

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, December 11, 2008

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, December 11, 2008. Chairperson Roy Oyama called the meeting to order at 10:17 a.m. On roll call, the following answered present:

BOARD: Mr. Roy Oyama, Chairperson
Mr. Ian Costa
Mr. Dee Crowell
Mr. Donald Fujimoto
Mr. Leland Kahawai
Mr. Steven Kyono
Mr. Randall Nishimura

STAFF: Ms. Wynne M. Ushigome
Mr. Paul Ganaden
Mr. Gregg Fujikawa
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Ms. Amy Esaki
Mr. Edward Doi
Deputy County Attorney Jim Tagupa

Absent & Excused: Mr. William Eddy

GUESTS: Mr. Lindsay Crawford, Kukui'ula Development LLC (about 10:25 am)
Mr. Max Graham, Opaekaa Gardens' Legal Counsel (left about 12 noon)
Ms. Judy Ta'afuli Webb (left about 12:30 pm)
Mr. George Hoffberg
Mr. Glen Hale, Mr. Hoffberg's Legal Counsel

AGENDA

Chair Oyama stated that to accommodate our guests, G1 New Business, Request to Testify by George Hoffberg will be taken up after F3 Old Business, Request to Testify by Judy Ta'afuli Webb.

Mr. Nishimura moved to approve the Agenda, as amended, seconded by Mr. Kyono; motion was carried.

MINUTES:

Mr. Nishimura moved to receive the Regular Meeting minutes of Thursday, November 13, 2008 and place on file, seconded by Mr. Costa; motion was carried.

CORRESPONDENCE: None

OLD BUSINESS:

Re: Status Report by Kukui'ula Development Company (Hawai'i) LLC

Mr. Lindsay Crawford of Kukui'ula Development was present at the meeting. Acting Manager Ushigome gave the following report:

Kukui'ula has submitted a monthly status update on their project. As part of their approval of a DOW Waiver, Release & Indemnity Agreement Request for: 1) *Subdivision Y Cottages, S-2005-25, TMK: (4) 2-6-016: 016 thru 088; and, 2) Subdivision Y Custom Home Sites, S-2005-25; and, 3) Subdivision M1/M4 Custom Home Sites, S-2005-21, Kukui'ula Development, Kukui'ula, Kaua'i, Hawai'i*, the Board requested monthly status updates on Kukui'ula's project.

The final inspection for Kukui'ula Village and Paanau Tank are completed. One remaining item is the training session for the Paanau Tank motor controls. Tentatively, the training session will be in January 2009. KDC and the Department of Water's staff will work together to come up with an effective, worthwhile "hands on" training for its facilities.

With the completion of the final inspection at Paanau Tank, building permits for interior tenant improvement and "white box" lease spaces for Kukui'ula Village were signed.

The Department has not signed any additional Waiver, Release and Indemnity Agreements for Subdivision Y and the custom home lots in Subdivision M1/M4 pending confirmation from KDC that they will maintain the circulation of water through their on-site water system, and the payment of water charges for the flushing are "non-issues."

In addition, KDC should review the conditions of the Waiver, Release and Indemnity Agreements, whereby KDC agrees to waive, release and indemnify the Department of Water from any and all liability for injuries or damages which might arise out of the fact that the County will be issuing and does issue a permit to the Applicant for construction activities on the property although the project water improvements have not been fully and finally approved and accepted as required by the Department of Water's Rule and Regulations.

In consideration of the Department of Water's approval of the issuance of the permit prior to the final approval and acceptance of the project water system improvements, the Applicant agrees, promise and covenant to waive any and all rights to pursue any action, claim, lawsuit or demand against the Department of Water.

Kukui'ula's Update Report: Submitted by Lindsay Crawford, Senior Project Manager of Kukui'ula Development Company (Hawaii) LLC.

Water System Completion:

All water system improvements are complete and operating, excluding the two Manuhonuhonu Tanks and the associated 425 pressure zone waterlines. DOW staff and Kukui'ula are discussing commissioning alternatives due to the fact that no users for the 425 zone will be in place for another year. Filling, chlorinating and testing of the tanks and the 425 lines continue.

Piwai 0.1 MG Tank Spillway:

DOW staff, Tom Nance, Esaki, Surveying, and Kukui'ula will again meet in early December to discuss the Piwai 0.1 MG temporary tank spillway issue. Numerous alternative solutions have now been thoroughly addressed and preferred solution will chosen ASAP.

