the data shows that there is not contamination coming in to the Park's water. Mr. Scheuer said that if the data shows pollution coming in or rapidly increasing chlorides, NPS could get sued by more radical environmental groups alleging that NPS had failed to abide by Park Service laws. These groups might complain that NPS should have filed a petition six years ago. He said that NPS is trying to do a balancing act. Once the I & M data is available to share, there is an absolute commitment to share it. He said that he believed that his colleagues have shared all the data that is available to share, but he asked the audience to notify him if there is some information out there that has not been shared.

Mr. Uyeda noted that Mr. Smith had said that NPS shared data with DWS and other stakeholders during last week's meeting of the County Council Committee on Agriculture. He asked what data was shared by NPS.

Mr. Scheuer said that NPS has some monitoring data from the same three wells mentioned earlier; that data has been processed. NPS has provided that data to anyone who has asked for it. USGS does not share their data when it is in the pre-publication stage pending peer review. Once the USGS data becomes available, NPS will share it. He noted that UH scientists also collect data, but NPS itself collects an extremely limited amount of data. Mr. Scheuer said that because Dr. Cutillo was not present, he could respond in writing and provide a full list of all of the data that NPS has generated. This will make clear what data is publicly available.

Mr. Robinson said he was really bothered by the application for designation of Keauhou Aquifer. He said he remembered writing letters of support for the establishment of Kaloko-Honokōhau National Historical Park, and he remembered the nice Kaloko-Honokōhau Management Plan, and what the Plan said. Mr. Robinson said it was great that all the mangroves got removed, but the kiawe still remains along the shoreline. The Plan's representation said that all of the non-native vegetation would be removed, but Mr. Robinson said he sees little evidence of that. He said that the hope that people had with Volcanoes and Pu'uhonua National Parks has not been realized at Kaloko-Honokōhau. It appears that Kaloko-Honokōhau has turned its focus outwards, towards managing water and delaying the Queen Ka'ahumanu Highway widening project, Mr. Robinson said. He said that he saw the 27 pages of comments that were sent back and forth regarding the roadway, and now the project looks like it will go beyond 2014. DWS entered into a contract for the waterline along the roadway, and meanwhile, DWS has pipes rusting away down at the intersection of the highway and the harbor entrance. Hopefully, the pipes will go into the ground at some point, he added. Mr. Robinson said that it seems that everything that had been hoped for regarding Kaloko-Honokōhau has not been realized. Rather than focusing on its kuleana, which is the establishment of the 1,300 acres in conjunction with the Kaloko-Honokōhau Management Plan, NPS has turned outward to water management. He noted that if NPS wanted to do something progressive, it should work with the EPA to do a clean-up of the unlined dump right next door to the Park – rather than try to stop people from drilling wells to provide drinking water. Mr. Robinson said he just did not see how NPS is really fulfilling the mission that was originally established for Kaloko-Honokōhau.

Ms. Duchesne noted that while the Park was established in 1978, it took 25 years to actually acquire the land for the Park. During those 25 years, the Park did not have any responsibility for land management. Regarding Mr. Robinson's comment about invasive species, she said she did not know how long it had been since Mr. Robinson had been to the Park, but she would love to offer him a tour. In the past couple of years, the Park has done great work in removing a lot of the invasive species near the fish pond and on the way going to it, Ms. Duchesne said. She repeated that she would love to give Mr. Robinson a tour so that she could hear his thoughts. Regarding the Queen Ka'ahumanu Highway widening, Ms. Duchesne said that NPS was actually the first agency to submit its comments regarding the Memorandum of Agreement (MOA). NPS followed its kuleana by providing those comments, regarding NPS's concerns about noise, the night sky, and threatened or endangered species. These concerns are the reasons why a National Park is established, she said. NPS said in its comments submitted in 2011 that it would like either a noise study or "quiet pavement." The MOA has never been finalized. Last summer, NPS was asked to provide comments, and simply reiterated what it had been saying all along. Therefore, it was not a new concern that NPS raised that was delaying the project; it is just that Federal Highways had not given any assurance that NPS's request would be honored. She said this was not a new request that was submitted; there was no intentional delay. It was just that when NPS was asked to weigh in again on potential impacts, NPS's mission states that NPS will prevent impairment, Ms. Duchesne said. NPS was just doing its due diligence, she added. She reiterated that these were comments that NPS made in 2011, and Federal Highways never assured NPS that they would address them. However, there is a perception in the community that NPS had stepped in at the eleventh hour with something else to stop the project, but that is

not the case, she said. There was nothing new inserted over the summer; it is just that NPS's concerns were never heard back in 2011, Ms. Duchesne said.

Mr. Scheuer acknowledged that there is still a lot of work to do on managing invasive species at the Park; there is still a lot of kiawe. He agreed with Mr. Robinson that there is a lot that NPS could be focusing on, solely within the boundaries of the Park. However, he believed that does not diminish the impact that NPS sees, based on the best science NPS has, that might come from water withdrawals. Mr. Scheuer stated that NPS is not interested in stopping all wells from being drilled in North Kona. NPS is not even necessarily concerned about how much water is being taken on an ultimate level; it is more concerned with where the wells are, he said. He said that the problem with the way the Water Code works is that the only way to control well location is through designation. Mr. Scheuer made the analogy of using a tweezer versus a hammer. NPS has been trying to take the approach of commenting on well construction permits and pump installation permits, but NPS could not get any action on its core concerns, so that is why NPS took the step of filing the petition. He reiterated that there are more things that NPS needs to be doing internally and externally. He said he hoped this dialogue was not just upsetting people, and he hoped that there is a good dialogue in the community about a shared future. He hoped this would allow for water for people, homes, new developments, as well as water continuing to flow mauka to makai.

Mr. Robinson noted that Hualālai Resort, Kūki'ō and Kohanaiki have all removed the kiawe at their locations, to reveal a beautiful coastline and access to the public. By contrast, Kaloko-Honokōhau has all that kiawe, and the beaches are not visible or accessible. It is like a shuttered area. Mr. Robinson noted that Ms. Duchesne invited him to come down to the Park; Mr. Robinson said he had been to the Park twice. One time he was told he was walking in the wrong area, when he and his wife were trying to have a picnic. Mr. Robinson said he did not feel comfortable at the Park. He said that if NPS is going to be a part of the community, it needs to follow its Management Plan, instead of doing everything outside the Park. He urged NPS to focus internally.

Ms. Lee Loy asked how large the Park is.

Mr. Scheuer confirmed that it was 5,000 acres terrestrial and 5,000 acres submerged.

Ms. Lee Loy asked how much funding the Park gets.

Ms. Duchesne said the estimate for this year was \$1.8 million, for salaries, operations, etc.

Ms. Lee Loy asked how much was allotted to restoration.

Ms. Duchesne said there are two full-time staff members who work on restoration, a bio-technician and an invasive species manager. There are two seasonal workers as well, who each assist for no more than 1,039 hours a year.

Ms. Lee Loy asked whether the Park had done any baseline studies or data collection prior to the start of restoration work.

Ms. Duchesne said that there is a program called the Inventory and Monitoring program, which looks at the vital statistics of the Park. The program looks at different aspects; the program started in 2005 or 2006. She said she believed there is some kind of baseline.

Mr. Scheuer said that there was some monitoring and description of resources prior to the acquisition of the Park property and prior to the start of the restoration work. It would probably call for a more detailed conversation, probably with someone other than Mr. Scheuer or Ms. Duchesne, to get at what specifically was looked at or not looked at, at those particular points of time.

Ms. Lee Loy asked whether that information has been shared, to show the baseline of the situation at the Park.

Mr. Scheuer said it would be great to get into a slightly deeper conversation about what specific information is being talked about, specifically what information is publicly available. He attested that there is no withholding of any publicly available information.

Ms. Duchesne said that the Park is working on an administrative history which will show the genesis of the Park, how the Water Commission was formed. The history will look at the beginning, when the Park was just a concept, through to the present time. That history is in the works, she added.

Ms. Lee Loy turned to Native Hawaiian issues raised earlier. She asked how many conversations the Park had with Native Hawaiian trusts that are located within the potentially designated area.

Mr. Scheuer said NPS is having conversations with Kamehameha Schools, Queen Lili'uokalani Trust (QLT) and the Department of Hawaiian Homelands (DHHL).

Ms. Lee Loy asked whether these ali'i trusts have been part of the data collection, or at least part of a conversation regarding the designation.

Mr. Scheuer said he was not clear on what Ms. Lee Loy meant about whether the ali'i trusts are part of data collection. He said there certainly have been meetings between NPS staff and staff from these other entities; Mr. Scheuer said he had participated in some of those meetings.

Ms. Lee Loy noted that all of the ali'i trusts have their own missions and serve their respective beneficiaries. She asked what these trusts are doing in relation to stewardship, which might be impacted once a designation occurs.

Mr. Scheuer said he hoped to be responsive to Ms. Lee Loy's question, but he was reluctant to talk about what he thinks Kamehameha Schools or QLT are doing. He said he was familiar with DHHL, to which he acts as a consultant. He said that he has not worked with DHHL regarding the designation; there is a separation (i.e., a firewall) on that. Nevertheless, he said he could talk about how the Water Code works, and DHHL's water rights are specifically protected in designated water management areas. In undesignated areas, DHHL has the same water rights, but CWRM does not actually have an administrative mechanism for protecting them. Mr. Scheuer said that there is a bit of nuance, depending on which trust one is talking about. The trusts are not on an equal legal footing, he said.

Ms. Lee Loy noted that Mr. Scheuer is a consultant to DHHL.

Mr. Scheuer confirmed this.

Ms. Lee Loy asked whether DHHL would be treated uniquely under a designation.

Mr. Scheuer said DHHL's determination has been neither for or against designation; their determinations has been that they acknowledge, in designated areas, that DHHL has the ability to get a reservation of water rights for future use. That reservation would be enforced by CWRM, he added.

Ms. Lee Loy started to ask about other Native Hawaiian trusts like QLT and Kamehameha Schools.

Mr. Scheuer said he has talked story with them, but would be extremely hesitant to put it into his own words.

Ms. Lee Loy said that surely these trusts serve the same beneficiary.

Mr. Scheuer said yes, but DHHL ends up a little bit ahead of the other trusts; DHHL has different legal protections under the State Water Code. This has to do with the fact that the Hawaiian Homes Commission Act was accepted as a condition of statehood. Therefore, its standing is different from Kamehameha Schools and QLT or other ali'i trusts.

Mr. Uyeda, noting that Mr. Roy Hardy of CWRM was present, asked Mr. Hardy to explain about the process and the timeframe to get the additional permit required for a designated water management area.

Mr. Hardy quipped he would come more prepared when he attends these meetings. He asked for clarification of Mr. Uyeda's question.

Mr. Uyeda asked what the process and timeframe would be if the Keauhou Aquifer becomes designated. He also asked whether, during public meetings, the public can intervene or contest an application for the additional permit.

Mr. Hardy said he would keep his explanation as simple as possible. In the case of an area designated as a water management area, there is a two-step process. The processes are the same; the criteria are the same. Applications may be for existing initial uses, which have to be applied for within a year of designation; CWRM then takes action on the application. After the existing uses are established, CWRM can then go on to consider applications for new uses. The application process for existing uses and new uses is the same, he said. When an application is filed, there are a number of criteria. One of the new things that CWRM is adding to the application are questions with regard to Traditional and Customary (T & C) practices; these T & C elements have a lot to do with the NPS petition, Mr. Hardy said. Once CWRM gets a permit application, there is a lot of public and inter-agency input. There are two timelines: 90 days and 180 days. With the 90-day timeline, the talk-story with the public and other agencies takes place, and two public notices are published in the newspapers statewide. If there are no objections to the application, then CWRM must act on the application within 90 days. If there are objections to the application, the application goes on to a 180-day timeline, and CWRM must act within that timeframe. These two paths are also subject to contested cases; once an application goes to contested case, the timeline is very open-ended. Mr. Hardy cited the examples of Waiāhole, Kukui Moloka'i and Nawaeha. He said there are still some wells in high-level areas that have not been determined for existing uses; one case bounced back to CWRM from the Hawai'i Supreme Court. Once an application gets into a contested case situation, there is actually a third timeline (i.e., apart from the 90-day and 180-day timelines): it is very open-ended. Anyone can object to an application, and CWRM compiles all of the information and is responsible for making the determination.

Ms. Iokepa-Moses commented that this is all much more than a matter of just one additional permit, despite what Mr. Scheuer mentioned in his presentation. This application process seems to be open for public testimony; opposition comes in that causes delays; more opposition comes in, and the timeframe could be open-ended, she said. This is a huge deal, Ms. Iokepa-Moses said.

Mr. Hardy agreed that it is; it means a lot more work than for non-designated areas. For the non-designated areas, two permits are required, although contrary to the presentation, the application for these permits involves a bit more than just engineering. He used the analogy of a pipe, with the aquifer or a stream being the beginning of the pipe. CWRM does pay attention to environmental concerns. For example, there are pump tests that any well developer must perform. These tests give CWRM information about the characteristics of the aquifer as well, and as to whether the pump test is interfering with streams, etc. In that case, the developer needs to get further permits. CWRM calls them "In-Stream Flow Standard." CWRM has done these a couple of times, and the applicants have opted to not move forward with their projects. (Note: The above scenario applies to non-management areas). Mr. Hardy said that in management areas, CWRM pays attention more to the *end of the pipe*, i.e., how that water is used, whether

it is efficient, etc. Such applications are open to the public process, so the public gets a lot more say in the end uses of a situation, Mr. Hardy said.

Ms. Iokepa-Moses said that she is from Ka‘u, and therefore she is familiar with this kind of public process.

Ms. Lee Loy asked Mr. Hardy how many acres are covered by the Keauhou Aquifer.

Mr. Hardy said the Keauhou Aquifer covers all the way from Keāhole Airport to Kealakekua.

Ms. Lee Loy asked if it covered 100,000 acres.

Mr. Hardy said he did not know off the top of his head.

Ms. Lee Loy noted that earlier there were mentions of designations on Maui and Moloka‘i, where there was a sense of loss of home rule. In today’s testimony, the Kona Community Development Plan (Kona CDP) was also mentioned. She noted that during the development of the Kona CDP, there was a lot of effort and collaboration among the participants. Ms. Lee Loy asked how this designation of Keauhou Aquifer would impact the long-range goals of the Kona CDP and even some of the roadway networks that have been outlined. She asked what designation means for the long-range vision for Kona.

Mr. Scheuer said he would share his mana‘o. He had been told that he had 12 to 15 minutes for his presentation, so he crammed some information in and left some detail out. Mr. Scheuer said that when he told the Board that there is one additional permit, there *is* one more permit with all of these steps. He apologized for leaving out details. He said there are people in the room today who have been very actively involved in the development of the Kona CDP. He said these people may disagree with what he is about to say; they have been involved in the Kona CDP and Mr. Scheuer was not involved, he said. NPS’s intent is that the full management of water resources will really allow for fulfillment of the visions and the goals in the CDP, while protecting public trust uses of water in the Keauhou area; that really is NPS’s intent, he said. NPS is not out to stop the Kona CDP through its petition; NPS’s intent is not to stop any particular development. He said that NPS is concerned about making sure that mauka/makai water continues to flow. He acknowledged that some people in the room may be close to jumping out of their seats in defense of the Kona CDP. He reiterated that it is not NPS’s intent to stop the Kona CDP; NPS’s take is that the petition offers a mechanism to allow the Kona CDP to happen. He thanked the Board for being so generous with its time, and he expressed thanks for the straightforward and honest questions.

*(The Chairperson called for a brief recess at 11:12 a.m. Meeting resumed at 11:18 a.m.)*

Chairperson Kaneshiro asked that Item 5(B), PROPOSED OLA‘A FLUME SPRING AND TUNNEL PROJECT, be taken up next.

5) SOUTH HILO:

**B. PROPOSED OLA‘A FLUME SPRING AND TUNNEL PROJECT:**

The Hawai‘i Conference Foundation proposed a project with the Department of Water Supply to reinstate gravity water service from the Ola‘a Flume Spring and Tunnel, which are on the Hilo side of the Saddle Road.

Mr. Monty Richards spoke on behalf of the land owner, the United Church of Christ. He provided background on the springs, which years ago were used by the Ola‘a Sugar Company and then by the Puna Sugar Company. The Church has been working with Waimea Water Service on redeveloping the springs as a water source; the Church wants to generate income to fund its pensions for retired ministers, etc. Mr. Richards said that development of the springs would potentially provide potable water to the people of Hilo. From a Civil Defense standpoint, it is a separate source of water that can be gravity-fed

downhill to Hilo in case of an emergency. Today's presentation is to inform the Board that work with Waimea Water Service is moving along.

*(Mr. John Richards, the son of Mr. Monty Richards, sat next to his father at the mike.)*

Ms. Iokepa-Moses thanked Messrs. Richards for coming to the Board. She noted having worked with Mr. Steven Bowles, and she said that she was in support of this project.

Mr. Greenwell asked whether this project would entail a water treatment plant or any type of water filtration system.

Mr. John Richards said that water quality is one of the main questions right now. He said that he is working with DWS staff right now to get a final determination on water quality of the springs. Testing is underway, and until the numbers come in, Mr. John Richards said he could not answer Mr. Greenwell's question. There will obviously be some kind of baseline treatment and chlorination no matter what. The Church has instructed Messrs. Richards that they would be willing to do whatever is necessary regarding remediation of the site, to bring everything to potable water standards before the source is offered to DWS.

Mr. Robinson asked how much water the springs generate.

Mr. John Richards said that the baseline outflow that has been established is about 1.5 million gallons per day (mgd), and as much as 5 to 6 mgd has been observed. After having crawled in the tunnels, Mr. John Richards said he could take hours to talk about what was found. He said there are leaks and there are flows. The thinking is to change the system around; there are access points that were dug to remove rock when the springs were dug, which have allowed surface water to get in. The plan is to take from a different source, all the way in the back of the property, eliminating the contamination point, he said. That flow would be probably 5 to 6 mgd, but it cannot be guaranteed until that work starts, he said.

The Manager-Chief Engineer said that in his experience, this source continued flowing amid the driest period in Hilo. DWS really relied on this source. DWS intends to keep working with the land owners and their consultant, Waimea Water Service, because this source is a very good source, he said. The thing is that DWS must contend with DOH and EPA requirements regarding water treatment. Waimea Water Service is gathering a lot of information, and they are working with DWS's microbiology staff. He said that hopefully, DWS can come to a decision regarding the use of this source. The Manager-Chief Engineer noted that the Board packets contained the original 1977 agreement between the Church and DWS. Because of EPA requirements, DWS discontinued using the source, but the agreement is still in place. DWS continues to pay the Church \$500.00 in annual lease rent. DWS and the Church are reviewing that rent, which may be too low at this point. The important question now is what needs to be done regarding the source, and how much it will cost the Church, Waimea Water Service and DWS to continue using the source. Those numbers still need to be worked out, the Manager-Chief Engineer said.

Mr. Greenwell asked the elevation of the springs.

Mr. John Richards said he did not know the elevation off the top of his head; the springs are way up the mountain.

Mr. Inaba said DWS's storage reservoir up there is at 2,000 feet.