Water System Conveyance:

Conveyance documents and Grants of Easements have been revised for CFD language. Western Bypass Lines, Kukui'ula Village and Paanau Tank have already been accepted at the December Board Meeting, leaving only the Piwai Well, Tank and Transmission Lines and the two Manuhonuhonu Tanks will follow once all work is completed.

Waiver, Release and Indemnity Agreements:

Waivers for the first ten building permits have been signed and recorded. Waivers for the next seven Cottage lots in Subdivision Y and the first Custom Home lot in Subdivision M1/M4 were submitted in October and are awaiting DOW signature. Building permits for tenant improvements at our Commercial site were approved by the DOW.

Water Master Plan Update:

Kukui'ula met again with staff last October and will re-submit a new version of the Updated Master Plan (based on a new market-driven, build-out schedule) in January, 2009.

Commercial and Residential Openings/Occupancies:

The anticipated grand opening of the Kukui'ula Village Shopping Center is May of 2009. The first residential homes in Subdivisions Y and M1M4 are still a year or more away from being ready for occupancy. Plantation Core broke ground in September, 2008 but will be over two years in construction before occupancy.

Mr. Nishimura moved to receive this report and place on file, seconded by Mr. Costa; motion was carried.

Mr. Crawford left the meeting at about 10:25 a.m.

Re: Request Reconsideration of Board's Approval of the Private Water System Agreement for a Waiver, Release and Indemnity Agreement for a Private Water System, TMK: 4-2-03:12, 65 and 66, Opaekaa Falls Subdivision (S-2006-47), Situated at Wailua Homesteads, Wailua, Kauai - APPLICANT: Opaekaa Falls Land Company

Mr. Max Graham, Opaekaa Gardens' Legal Counsel was present at this meeting.

The Department is requesting the Board approve a motion for reconsideration of the Private Water System Agreement for a Waiver, Release and Indemnity for the Opaekaa Falls Land Companies' Subdivision (S-2006-47).

At the November 13, 2008 Board meeting, the Applicants submitted a revised agreement entitled Private Water System Agreement, Waiver, Release and Indemnity, for TMK: (4) 4-2-03:012, 065 and 066 (Private Water System Agreement). Since the Department did not get a chance to review the revised agreement, the Department recommended that the Board defer action on this agenda items to allow the staff an opportunity to review and comment. The Board instead elected to approve the Private Water System Agreement.

Upon review of the revised agreement document and in consultation with the County Attorney's Office, the Department was advised that any agreements approved by the Board of Water should be consistent with and in compliance with existing County ordinances and all applicable government rules and standards. Based on this advisement, the Department requested the Applicant revise the Private Water

System Agreement relating to the completion of improvements, agreements, and bond under Section 9-3.6 of the Subdivision Ordinance. This request was sent via letter to Mr. Max Graham, attorney for Opaekaa Falls Land Company, LLC. Reference DOW letter dated November 25, 2008.

The Board should note that the condition to either construct the necessary water system improvements or post a performance bond for construction is a standard requirement issued to all subdivision applications. As such, this condition is reflected in the Planning Department's tentative approval letter dated June 12, 2008 for the subject project. The Department's application of its subdivision requirements is consistent and conforms to the definitions and requirements of the Rules and Regulations of the Planning Commission.

Acting Manager Ushigome requested that this matter be taken up in Executive Session.

EXECUTIVE SESSION:

Pursuant to H.R.S. §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

*J3: ES-2008-4 (5-8-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with legal counsel and department staff regarding **Benjamin Garfinkle's** request for Board Approval to Clarify the Motion made at the December 13, 2007 Board for Agenda Item: "Revised Appeal to November 20, 2007 Agenda Item- Benjamin Garfinkle Regarding DOW Conditions of Tentative Subdivision Approval for Boundary Adjustment (Consolidation and Re-subdivision), TMK (4) 4-2-03:12, 65 and 66. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.*

Mr. Costa moved to go into Executive Session at about 10:25 a.m. to discuss Executive Session Agenda Item No J3 that was formally noticed under Executive Session, seconded by Mr. Kyono; motion was carried.

There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting.

The Regular Meeting was called back to order at 11:52 a.m.

On query by Mr. Graham, Mr. Tagupa stated that the Board has decided to stand by their motion made at the last Board Meeting.

Mr. Graham clarified that he has to go back to the Planning Commission and work with them for the applicant to resolve the bonding issue, which is part of getting final approval.

Acting Manager Ushigome discussed that the DOW will be sending Jim Tagupa, our new legal counsel from the County Attorney's Office, the latest draft agreement for his review to verify compliance with all of the County's ordinances and Department rules and standards.