The Manager-Chief Engineer said yes, the springs are a little higher than the gravity-fed storage tank.

Mr. John Richards said that the gravity-fed element will potentially afford a major energy savings, but the water quality has to be established first.

The Manager-Chief Engineer said DWS is working with them to come to a mutual agreement on what DWS wants to do.

Mr. Arikawa asked about the lease, which expires in 2028.

The Manager-Chief Engineer said the lease is still in place, and DWS continues to pay the \$500 annual lease rent because if something happens to DWS’s Saddle Road Well, DWS will have the option to use the Ola’a source, working with DOH. This might call for additional coordination and monitoring, etc. By continuing to pay the rent on the lease, DWS will at least have this emergency source in place that it can use in case the Saddle Road pump goes down or a similar emergency arises.

**A. VEHICLE BID NO. 2013-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY:**

Bids were opened on February 18, 2014, at 2:00 p.m., and the following are the bid results:

	<b>Inter Pacific Motors, Inc., dba Orchid Isle Auto Center</b>
<b>Part “A”</b>	
One (1) only 2014 or later cargo van, 2-wheel drive	
Total delivery price	\$33,335.52
Delivery time (calendar days)	240
<b>Part “B”</b>	
One (1) only 2014 or later full-size pickup with regular cab, service body and lift gate	
Total delivery price	\$42,093.88
Delivery time (calendar days)	240
<b>Part “C”</b>	
One (1) only 2014 or later full-size pickup with extended cab and service body	
Total delivery price	\$42,259.51
Delivery time (calendar days)	240
<b>Part “D”</b>	
Two (2) only 2014 or later mid-size extended cab pickup, 4-wheel drive	
Total delivery price	\$56,535.60
Deliver time (calendar days)	180
<b>Part “E”</b>	

One (1) only 2014 or later mid-size extended cab pickup with lift gate, 4-wheel drive	
Total delivery price	\$31,207.39
Delivery time (calendar days)	210

The Manager-Chief Engineer recommended that the Board award VEHICLE BID NO. 2013-11, FURNISHING AND DELIVERING VEHICLES TO THE DEPARTMENT OF WATER SUPPLY, to Inter Pacific Motors, Inc., dba Orchid Isle Auto Center, for Parts A to E, at a total cost of **\$205,431.90**, and that either the Chairperson or the Vice-Chairperson be authorized to sign the contract subject to approval of the contract as to form and legality by Corporation Counsel.

MOTION: Ms. Lee Loy moved to approve; seconded by Mr. Greenwell.

Mr. Ikeda noted that three vendors picked up the bid packets, but only one vendor submitted bids. He said DWS advertised this vehicle bid, and he did not know what more DWS could have done to draw more bidders.

The Manager-Chief Engineer said the Department was recommending approval of the bids, although there was only the one bidder. He said that DWS advertises its bids, and noted that calling vendors to submit bids would open DWS to complaints from vendors who were not called.

Mr. Greenwell asked whether DWS was limited to who the Department can send bids; he asked whether DWS could seek bids from vendors on Maui or Oahu.

The Manager-Chief Engineer said that DWS advertises on the County website, as the rest of the County does. DWS also advertises on the State Procurement Office website. DWS no longer advertises in the newspapers, he said. He said that bidders should be aware of how the notification about bids works, and bidders should keep an eye out for bid advertisements on the websites.

Mr. Ikeda said the prices turned out to be under DWS's Budget; the prices are reasonable and the prices were not jacked up by the sole bidder.

The Manager-Chief Engineer said the Department scrutinizes prices. He said Mr. Ikeda knows what the prices are, and DWS would reject the prices if they were outrageous.

Mr. Robinson asked whatever happened to the vehicle body that was ordered from Turkey a few years ago.

Mr. Ikeda said that it finally arrived, and is in Kona.

The Manager-Chief Engineer said that the bidder here has filled in the delivery dates for the vehicles, and DWS will be watching that the deliveries come in on time, after what DWS has experienced in the past. He said he believed the vendor will maintain these dates.

ACTION: Motion carried unanimously by voice vote.

**B. PROPOSED OLA'A FLUME SPRING AND TUNNEL PROJECT:**

*(This Item was handled earlier in the meeting.)*

**C. PĀPA'IKOU TRANSITE AND G.I. PIPELINE REPLACEMENT**

Kahuku Development Foundation, Inc. (KDF), a non-profit development company has obtained a USDA Rural Utilities Service (USDA RUS) loan of \$4,105,000.00 and grant of \$3,470,000.00 to

finance and construct the Pāpa‘ikou Transite and G.I. Pipeline Replacement project, subject to certain conditions.

In their Letter of Conditions to KDF, the USDA RUS is requiring KDF to enter into certain agreements with the Department of Water Supply (DWS). DWS would enter into the following agreements to lease the system, until the loan is paid back. DWS would subsequently become the owner of the improvements. The stipulated agreements are as follows:

1. Memorandum of Understanding Between Kahuku Development Foundation, Inc. and Water Board of the County of Hawai‘i
2. Project Agreement Between Kahuku Development Foundation, Inc. and Water Board of the County of Hawai‘i
3. Operations and Maintenance Agreement Between Kahuku Development Foundation, Inc. and Water Board of the County of Hawai‘i
4. Lease Between Kahuku Development Foundation, Inc. and Water Board of the County of Hawai‘i
5. License Agreement

Staff has reviewed the proposed documents and finds it acceptable.

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

MOTION: Ms. Lee Loy moved to approve; seconded by Mr. Greenwell.

The Manager-Chief Engineer said that DWS had worked closely with KDF and its attorneys to get to the point that the documents listed above can be presented to the Board. He noted that this is a waterline replacement project, designed to replace aging infrastructure. A loan and a grant from USDA in a total amount of \$7 million will fund this project, he added. To qualify for this loan and grant, DWS needed to go through a non-profit such as KDF. The Letter of Conditions is very complicated, but DWS staff have been working hard to ensure that the conditions are met. This is a very good project, and DWS wants to proceed with this project, the Manager-Chief Engineer said.

Ms. Jennifer Benck, the attorney for KDF, introduced Mr. Patrick Kubota and Mr. Alton Kimura, both from KDF and Mr. Tim O’Connell from USDA. Ms. Benck noted that the Board will have received five different agreements that the parties have been working on. Today, KDF is here hoping to get the Board’s approval of the agreements; that approval would be subject to final USDA review. The application at hand is for a loan and a grant for a total amount of nearly \$7.6 million, she said. One of the conditions in the Letter of Conditions is that the agreements be executed by the County before the loan and the grant from USDA can close. The versions of the agreements at this point are pretty close to final, she said.

Mr. O’Connell of USDA said this project is modeled after one that USDA did previously with DHHL. USDA is aiming to preserve its security and make sure that USDA gets the loan paid back; it is very simple for USDA. These documents before the Board are to ensure that USDA gets paid back, and if not, USDA will have something to attach.

The Manager-Chief Engineer asked how long USDA’s final review of the documents might take.

Mr. O’Connell said that USDA’s general counsel in San Francisco reviewed the documents. The Office of the General Counsel, like all federal agencies, has been subject to budget cutbacks, and so it depends on how many staff members are available at the time of final review. However, because general

counsel is already familiar with these documents from three previous projects that USDA has done with DHHL, it will probably take a month at the most, he said.

Mr. Greenwell noted a letter in the packet dated September 25, 2013, which says that there is a year to get everything together. He asked how close everything was to completion of the application. He also asked whether other people were competing for this loan and grant.

Ms. Benck acknowledged that the letter was dated September 25, 2013. The parties have a year to get to the closing, and that could be extended to 18 months, she said. Getting these agreements approved is the biggest hurdle, in order to continue with other details in closing the loan. She noted that there are 30 conditions in the Letter of Conditions, which is a lot of detail to get through. However, the agreements here are not atypical; it just takes time to get through agreements, she said. The agreements are probably the most complicated thing, and the other aspects of closing are relatively traditional closing issues. Ms. Benck expressed confidence that the parties should be able to meet the stipulated timeframe, with only a month out to final USDA approval of the agreements. It was very likely that closing would happen before the 18-month mark, because a lot of what remain are typical closing requirements. The bulk of the work was done in preparing the very detailed application submitted to USDA. Regarding Mr. Greenwell's question on competition for these funds, this money has been set aside, but if there is slippage on the deadline, it could jeopardize these funds.

Mr. O'Connell confirmed that the money has been set aside specifically for this project, and USDA is pretty flexible on the timeframe. USDA knows that certain circumstances come up, and this is a non-traditional credit for USDA. USDA would allow more time to complete it, if warranted. He reiterated that the money has been set aside.

Mr. Robinson said he always likes to know who he is doing business with; he said he did not have the faintest idea who Kahuku Development Foundation is.

Ms. Benck asked Mr. Kubota to fill Mr. Robinson in on KDF, noting that KDF is a 501(C)3 non-profit organization.

Mr. Kubota said that KDF was started in the mid-1970s, when Kahuku Plantation closed and its displaced workers needed low-cost rental housing. Community leaders formed KDF as a non-profit, and asked the City and County of Honolulu for land. KDF was granted a 75-year lease at \$1 a year, and went to the Department of Housing and Urban Development (HUD) for funds to build homes for the displaced workers. After 30 years, many of the KDF Board members passed away or left, and it came down to three Board members. The remaining Board members realized that KDF was cash-poor but asset-rich; another non-profit bought the property, using federal, state and county tax credits to do a better job than the original Kahuku board did, Mr. Kubota said. The new owners sold the property two years ago, and KDF was now sitting on a lot of cash that they wanted to invest in affordable housing. However, things are very different from the way they were in the mid-1970s; there are more regulations, higher construction costs, etc. The Chairman of the KDF Board, over time, developed a network of experts in various engineering fields who had experience working with government agencies. The Chairman developed an expertise for putting applications together for government-subsidized programs, which Mr. Kubota said is no simple matter. KDF and USDA have worked together the past two years, and their perseverance paid off; Mr. Kubota also thanked Messrs. Inaba and Killam of DWS for their cooperation. He noted that there is a 40 percent grant of \$3 million, which is nothing to set aside. Mr. Kubota said that a lot of people do not realize that USDA has money to support water development projects, to replace aging infrastructure in rural areas. He noted that the entire Big Island is a rural area, and having the expertise to fulfill the 30 conditions of the Letter of Conditions is really necessary. He noted that USDA is willing to grant up to 75 percent of a project's cost if it is a critical project that has certain major environmental violations. KDF tried to get the 75 percent grant for the Papa'ikou project,

but it did not qualify because it did not have a water violation. Mr. Kubota ended by saying that as a community developer, KDF hopes that this project is the first of many more.

The Manager-Chief Engineer said that DWS has done projects like this that involved USDA and a non-profit. He noted that Hāmākua Housing was created as a non-profit in the wake of the plantation closures on the Big Island. DWS has done water system improvements in several of the old plantation camps such as Pu‘ukala. DWS has also worked with USDA on improvement district projects; the most recent one is the Kona Ocean View project which has just broken ground. He also cited the Kona Coastview/Wonderview project completed several years ago. The Manager-Chief Engineer said that Hawai‘i competes for USDA funding with areas like Guam and other Pacific Islands. The KDF project with its \$7 million in grants and loans will benefit DWS’s customers. Mentioning Mr. Kubota’s reference to the 75 percent funding, the Manager-Chief Engineer said he was grateful that DWS is not in violation of anything; this is a testament to DWS’s diligence in maintaining its systems. This project is going to be a very good example of replacing or improving aging infrastructure.

Mr. Uyeda said he had specific questions regarding the various agreements. He asked when the Lease Agreement starts and stops, and also when the Operations and Maintenance (OM) Agreement starts and stops. He thought that the Project Agreement was the place to add language on when the Lease Agreement and OM Agreement start and stop. With regard to construction, Mr. Uyeda asked if completion means “substantial completion” or “final completion.” In the construction realm, there are two different completions: substantial completion means that one can use the facility for its intended use, with the water online and into the system, he said. He asked whether instead the trigger to start the Lease was when final approval of the project takes place. He asked the same question with regard to the OM Agreement. He then asked when the one-year maintenance period starts; he asked what happens if something happens to the system. He said that obviously the contractor will fix the problem, based on their commitment on the one-year warranty. He asked what happens if the contractor walks away; he asked if there would be a bond in place at a lower amount than the total project bond. He apologized for asking such technical questions. He then asked whether there would be direct construction on the performance and payment bond, and whether there would be some sort of Operations and Maintenance bond during operations. He said that he wanted to see added language introduced to make things clear later on in the life of this 36-year lease that the Water Board is entering into.

Mr. Kubota said that KDF’s intent is that the lease will start once there is a completion date, i.e., when there is a Notice of Completion issued.

Ms. Benck noted that on Page 2 of the Lease Agreement, the effective completion date is upon filing of the Notice of Completion.

Mr. O’Connell said with regard to bonding, KDF will follow the federal regulations on bonding. Regarding the terms of the Lease, USDA mandates that the applicant must have control of the site before USDA puts money into a project.

Ms. Benck said that Mr. Uyeda’s comment on the OM Agreement is a really good one. She said that she was looking at Page 2 of the OM Agreement which describes DWS’s responsibilities, and Item 3(B) is a condensation of the Construction and Improvements. The Operations and Maintenance become DWS’s responsibility. However, looking it over and hearing Mr. Uyeda’s comments, Ms. Benck said she realized that the language should be made more consistent, to reconcile the language of the OM Agreement with the Lease Agreement. The OM Agreement becomes effective on the day everyone signs off on it, but the responsibilities do not become effective until the completion.

The Deputy said that if he heard Mr. Uyeda correctly, with typical construction projects, there is a warranty period. DWS does not want to relieve the contractor of their responsibilities; it should be

identified so that even if DWS is operating and maintaining the system, the warranty on the contract continues to whatever the defined day may be.

Ms. Benck said that she and Ms. Garson would look through it to make sure it is clear and covers everything.

Ms. Lee Loy said yes, her concern was that the warranties were all covered. More importantly, she was concerned that the agreements were consistent among each other, with each agreement pointing to each other.

Ms. Benck said that Ms. Lee Loy's point was well taken; there were probably various instances where the two attorneys should just use one set of defined terms so that every agreement is pointing back at the same terminology. It would make things much easier, and it would not be a difficult task from a drafting perspective.

Ms. Lee Loy said yes, her concern was that someone might get the Lease Agreement, and somebody else might get the OM Agreement, and they each would interpret the agreements their own way. The terms should be consistent; the language should be consistent, she said.

Ms. Benck agreed, saying that would definitely make it simpler.

Ms. Garson noted that the Motion on the floor was to approve the agreements; she suggested a friendly Amendment to the Main Motion, in light of Mr. Uyeda's comments. She said to make sure that she and Ms. Benck were clear on what the Board wants to be done with the agreements. There will be no material changes to the agreements; the two attorneys would ensure that the agreements are consistent with each other, and the attorneys would have the authority to negotiate the new language with the Manager-Chief Engineer. The Manager-Chief Engineer would then sign off and the Chairperson would sign off on the added language.

Ms. Lee Loy made an Amendment to the Main Motion.

ACTION: Ms. Lee Loy moved that the Board approve the various agreements subject to Mr. Uyeda's comments, with review and consideration from Ms. Garson and all parties to enable the Manager-Chief Engineer to approve it. However, if there are substantive changes to the agreement, all parties would agree to bring the agreements back to the Board for review one more time. Seconded by Mr. Robinson, and carried unanimously by voice vote.

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

6) SOUTH KOHALA:

A. **JOB NO. 2013-1002, WAIMEA WATER TREATMENT PLANT FLOCCULATION DRIVE REPAIR:**

This project generally consists of the repair of four (4) flocculation drive systems, which include the gearboxes, mechanical seals, drive shafts, bearings and appurtenances, in accordance with the plans and specifications.

Bids for this project were opened on February 6, 2014, at 2:00 p.m., and the following are the bid results:

<b>Bidder</b>	<b>Bid Amount</b>
Aloha Machine and Welding, Ltd.	Non-Responsive

The Manager-Chief Engineer recommended that the Board not award the contract for JOB NO. 2013-1002, WAIMEA WATER TREATMENT PLANT FLOCCULATION DRIVE REPAIR, due to no qualified bids received. Staff will seek alternate methods of procurement, in accordance with procurement rules.

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

Mr. Greenwell asked what the next step would be; he asked if DWS planned to negotiate this and bring it back to the Board at the next meeting.

The Manager-Chief Engineer said the Department would look at its options regarding procurement of the contract. DWS has alternate means to procure a contractor for this, he said. DWS could get direct quotes from contractors. Depending on what happens, the Department will probably need to come back to the Board to execute a contract, he added.

Mr. Greenwell asked if this Item was deferred to a future date.

The Manager-Chief Engineer said that this allows the Department to seek alternate means for procuring the contract.

Mr. Ikeda said that DWS is going to negotiate with contractors to get a fair price.

Chairperson Kaneshiro asked if in that case, the Board would not have to take any action today; the Item will just be deferred.

The Manager-Chief Engineer said the Item would be deferred to a future meeting.

B. **REQUEST TO CONSENT FOR ASSIGNMENT AND TRANSFER OF WATER UNITS  
MAUNA KEA PROPERTIES, INC.:**

Mauna Kea Properties, Inc. (MKP), MK Parcel F, LLC (Parcel F LLC), and One Puako Bay Associates, LLC (One Puako LLC) requests DWS consent to allow One Puako LLC to receive and assignment of 11 water units from MKP's allocation from the Parker Wells 3 and 4 Tri-Party Agreement dated April 6, 2006.

Parcel F LLC and One Puako LLC have shared ownership and are under the management of the same individual, Kevin J. Hayes. Parcel F LLC will limit their development to 74 units of water or 40 residential units, whichever results in the lesser units of water. The original estimate for water assignment to Parcel F LLC was 102 water units.

Although One Puako LLC is not in the development area as defined in the Tri-Party Agreement, it is being served by the same system that provides MKP's allocation of water from the Tri-Party Agreement.

Staff has reviewed the proposal and finds it acceptable.

The Manager-Chief Engineer recommended that the Water Board accept the consent document subject to the approval of the Corporation Counsel as to form and legality, and that either the Chairperson or the Vice-Chairperson be authorized to sign the documents.

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

The Manager-Chief Engineer said that this Assignment is basically part of the Mauna Kea/Mauna Lani Tri-Party Agreement executed years ago. One of the owners of Mauna Kea Properties wants to assign their water units to another property that they own, he said. The problem is that the assignment is to a

property outside of the original development area that was identified in the original agreement. He said that DWS staff had reviewed the assignment to the other property, which is within the existing Lālāmilo water system; DWS has no objections to this assignment. However, he anticipated that the Board would have questions regarding the assignment itself.