On query by Mr. Tagupa, Mr. Graham stated that the bonding requirement would be the only modification to the Agreement, which would resolve the issues raised by the DOW. In contrary, Mr. Nishimura informed Mr. Tagupa that the applicant requested several deviations from water standards and as part of that request the applicant also requested that the Board waive the bonding and/or construction requirement. This is inclusive in the draft agreement that would be submitted to Mr. Tagupa for review. He added that there are other issues that may come up as part of the review.

Mr. Max Graham left the meeting about 12 noon.

Re: Request to Testify by Judy Taafuli Webb for the Nawiliwili Paradise Condominium Association by the Developer Niumalu/Nawiliwili Community Planning Project (NNCPP), TMK: 3-2-03:58, Units 1 thru 13, Niumalu, Lihu'e, Kauai

Ms. Judy Ta'afuli Webb was present at the meeting.

Department's Recommendation:

The Department recommended that the Board remand Ms. Webb (formerly Judy L. Taafuli) to work with the Niumalu-Nawiliwili Community Planning Project (NNCPP) and the Niumalu Paradise Condominium (NPC) Association to resolve any reassignment of existing water meters.

At its November meeting, the Board made a motion to defer action on this matter allowing Ms. Webb to submit documentation verifying that she has the approval from the Niumalu Paradise Condominium Association (NPC). To date, the Department has not received this document.

On November 26, 2008, the Department received a letter from Ms. Webb requesting to testify at the December 11, 2008 Water Board meeting. In her letter Ms. Webb indicates, members of the developing corporation (NNCPP) have been unable to collectively complete the water system improvements for the 13-unit CPR. Reference Ms. Webb's letter (with enclosures: Circuit Court Stipulation and Order) dated November 25, 2008.

There are two meters currently assigned to the parcel, one of the meters is assigned to John Lake III, who has since passed away and the other meter is assigned to NNCPP. In this case, since there are only two (2) existing meters servicing the 13-unit CPR, prior to the Department processing an application for water service or reassignment of the existing water meter to Ms. Webb, all the unit owners in the CPR should acknowledge the transfer of the billing account from NNCPP to Ms Webb. To effectuate this understanding, all the unit owners of Niumalu Paradise Condominium should execute an agreement allowing Ms. Webb temporary use of the water meter that is currently assigned to NNCPP.

On December 2, 2008, the Department wrote to NNCP's attorney Mr. Max Graham informing him that the Department will not process Ms. Webb's application for a water meter unless all the owners in the CPR agree to reassign the NNCP meter to Ms. Webb. If it is NNCP's desire to transfer the billing account to Ms. Webb, the CPR owners should execute an agreement assigning the said meter to Ms. Webb's CPR unit. Reference DOW letter to Max Graham dated December 2, 2008.

This agreement essentially should state that the owners acknowledge there are only two (2) existing meters servicing the parcel and that they accept the fact that by assigning this meter to Ms. Webb, no County-supplied water service may ever exist at the location. The Niumalu Paradise Condominium (NPC) Association shall acknowledge that any future requests for additional water service are not guaranteed and will be subject to the availability of water at the time of the application, as determined by the Department of Water. By signing the agreement, the owners, successors in interest, heirs, or assigns agree to indemnify and agree not to file any claims, action or lawsuit against the County of Kaua'i, the Board of Water Supply, the Department of Water, its officers, employees, successors and assigns, for costs, damages, or injuries to person or property resulting from granting of the water meter service to Ms. Webb. This agreement shall run with the land and be recorded with the Bureau of Conveyances.

As stated in the November Board report, Ms. Webb signed a Waiver and Release Agreement; whereby, she agreed that in exchange for the Department of Water signing her building permit for her single family dwelling to be built on her CPR unit, she would not use County water and instead proposed to drill a private well. In addition, Ms. Webb executed a Private-Public Water System Agreement declaration and agreed to the following in consideration of the Department allowance that the property will be serviced by a private water system:

- a. No interconnections between water supplied to the Property by DOW's water meters and water supplied by the private water system exists or shall be constructed, at any time the future.
- b. Owner is responsible to maintain and operate the private water system. This must clearly be stated on the construction drawings, final subdivision map and deeds of the affected lot that the owner is responsible to maintain and operate the private water system.
- c. The agreement shall be binding upon the owner and its heirs, successors and assigns, and shall inure to the benefit of the DOW and its successors and assigns.