Mr. Aaron Chung, the attorney representing the land owner, introduced Mr. Kevin J. Hayes. Mr. Hayes is the manager of both One Puāko Bay Associates, LLC (One Puāko LLC), which is the assignee of this matter, and MK Parcel F, LLC (Parcel F LLC). Mr. Chung described Parcel F LLC as being the conduit property. Mr. Chung said he could only imagine how many questions the Board would have regarding this arrangement. He explained that 20 years ago, he was sitting where Ms. Garson sits today, as legal counsel to the then-Water Commission. He has a lot of aloha for DWS, and would never do anything to compromise DWS's policies or the integrity of its systems. He explained that the Tri-Party Agreement is the underlying agreement for the matter at hand. Mr. Chung admitted that he had had some serious questions. His questions related to contractual issues, particularly Mauna Lani Services' involvement in all of this, and whether Mauna Lani Services would need to consent to this arrangement. The other questions he had were precedent-setting issues that this arrangement presents. He said that he was not sure at first whether he wanted to take the matter on, but he listened and kept as much of an open mind as possible. Mr. Chung said he really believes that this arrangement holds a lot of benefits for DWS as well as the public in general. Prior to Mr. Chung's involvement in the matter, DWS staff had discussed the arrangement, and had already expressed their non-objection to the arrangement, he said. Mr. Chung said that if the staff had not taken that position, he would not have gotten involved in the matter. The staff's stance gave Mr. Chung an opening to take this matter on, so that he could really listen to what the issues were. He expressed willingness to field any questions the Board may have.

Ms. Lee Loy asked about Parcel F, which would be limited to 40 single-family residential units. She asked if Mr. Chung had crafted any documents that could be recorded with the Bureau of Conveyances to ensure that density does not increase.

Mr. Chung said that was a very good question. There is a companion agreement which is currently being redrafted by Mr. David Tom, an attorney for Maua Kea. Mr. Chung said that Mr. Don Takahashi, the president of Prince Resorts, which is the sole member of the Mauna Kea entity, had bronchitis right when the agreements were getting close to finalization. Unfortunately, that meant that many of the documents have not been finalized yet, but now that Mr. Takahashi has recovered, the documents will be finalized soon. However, in concept, all of the elements are there in the documents, and the final agreement will be exactly what is here in hand. The documents set forth some deviations from what had been provided in the Mauna Kea Uplands Guidelines, with regards to setbacks, distances between the buildings, etc. He said there are two main benefits in this arrangement. One benefit is the reduction in possible potential build-out, which could translate into a reduction in water usage. It could be argued the other way, too, i.e., that it would just give more reserves to Mauna Kea, but Mr. Chung thinks it would have a lesser impact on the system as a whole. The second benefit is the use of non-potable water as an irrigation source for Parcel F; Mr. Chung and his client have been working on this with Mr. Tom Nance, who represents Mauna Kea. That would have a substantial impact, Mr. Chung said, because all of the irrigation on Parcel F would be done with non-potable water. Those are the basic elements of that agreement, which has not been finalized yet.

Mr. Hayes said that this agreement is going to specifically reduce the water unit allocation to Parcel F, from the current 102 scheduled water units under the Mauna Kea General Plan, down to a total of 85 units, of which 11 units will be going to Puakō. Seventy-four units would remain on Parcel F, he said. He said that the agreement reduces the overall demand on the system, setting new caps that are lower than the caps in place today. All non-potable water usages will be required, and Mr. Hayes said that he is agreeing to require them to be used off of the Mauna Kea non-potable supply system. This will limit the landscaping palette that Parcel F will have to work with. That is a benefit in terms of reducing the

demands on the Lālāmilo water system, he said. Mr. Hayes said that Puakō, where the transfer property will be receiving these water units, is known to be a habitual abuser of water units. The real use is greater than 1 unit per lot in the residential units in Puakō, he said. Mr. Hayes said he is establishing a new standard in Puakō, by requiring two units per lot. There will be seven lots in Puakō, of which two water units will be assigned to each of the seven lots. This will help DWS establish a new, more demanding precedent for future water use in Puakō, Mr. Hayes said.

Ms. Lee Loy asked about the six-year limit on indemnification in the agreement.

Mr. Chung said the limit had been discussed between Ms. Garson and him; Mr. Chung said he set six years, but conceivably it could go a little bit longer. No person or entity wants to be on the hook in perpetuity, he noted. He set six years because that is the longest statute of limitations that is legally available. He acknowledged that there could be some variances within the context of that, if for example, something is discovered later. However, Mr. Chung said he believes that the main risk to the Board would be some kind of derivative claim by a member of the public, claiming breach of fiduciary duty or something like that. He said he never mentioned that to Ms. Garson in their discussions. However, he believed that the risk of such a derivative claim is extremely low. Mr. Chung said that Ms. Garson had raised the scenario of someone who may have missed an opportunity to have water rights transferred to them. In response to that, Mr. Chung told the Board that he would say that the person could have applied just as his client is doing today. As far as Mr. Chung knows, no such application or denials have taken place. Today's matter is really a novel thing, and only the Board can determine its comfort level in terms of risk assessment. Mr. Chung said he is trying to be as honest as he can with the Board; he feels he owes it to the Board to look at things from the Board's perspective.

Mr. Robinson noted that according to Mr. Chung's letter to the Board, Mauni Lani Services was dissolved in 2008. He asked if the dissolution was voluntary or involuntary.

Mr. Chung said that it was probably voluntary; he did not think the dissolution was because Mauni Lani Services failed to pay its annual dues or anything like that. He said he surmised that it was a matter of Mauni Lani Services having satisfied their development obligations under the Tri-Party Agreement. He said he really did not know the reason for the dissolution.

Mr. Robinson asked if there were any known successors-in-interest to Mauna Lani Services.

Mr. Chung alluded to a Mr. Koji Nakamura, who he described as a fairly high-level executive of Tokyu Corporation, the parent company of what was Mauna Lani Services. Mr. Chung said he never met Mr. Nakamura, who he heard once worked at Mauni Lani Services and has since returned to Tokyo to a high-ranking position.

Mr. Robinson said the assumption is that the dissolution was voluntary.

Mr. Chung agreed.

Mr. Robinson asked whether Mauni Lani Services held any hard assets; he asked whether the company was instead just an operating company without assets.

Mr. Chung apologized, saying he really did not know much about this entity.

Mr. Robinson asked if there were any successor-in-interest that has been determined.

Mr. Chung said there was no successor-in-interest that he knew of.

Mr. Robinson asked if there were a filing for the dissolution, voluntary or involuntary.

Mr. Chung said he knew that there was a filing for the dissolution, probably with the Department of Commerce and Consumer Affairs (DCCA).

Mr. Robinson asked if during the filing, there were any transfer of interest to anyone else.

Mr. Chung said there was no such transfer that he knew of.

Mr. Robinson noted that Mr. Chung had written in his letter of minimal risk to the Department, which the letter defined as the Board and DWS staff.

Mr. Chung confirmed this.

Mr. Robinson said he understood the portion of the letter regarding the reduction of the number of units, or unit counts, because there were so many instances of this with Mauna Lani. He cited 49 Black Sand Beach as an example. In these cases, the reduction of units actually translated into more money in development costs and resaleable land value, lessening the cost of infrastructure. He said he could understand that. He said he just wished there was something that clearly said that the interest was dissolved or transferred to another party; he expressed discomfort at that lack of clarity.

Mr. Chung said he understood completely.

Mr. Uyeda said that when he heard about this matter coming before the Board, he was concerned that the arrangement goes against his interpretation of the Tri-Party Agreement, and also against Rule No. 5, Section (1)(e) of DWS's Rules and Regulations, entitled "Water Commitments." He read the relevant passages of the Tri-Party Agreement: "Any transfer of available water units should be done only in the development area," and "Any excess units should go back to the Water Supply, based on the Agreement." Turning to Rule 5, Section (1)(e) of the Rules and Regulations, Mr. Uyeda read: "Water commitments granted pursuant to the Water Development Agreements shall remain appurtenant to the original parcel, which is subject to the Water Development Agreement, and shall only be assignable to successors in interest to that original parcel." He said that was his concern: that the Board would be setting precedents that may be going against the legal Development Agreement (i.e., the Tri-Party Agreement) and the Department's Rules and Regulations.

Mr. Chung said that was considered; the discussion is about the precedent-setting nature of this arrangement. Regarding the Tri-Party Agreement, Mr. Chung said that he and his client were stumped because there is no more Mauni Lani Services, and there is no new signatory to come in. The only avenue available was to come to the Board and seek some kind of consideration, under the circumstances. Mr. Chung noted that in the new agreement it was pointed out that the arrangement is not in strict compliance with the Tri-Party Agreement. That is clear, and Mr. Chung said he would not argue that. He said that under the circumstances, the hope was that there could be some flexibility.

Mr. Hayes acknowledged to Mr. Uyeda that the arrangement is not in strict compliance, but he noted that the property owners of Puakō are somewhat under-represented constituents of the Tri-Party Agreement. Although the people of Puakō are serviced by the same Lālāmilo water system, they were never a party to the Tri-Party Agreement. Mr. Hayes said that his hunch was that the parties to the Tri-Party Agreement did not mean to exclude Puakō. Mr. Hayes said that his inference regarding the intention of the document is that it is confined to this water system; that would be a liberal interpretation from a legal standpoint. He thought that from a practical standpoint, the parties to the Tri-Party Agreement did not intend to exclude the Puakō neighborhood, which was obviously part of the agreement.

Mr. Chung asked Mr. Uyeda for time to get back to his question about the Rules and Regulations; he needed to look at the relevant section. (*Mr. Chung studies a copy of DWS's Rules and Regulations.*)

Mr. Hayes said that while Mr. Chung studied the Rules and Regulations, he wanted to address the concerns about precedent. He said that to the extent that the arrangement was setting any precedent, he believed that it was a very narrow, very strictly-defined and beneficial set of precedents, which would be of use to the Board. He said that part of the new agreement reduces the demand on the water system; that is a benefit to the public and to the Board. This arrangement is inside of the same water system; the units would not be transferred from one water system to another. There is a common ownership interest among the parcels under this arrangement. That is a pretty narrow precedent, and it would be difficult for anyone to come before the Board to ask for a transfer of units without having met that criteria. It is a pretty tall standard, Mr. Hayes said. He said that no compensation between the parties is involved here, and that establishes a pretty high standard, too. The arrangement sets a new 2 water units-per-lot standard in Puakō, he added. Mr. Hayes said that all of these precedents are very positive for the Board in the future. Any new applicant would have to come before the Board on a case-by-case basis to rationalize their case. Mr. Hayes thought that the arrangement probably helps the Board rather than hinders the Board.