Finally, the Circuit Court Stipulation and Order that Ms. Taafuli mentions in her request is not binding on the Department of Water since the water meters are owned by the Department and cannot be assigned by the private parties. Also the lawsuit, according to the Association's attorney, was dismissed.

Based on the above, Ms. Webb's recourse is with the Niumalu-Nawiliwili Community Planning Project (NNCPP) and the Niumalu Paradise Condominium (NPC) Association and not with the Board.

Applicant's Testimony:

Ms. Webb stated that she got a letter dated April 20, 2005 from Warren Perry who signed for the developers stating that Ms. Webb could get the one water meter assignment that she has been asking for. Ms. Webb added that she does not need to get signatures from all of the owners as it is not their meter to begin with. Therefore, she asked if the Board would honor Warren Perry's letter and the Stipulation and Order dated May 30, 2006 as she is willing to pay the back 'taxes' on the water meter and wants only a temporary assignment of the water meter until a permanent waterline is installed.

Acting Manager Ushigome reiterated that the Stipulation and Order is not binding upon the Department of Water. Ms. Webb added that Warren Perry was representing the developers at the time and they said that she could connect.

Waterworks Legal Advisor Esaki stated that Warren Perry is no longer the developer's representative and it has come to light that there are other owners that are presently interested in the 2nd water meter. Ms. Webb added that it does not matter now that Warren Perry is no longer the representative and that there is no house presently on the lot except her house.

Acting Manager Ushigome discussed that Ms. Webb previously got her building permit approval from the DOW only because she signed a Waiver, Release and Indemnity Agreement stating that she would not need County water for the construction of her house, as she was going to drill a private well.

Ms. Webb stated that they all bought their property with the knowledge that they were all promised to get a water meter; therefore, she is asking to be temporarily assigned the water meter.

Acting Manager Ushigome stated that since this a CPR parcel that has 2 water meters and since the CPR parcel is collectively owned by all the owners, they all need to acknowledge that there are 2 existing water meters and that one of the water meters will be assigned to Ms. Webb. To date, the DOW has not received any such written documents.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the Department did check with the County Attorney's Office on the Stipulation and Order and they stated that since the water meters are owned by the DOW, it cannot be assigned by private owners. Acting Manager Ushigome also stated that the lawsuit that the Stipulation referred to was dismissed. Ms. Webb added that the lawsuit was dismissed with the agreement that she would get the water meter assigned to her.

Acting Manager Ushigome explained that the developer was supposed to have installed all of the water meters. The developer has completed the construction drawings and they put it out to bid; it is the Department's understanding that the bid prices were too high; therefore, a contractor was not selected.

On query by Mr. Tagupa, Acting Manager Ushigome explained that the DOW had written a letter to NNCPP's attorney Max Graham dated December 2, 2008 that the DOW would process Ms. Webb's water meter application, contingent upon the unit owners written acknowledgement that Ms. Webb was going to have one of the water meters. The unit owners would also acknowledge that any future requests for additional water service are not guaranteed and will be subject to the DOW's determination of the water availability at the time of the application. The DOW would also need written acknowledgement from the unit owners that they and their heirs and assigns agree to indemnify and agree to not to file any claims against the County of Kauai, DOW and its officers, employers, etc. for cost, damages injuries, etc. resulting from granting the water meter to Ms. Webb and that this waiver would run with the land and to be recorded at the Bureau of Conveyances.

Mr. D. Fujimoto stated this issue brings up that we should have rules and policies in place that addresses CPR issues to ensure its consistency with subdivisions.

Ms. Webb stated that they are working out their financial issues and will have enough money to construct the infrastructure as they have gone out to bid and got 4 bids to do the work, then everyone would have their water meters. In the meantime, she asked for only the temporary use of the water meter.

Acting Manager Ushigome reiterated that the Department recommended having this matter remanded back to the developers for their resolution on any water meter assignments.

Ms. Webb added that she will be meeting with NNCPP's attorney Max Graham next week to discuss this matter.

Mr. Nishimura moved that upon Receipt of Authorization by NNCPP that the DOW issue a water meter to Judy Ta'afuli Webb, seconded by Mr. Costa.

Mr. Nishimura added that if NNCPP approves the temporary use by Ms. Webb, that they would need to discontinue their service and make it available for Ms. Webb.

Motion was carried.

Ms. Ta'afuli Webb left the meeting at about 12:30 p.m.

Based on the above discussions, Rules Committee Chair Crowell suggested that the definition of 'Applicant' should be clarified in the DOW's Rules and Regulations like how it is in the CZO.