ACTION: Ms. Lee Loy moved to go into Executive Session in order for the Board to consult Corporation Counsel; seconded by Mr. Robinson, and carried unanimously by voice vote.

*(The Board entered Executive Session at 12:26 p.m., and exited Executive Session at 12:45 p.m.)*

Mr. Robinson said that after consultation with Corporation Counsel regarding this proposal and in looking at DWS's Rules and Regulations, he would have to vote against approving this Item. He did not see how the Board could shield itself and the Department from the risk in the event of any legal action, in the absence of any successor-in-interest. He said it was unfortunate that Mauna Lani Services did not have any successor-in-interest; without a successor-in-interest, it is a risk that the Board should not take.

Ms. Iokepa-Moses agreed with his comment.

Mr. Chung said he would like to respond. He said he appreciated the Board's input, and it helped him and his client because they might try to reframe things a bit differently later in the event that today's Item does not pass. He agreed that the Board needed to defer to its legal counsel regarding risk. However, he said that there are risks in any action by government, and 99.9 percent of the time, none of those decisions which carry risks also carry with them any indemnification. He said that his client and his company plan to be around for a while, and do not intend to spin this project and leave the island, as so many other developers do. His client, in fact, is being looked to by Mauna Kea as being the entity that will purchase the remainder of the Uplands properties. Mr. Chung said that his client was just looking for one small accommodation from the Board. He credited Mr. Uyeda for raising the issue of the Rules and Regulations, which he admitted had escaped his own attention. He said he could fool around with semantics by talking about water confluence vis a vis the Tri-Party Agreement, but he would not go there. Mr. Chung said that the crux of the matter is that this assignment is to a property within the service area; the Tri-Party Agreement was intended to augment the Lālāmilo system, not just specific areas within the system. He said it was hard to argue with the drafters of the Tri-Party Agreement; it is what it is. However, he asked what kind of precedent would be set by granting the assignment, in terms of damages. He asked what impact it would have on the integrity of the Lālāmilo system. Mr. Chung asked the Board to look at the spirit of what is intended, rather than the strict letter of the law.

Mr. Hayes, addressing Mr. Uyeda's point on DWS's Rules and Regulations, said under his interpretation of the Tri-Party Agreement, that agreement had already violated Rule No. 5, Section (1)(e) in its strictest form, which stipulates that once a water meter is assigned to a parcel, it has to stay on that parcel. The Tri-Party Agreement explicitly allows transfers from Mauna Kea to Mauna Lani

Services; it allows transfers from parcel to parcel. Because the allocations have already been made to those two parties, those allocations are really stuck there, in keeping with strict accordance with Rule 5(1) (e). Therefore, the Tri-Party Agreement already addresses the issue of transferring units; Mr. Hayes said that the proposed assignment here is certainly within the context of the spirit of that notion of transferring units. Regarding Mr. Robinson's concern with risks, Mr. Hayes said that in order for somebody to raise a legitimate claim, that person would have to prove that they have been damaged. It would really be difficult to prove that anybody has been damaged by the arrangement here – even a neighbor would have a hard time proving damages. Mr. Hayes noted that he had gotten strong support from the Puakō Homeowners' Association for his seven-lot subdivision project. Instead of the usual 15,000 square-foot lots in Puakō, the seven lots will be approximately an acre each, so the density in the community will actually decrease with this project. He reiterated that it would be really difficult to prove that anyone has been damaged, but Mr. Hayes offered to provide a more open-ended indemnity on this matter. He said he would agree to do the indemnity indefinitely; he assured the Board that his company would be around for a while.

Ms. Iokepa-Moses commented that the sugar cane companies claimed that they would be around forever as well; she said she believed that the Board has decided that it does not want to open the door to going against DWS's Rules and Regulations. She said that Mr. Hayes said that there had already been a violation (of DWS's Rules and Regulations, via the Tri-Party Agreement), but the Board should not commit further violations. She said that she would be voting against approving the assignment.

ACTION: Motion to accept the consent document denied unanimously by voice vote (9 Nays).

7) NORTH KONA:

A. NATIONAL PARKS SERVICE PRESENTATION ON ITS PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND WATER MANAGEMENT AREA:

*(This Item was handled earlier in the meeting.)*

B. FIFTH AMENDMENT OF WATER FACILITIES AGREEMENT KONA SEASCAPE DEVELOPMENT, LLC AND KUKUI DEVELOPMENT, LLC:

Subject to the terms of the Kona Seascape Development, LLC ("Seascape") Water Facilities Agreement ("Agreement") of October 28, 2008 and the four subsequent amendments (Amendments) to the Agreement, Seascape and Kukui Development, LLC ("Kukui") fulfilled their obligation by completing the reservoir and related improvements ("Improvements") plans and specifications.

Subject to the completion of the construction of the Improvements, Seascape and Kukui will receive 204 equivalent units (of water) to develop 194 residential units. Based on DWS' current timeframe to complete the Improvements, Seascape and Kukui propose to purchase and deliver a spare pump and motor meeting the specifications of DWS' Hualālai Deepwell, in order to utilize the 204 units ahead of the completion of the Improvements. Should DWS not agree to the proposed offer, Seascape and Kukui will have to wait until DWS completes the Improvements and then be able to utilize the 204 units with no further obligation.

As mentioned, the spare pump and motor will serve as a back-up to the Hualālai Deepwell, which serves the system that will service the Seascape and Kukui developments. As the Kalaoa Well is now capable of pumping 700 gallons per minute (gpm) into the existing 0.3 MG Reservoir, the spare pump and motor will minimize the down time and subsequent stress on the rest of the system that may occur should the existing Hualālai Deepwell fail.

Staff has reviewed the proposal and finds it acceptable.

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

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

The Manager-Chief Engineer said under the agreement, the developer was to deliver construction drawings to DWS that were required; once those construction drawings were delivered, DWS was to have gone out to bid for the construction of the storage reservoir. DWS had programmed the construction of the storage reservoir for FY2018, he said. When the bid goes out for the construction of the reservoir, the developer will receive a certain amount of water allocation. However, the developer is asking DWS for another option because the developer cannot wait for the couple of years that DWS is programming for construction of the reservoir, the Manager-Chief Engineer said. The developer wants to move forward with their entitlements to the property, and wants to construct their development. As a result, the developer is proposing to buy a pump and motor for the Hualālai Deepwell, one of DWS's well sites that serve the area. DWS has no objection to the developer supplying the pump and motor in accordance with DWS specifications, and has no objection to this Fifth Amendment.

Mr. Inaba noted that the construction of the storage reservoir is on the CIP Budget for FY2017.

Mr. Robinson asked for clarification on what is involved here; he asked if DWS was going to build more transmission facilities to service the developer's site.

The Manager-Chief Engineer said that in the current agreement in place, the developer is to deliver construction plans for a storage reservoir in the Kalaoa area. Those improvements include a storage reservoir and connections to the existing water system facilities in the area. Once that storage reservoir is constructed, the developer will be able to secure a water allotment to serve their project, which is located in the Kalaoa service zone.

Mr. Robinson asked whether the developer or DWS will build the storage reservoir.

The Manager-Chief Engineer said the requirement was that the developer would furnish the construction drawings, and DWS will build the reservoir. One part of the agreement stipulated that the developer would find a site for the storage reservoir; the developer did so. DWS then purchased the site, which matches the existing reservoir that DWS has in the area. The developer prepared and delivered to DWS the construction drawings, with the necessary connections to DWS's existing system. At this point, the requirement is for DWS to construct the reservoir with DWS's own funds; this construction is scheduled for FY2017. However, the developer needs their project entitlements for development earlier than 2017; the fastest option is to deliver a pump and motor that matches an existing DWS well site in the area. If something were to happen to that well, DWS would be able to immediately install that pump and motor.

Mr. Robinson asked whether the pump and motor that the developer is furnishing to DWS is an incentive for the Board to approve the developer's water credits early. He asked whether they were furnishing the pump and motor because they were obligated to do so.

The Manager-Chief Engineer said delivering the pump and motor to DWS was an incentive, which will help the developer obtain its water credits sooner than 2017.

Mr. Robinson asked the approximate cost of the pump and motor.

Mr. Inaba said it was \$150,000.00 to \$200,000.00.

Mr. Uyeda referred to the Fourth Amendment to the Water Facilities Agreement, which extended the deadline to complete the construction plans. He noted that at the time there was some discussion recorded in the Minutes about the developer obtaining the Use and Occupancy Permit from the Department of Transportation.

Mr. Inaba said that DWS would get the permit.

The Manager-Chief Engineer noted that part of the connection work is in the State Highways' right-of-way.

Mr. Inaba said that once DWS figures out with its consultant the route, DWS will pursue the Use and Occupancy Permit.

Mr. Uyeda, turning to Ms. Garson, noted that in the Minutes of the meeting in question, the developer was going to provide the Use and Occupancy Permit, along with the construction drawings. He suggested that the Fifth Amendment should include some language about that, because that discussion was on record in the Minutes.

Ms. Garson said yes, that language was not in the Fourth Amendment.

Mr. Uyeda said okay, he just wanted to make sure; there was therefore no need for a Motion to add language to the Fifth Amendment.

Ms. Garson said the Fourth Amendment was all about time; it stipulated that the engineering and design work by Kona Seascape Development (KSD) needed to be completed by no later than June 30, 2013. She quoted the Fourth Amendment as saying: "If all engineering and design work is not completed and assigned to the Department, or if any necessary permits for such engineering and design work are not received by no later than June 30, 2013, then this Agreement is void and of no effect without any further action by either party." The Fourth Amendment is talking about necessary permits for engineering and design work, Ms. Garson said. She said there is no need to add language about a Use and Occupancy Permit.

ACTION: Motion carried unanimously by voice vote.

8) 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. **FIRST AMENDMENT TO LICENSE EASEMENT NO. 423**  
"Pu'ukapu Hybrid Water System"  
Licensor: State of Hawai'i Department of Hawaiian Home Lands  
Tax Map Key: (3) 6-4-001: 032-038, 041-045, 051, 053 and 054  
Facilities Charge: \$849,420.00                      Date Paid: 07/10/2013  
Final Inspection Date: 02/10/2014  
Water System Cost: \$55,030.00

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. Robinson moved to approve; seconded by Mr. Greenwell.

Mr. Inaba said that this dedication involves only a short section of pipe that will enable DWS to install a master meter.

The Manager-Chief Engineer said that DWS is not actually accepting dedication of this private hybrid system. This hybrid system is not 100 percent according to DWS standards; it will be operated and maintained by DHHL. The short section of pipe is being dedicated today, so that a master meter can be installed for the private system; DWS is only taking over the short section of pipe, he added.

The Deputy clarified that this short segment of water infrastructure meets DWS standards, and leads to the master meter feeding the hybrid water system.

ACTION: Motion carried unanimously by voice vote.

**B. REQUEST FOR A PUBLIC HEARING FOR THE DEPARTMENT'S OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEAR 2015:**

The Department's FY2015 Operating and CIP Budgets totaling \$52,188,000.00 and \$32,155,000.00, respectively, have been distributed for the Board's review. Operating revenues include a 2.7% rate increase provided for by the 2010 RW Beck rate study. Consumption is not expected to change from estimates for the current year. Power costs are estimated at \$23,000,000.00, and salaries include increases based on negotiated bargaining unit contracts.

The Manager-Chief Engineer recommended that a public hearing be held on Tuesday, March 25, 2014 at 9:45a.m., prior to the Water Board's regular meeting, to accept public testimony regarding the Department's FY2015 Operating and Capital Improvement Budgets.

ACTION: Mr. Robinson moved to approve holding the Public Hearing on Tuesday, March 25, 2014 at 9:45a.m., prior to the Water Board's regular meeting; seconded by Mr. Greenwell, and carried unanimously by voice vote.

**C. AD HOC COMMITTEE REPORT ON STATUS OF SB 3094 REGARDING THE PLACEMENT OF AUTOMATIC LIENS ON PROPERTY FOR WATER AND WASTEWATER DELINQUENCIES:**

Ms. Lee Loy reported that SB 3094 was being heard in the Senate Ways and Means Committee today; she was assuming that the bill would pass committee. If it passes today, it would meet the first decking deadline, which is this Friday, and would then meet the first crossover deadline which is March 5. Once the bill crosses over, it moves to the House. Ms. Lee Loy will be contacting all of the Big Island's Representatives in the House to support this piece of legislation.

The Manager-Chief Engineer noted that Ms. Lee Loy had already enlisted Rep. Clift Tsuji to help move this bill through whatever House Committees it needs to navigate. He said that things look good so far.

**D. MONTHLY PROGRESS REPORT:**

No discussion.

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

No discussion.

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

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

- 1) Pu'ukala/Kona Ocean View Properties Subdivision Improvement District Update – The project is under construction, and the Department will provide a monthly progress report.
- 2) Waikoloa Reservoir No. 1 Update – The Manager-Chief Engineer said that once the additional Environmental Assessment is done, there is one more obstacle to surmount, and then DWS can put the project out to bid. Mr. Inaba said a couple of weeks ago, the consultant with DWS staff did a site visit of the area that is to be affected. The consultant will be submitting to DLNR its plan revisions; DLNR received comments back from their peer review and DWS will pass those comments on to the consultant. Mr. Inaba thought that it should be close to being ready to bid at this point. The Deputy noted that the State has required DWS to pay inspection fees for its reservoirs, which are considered dams. The Hawai'i Revised Statutes do provide for exemptions or variances for those fees, and DWS is trying to make the case that these three reservoirs are in the same place and therefore do not require an independent assessment for each one. Mr. Greenwell asked whether the fence around the reservoir is going to be replaced; he noted that the fence is in pretty bad shape. Mr. Inaba said that the “toe” of the fence will be replaced, and portions of the fence will stay in place. The fence being replaced at the “toe” is basically to prevent cattle from going up the slopes.
- 3) Kawailani Tank Update – Mr. Inaba said that a portion of the contaminated soil is being shipped to the Mainland in barrels, and the remainder will be shipped to the West Hawai'i Landfill. DWS will have to work with the hygienist to determine what constitutes adequate removal. The Manager-Chief Engineer said that DWS will need clearance or final certification from DOH that the site is clear. Mr. Inaba said that DOH stipulated in a memo that DWS must have everything on record; if there is some residual contaminated soil, DWS just needs to document it in the interests of any future permitting for activity on the property. The Manager-Chief Engineer said there would be a final report on this project next month.
- 4) Queen Ka'ahumanu Highway Widening -- Phase II Project Update -- The Manager-Chief Engineer said there was no report. DWS is working on a tri-party agreement with the State Highways Division and the contractor for the change order that is required for DWS to do the design work. It has not been submitted to State Highways and the contractor for their review; it will probably have to go to the State Attorney General for review as well. Mr. Uyeda recommended that this item be removed from the Agenda, since it seems like the project is delayed. The Manager-Chief Engineer said DWS is hounding State Highways on when the Notice to Proceed will be issued. Mr. Robinson said that Federal Highways has just mandated a new sound study to be done by the State Department of Transportation (DOT); there is no way that work on the highway is going to begin in the latter part of 2014. The National Parks Service and others are doing everything they can to delay this project, Mr. Robinson said. Mr. Robinson noted that the contractor, Goodfellow Brothers, has had a \$75 million bond in place for the past five years, which they have to renew every year; that costs the taxpayers money. Ms. Lee Loy said she agrees with Mr. Uyeda's request to remove this item until something substantive happens; Mr. Uyeda has been asking month after month for DOT to do an update for the Board. The Manager-Chief Engineer agreed that the item would be removed, and in the meantime, DWS will keep hounding DOT for word on progress on the project. Mr. Greenwell asked if there was any word from Rev. Norman Keana'aina of Kalaoa. The Manager-Chief Engineer said no.
- 5) Energy Management Analyst Update – Ms. Myhre said she was finalizing a draft DLNR sub-lease document which will establish the rent for the property. DWS sent a letter this week to DLNR, requesting that DLNR do a valuation of the property. Next week Ms. Myhre will meet with the environmental consultant to make sure the environmental aspect of the project was moving along. Ms. Myhre had her semi-annual meeting with HELCO yesterday, to discuss an array of topics including DWS's Rider M program, well repair status, etc.
- 6) Public Information and Education Specialist Update – Ms. Aton reported that she had been working on the latest update of the Strategic and Business Plan. She distributed water-related

news articles to the Board. Mr. Greenwell asked about what was happening regarding HB1969, which proposes to assess a royalty amount of \$1 per 1,000 gallons of water withdrawn from an aquifer. Ms. Aton said that DWS had submitted testimony against the bill.

**G. MANAGER-CHIEF ENGINEER'S QUARTERLY UPDATE:**

*(Deferred from the January 28, 2014, Board meeting.)*

The Manager-Chief Engineer asked to defer this Item until the April meeting, when the calendar first quarter from January to March would be covered.

**H. MANAGER-CHIEF ENGINEER'S COMPENSATION:**

**ACTION:** Mr. Robinson moved to go into Executive Session; seconded by Ms. Lee Loy; and carried unanimously by voice vote.

*(The following occurred after the Executive Session concluded.)*

Mr. David Greenwell reported on the salary information he gathered regarding compensation for the Manager-Chief Engineer and the Deputy. He noted that the Manager-Chief Engineer's salary was set on December 31, 2011, and the salary has remained the same for more than two years. Mr. Greenwell said that the salary for the previous Manager-Chief Engineer, Mr. Milton Pavao, was \$126,044 when Mr. Pavao retired. He noted that the Board had the findings from his research sealed in envelopes marked Confidential.

Chairperson Kaneshiro asked if there were any recommendations for what the Manager-Chief Engineer's salary should be.

**MOTION:** Mr. Robinson proposed a 5 percent raise. *(There was no immediate second.)*

Mr. Greenwell said that he spoke with DWS's Human Resources Manager, who showed Mr. Greenwell how raises come automatically through collective bargaining, whereas the Board sets the salaries for the Manager-Chief Engineer. Some employees got 2 percent raises, and some got 4 percent raises, he said.

The Manager-Chief Engineer asked to add that some bargaining units got raises retroactive to July 2013, and will get raises in July 2014, so there will be compounding. Late last year, the Salary Commission granted salary raises (for some department heads, etc.), effective July 1, 2014, ranging from 10 percent to 30 percent, he said. One major reason was that department heads were falling behind the people they supervised; he noted that he and the Deputy had not seen any increase the past couple of years. The Manager-Chief Engineer said that he himself was not granted what his predecessor was making at the time; that was fine with him. He noted that historically, the salary for the Manager-Chief Engineer position had been higher than what the other department heads were making. The raises that the other department heads have gotten put the other department heads way over what the Manager-Chief Engineer is making. For example, the Police Chief had been making \$114,000.00, and the last increase pushed the Police Chief's salary up to \$130,000.00. The Manager-Chief Engineer said he was not sure what percentage raises the other department heads got, but historically, the salary for the DWS Manager-Chief Engineer has been higher than the others. It is a similar situation with the other jurisdictions; the Water Department administrators made higher salaries than other department heads in the County.

Mr. Takamine asked what the other counties' Water Supply Manager-Chief Engineers were making.

The Manager-Chief Engineer said he believed his counterpart on Maui makes \$136,000.00, and his counterpart on Oahu makes \$160,000.00, and the Kaua'i water department manager makes \$107,000.00.

Mr. Greenwell said his research shows that in the two years since Mr. Antonio took over as Manager-Chief Engineer, there was no change in the Kaua'i water supply manager's salary. The salaries for the Maui and Oahu water supply managers went up, and now the Board is deliberating the salary for the Big Island water manager.

Ms. Iokepa-Moses said that 5 percent is a nice increase.

Mr. Takamine asked what the percentage raises were for Maui and Oahu.

Mr. Greenwell said he did not have a calculator, but Oahu went from \$140,000.00 to \$160,000.00, and Maui went from \$105,000.00 to \$121,000.00. Kaua'i stayed the same.

Ms. Iokepa-Moses said the raises probably had to do with cost of living, etc.

The Manager-Chief Engineer said the raises for department heads in Hawai'i County were 10 to 15 percent.

Ms. Garson said that not all of the department heads got raises yet. The Salary Commission right now is deliberating over some of the remaining department heads and deputies; the salaries went up for some department heads and deputies, but not all, she added. She suggested that someone make a Motion.

MOTION: Mr. Robinson said he already made a Motion, for a 5 percent raise. Ms. Iokepa-Moses seconded.

Ms. Garson asked if the Motion had an effective date for the raise.

Mr. Robinson said it should be effective as of January 1, 2014.

Ms. Garson asked if the raise was only for the Manager-Chief Engineer.

Mr. Robinson said the raise should be for the Deputy as well.

Chairperson Kaneshiro said that the Manager-Chief Engineer usually makes a recommendation for the Deputy's salary.

Ms. Garson said the Water Board sets the salary for the Manager-Chief Engineer and the Deputy.

Mr. Greenwell said that the Board should be taking up the Manager-Chief Engineer's salary increase separately from the Deputy, because for the Deputy there are a separate set of things that the Board needs to look at. The Deputy started out lower than where Mr. Antonio was when he held the Deputy position. The other thing is that while other employees will be getting a 2 percent or 4 percent raise automatically this year, neither the Deputy nor the Manager-Chief Engineer will get an automatic raise.

Ms. Iokepa-Moses said she was sticking with the 5 percent raise. She said that the Manager-Chief Engineer and the Deputy both accepted their positions, at the salaries offered; a 5 percent raise now would be a good one and they will get the raise again next year. She noted that there was a Motion and a Second on the floor already.

Mr. Greenwell said that while the Board is showing its cards, he himself could not see recommending a 15 percent raise for the Deputy, but the Board should look at a raise of a touch above 5 percent. The reason, Mr. Greenwell said, is that the Deputy is a long way from where Mr. Antonio's salary was in the Deputy position.

Ms. Iokepa-Moses reiterated that the Deputy accepted the position at the salary that was offered; he should have negotiated his price higher.

Chairperson Kaneshiro said a lot of it has to do with longevity.

The Manager-Chief Engineer agreed, but noted that the highest-paid subordinate is getting paid around \$105,000.00 now, with the increases. He asked Mr. Greenwell to confirm that was correct.

Ms. Iokepa-Moses said the Board could always take a vote to see whether the majority was for or against the raise.

Chairperson Kaneshiro suggested that the Board vote on the Manager-Chief Engineer's salary raise first, and then move on to the Deputy's salary raise.

Ms. Garson said that the Motion on the table is for a 5 percent increase for the Manager-Chief Engineer, effective January 1, 2014.

Mr. Robinson said that actually his Motion was for both the Manager-Chief Engineer and the Deputy to get a 5 percent raise.

Ms. Garson said okay, unless somebody wanted to amend the Motion.

ACTION: Mr. Arikawa amended the Motion to give *only* the Manager-Chief Engineer a 5 percent raise, effective January 1, 2014; seconded by Mr. Uyeda; and carried by eight (8) Ayes (Messrs. Arikawa, Greenwell, Perry, Robinson, Takamine and Uyeda; Ms. Lee Loy and Chairperson Kaneshiro) and one (1) Nay (Ms. Iokepa-Moses).

ACTION: Main Motion as Amended passed unanimously by voice vote.

Chairperson Kaneshiro said that it was his understanding the Manager-Chief Engineer was supposed to give the Board a recommendation on the Deputy's salary.

The Manager-Chief Engineer said that if the Board wanted a recommendation from him, he would give the Board a recommendation.

Mr. Robinson said please.

The Manager-Chief Engineer said it was difficult because he understands that Mr. Okamoto is brand new as far as being in the administration, whereas Mr. Antonio and his predecessor Mr. Pavao were close in seniority, having come into their respective positions at the same time from staff as engineers. The idea back then was that the Deputy's salary was 6 percent lower than the Manager-Chief Engineer. One option is to go that way, to give Mr. Okamoto a salary of 6 percent of what the Board just approved for the Manager-Chief Engineer. That may be too much, because Mr. Okamoto is brand new in the position. However, the Manager-Chief Engineer returned to the subject of the highest-paid subordinate and suggested giving Mr. Okamoto some kind of percentage above the highest-paid subordinate. He said he was not sure what information Mr. Greenwell had on the highest-paid subordinate.

Ms. Iokepa-Moses said that because the Board does not have that information, a decision on the Deputy's salary should be deferred to next month.

Mr. Robinson said right, he would like to make a Motion to defer the decision to next month, when the Manager-Chief Engineer could come back with a recommendation as to what the Deputy's salary should be.

The Manager-Chief Engineer said he could give a firm recommendation right now: \$105,000.

Mr. Robinson said okay, that is better.

Mr. Arikawa asked what the Deputy's current salary is.

The Manager-Chief Engineer said it is \$90,000.00.

Mr. Robinson said okay.

Chairperson Kaneshiro said that \$105,000.00 would be a more than 15 percent raise.

Mr. Robinson acknowledged this.

Chairperson Kaneshiro said that would be pretty high.

The Manager-Chief Engineer said he would go back to the scale of raises set by the Salary Commission for the other department heads.

MOTION: Mr. Perry moved to increase the Deputy's salary to \$105,000.00; seconded by Mr. Robinson.

Mr. Perry noted that with a Motion, the Board could now discuss the Deputy's salary.

Mr. Robinson said the Motion is that the Deputy's salary be raised to \$105,000.00 upon the recommendation of the Manager-Chief Engineer; this has been moved and seconded.

Mr. Greenwell said that he wanted to make sure that Mr. Robinson understands that if the Deputy were given a 15 percent raise, it would still not achieve that \$105,000.00. Mr. Greenwell said he thought that a 15 percent raise is rather large; he believed that the Deputy deserves more than what he is getting now, but he could not justify a 15 percent raise. That would be a little hard to swallow, he said. Mr. Greenwell noted that at the time Mr. Okamoto got the position, his salary had been \$80,000.00.

Chairperson Kaneshiro said that when he took the Deputy position, he got a \$10,000.00 raise.

Mr. Greenwell said that at the time that he took the Deputy position, Mr. Okamoto was in a temporary position that was paying \$86,000.00. Therefore, the level of raise depends on how one looks at it, (i.e., whether he was in the permanent position at \$80,000.00 or the temporary position at \$86,000.00.)

Mr. Takamine asked for confirmation that the next highest-paid employee was making about \$103,000.00.

Mr. Greenwell confirmed this, saying that he was not trying to withhold any of this information from the Board.

Ms. Iokepa-Moses said that she wanted to defer this matter until next month; the proposed salary is a big jump, and the Board does not have any information in front of it to justify this big jump.

Chairperson Kaneshiro asked if Ms. Iokepa-Moses wanted to make a Motion.

Mr. Robinson said there were already a Motion and a Second on the floor, to follow the Manager-Chief Engineer's recommendation of \$105,000.00.

Ms. Iokepa-Moses said the Board should take a vote.

*(There was a voice vote as well as a show of hands.)*

ACTION: Motion to raise the Deputy's salary to \$105,000.00 passed with five (5) Ayes: (Ms. Lee Loy, and Messrs. Arikawa, Robinson, Takamine and Uyeda) and four (4) Nays: (Ms. Iokepa-Moses, Messrs. Perry and Greenwell, and Chairperson Kaneshiro.)

I. **EXECUTIVE SESSION REGARDING THE MANAGER-CHIEF ENGINEER'S COMPENSATION:**

*(The Board went into Executive Session at 1:24 p.m., and exited Executive Session at 1:26 p.m.)*

J. **CHAIRPERSON'S REPORT:**

The Chairperson had no report.

9) **ANNOUNCEMENTS:**

1. **Next Regular Meeting:**

The next meeting of the Water Board will be held at 10:00 a.m. on March 25, 2014 at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI.

2. **Following Meeting:**

The following meeting of the Water Board is scheduled for April 22, 2014 at 10:00 a.m. at the Department of Water Supply, Operations Center Conference Room, 889 Leilani Street, Hilo, HI. This will be preceded at **9:45 a.m., by a Public Hearing on the Department's Operating and Capital Improvement Budgets** for Fiscal Year 2015.

10) **ADJOURNMENT**

**ACTION:** Ms. Lee Loy moved to adjourn; seconded by Mr. Arikawa, and carried unanimously by voice vote.

Chairperson Kaneshiro adjourned the meeting at 1:53 p.m.

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Secretary

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 Janet Snyder, 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.*