Acting Manager Ushigome added that the County Attorney's Office had already been working on drafting CPR rules; therefore, Ms. Esaki was tasked to check on the status of those rules.

NEW BUSINESS:

Re: Subdivision of Parcel 4, TMK:4-3-03 (S-2006-44), Being a Portion of Royal Patent 7375, L.C. Award 8559-B, Apana 42 to W.C. Lunalilo, Situated at Waipouli, Kawaihau, Kauai, Hawai'i, into Lots 1 through 11, inclusive

Mr. George Hoffberg and his legal counsel Mr. Glen Hale were present at the meeting.

LOCATION: Olohena (Kawaihau). The property is located approximately 300 feet North-West of the intersection of Hauiki and Waipouli Roads and is further identified by Tax Map Key 4-3-03:4 affecting a total area of approximately 27 acres.

I. ACTIONS REQUIRED:

The applicant is requesting the Board of Water Supply:

- a. Approve George Hoffberg's June 10, 2008 private water well service application.
- b. Authorization to utilize both public and private water systems.

II. PROJECT DESCRIPTION AND USE:

The project consists of the subdivision of TMK: 4-3-03: Parcel 4 into 11 lots. Parcel 4 is approximately 27 acres in size and its zoning is "AG."

- Original subdivision application accepted by the Planning Department on May 15, 2006 (Exhibit 1).
- Department of Water's Subdivision Report to the Planning Department dated July 26, 2006 (Exhibit 2).
- Department of Water's letter to Laurel Loo dated September 10, 2007 which provides recommendations that shall be completed prior to the Department of Water (DOW) granting subdivision approval with water service from a private well water system (Exhibit 3).
- George Hoffberg's letter dated June 10, 2008 proposing to develop a dual but separate private water system to meet the domestic and irrigation water demands for the proposed subdivision (Exhibit 4).
- Department of Water's letter to George Hoffberg dated July 14, 2008 (Exhibit 5). This letter is notifying Mr. Hoffberg that the DOW is waiting for a decision from the County Attorney's office regarding whether or not a developer, who is applying for a subdivision shall comply with the Water Department Standards for developing a private water system to service the subdivision.

III. LEGAL REQUIREMENTS:

- Chapter 9 of the Kauai County Code ("KCC") regulates the subdivision process through the Planning Commission.
- KCC 9-2.4 states, "Water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water."
- Part 3 of the Department of Water, County of Kauai's Rules and Regulations ("DOW Rules") is titled, "Establishing Standards for Subdivision Water Systems" and regulates water systems within subdivisions.

- Part 3, Section II, Paragraph (2), of the DOW Rules states:

“In areas where there is no public water supply available or where large quantities of water required or a large investment is necessary to provide service, the subdivider will be informed as to the conditions under which the subdivision may be approved and, where appropriate, refunds made.”
- Part 3, Section IX, Paragraph (4), of the DOW Rules regarding the approval of plans for subdivision water system states:

“In areas where there is no public water supply available to serve the subdivision, plans and specifications for the development of water sources, including wells, tunnels, shafts, pump buildings, mains, and other appurtenances, structures and devices, shall be in conformance with the standards of the Department and shall be approved by the Department in their entirety prior to the construction.”
- Part 3, Section II, Paragraph (c) of the DOW Rules set forth the water system standards of the Department as follows:

“The subdivision water system complies with these rules and regulation and is designed and constructed in compliance with (1) all applicable statutes, ordinances, rules, and regulations of the State of Hawai‘i and the County of Kauai, and (2) the 2002 Water System Standard (“Standards”) developed by Hawaii’s four county departments of water, as amended by the Department’s 2005 Amendments are hereby incorporated by reference into the Department Rules. The Manager and Chief Engineer may, for good cause shown, permit departure from the Standards or 2005 Amendments, or both.”
- Part 3, Section XII of the DOW Rules allow for a variance from water department standards for subdivisions under the following conditions:

“When conditions pertaining to any subdivision are such that the public may be properly served with water and with fire protection without full and strict compliance with these rules and regulations, or where the subdivision site or layout is such that the public interest will be adequately protected, such modification thereof as is reasonably necessary or expedient, and not contrary to law or the intent and purposes of these rules and regulation, may be made by the Department.”

IV. APPLICANT’S REASONS/JUSTIFICATION:

Refer to the Applicant’s November 14, 2008 letter to the Board.

ADDITIONAL FINDINGS

Fire protection required for the proposed subdivision agricultural zoned land is not available from the existing water system facilities (transmission main). The applicant was required to provide water main extensions to provide adequate domestic and fire flow demands for the proposed subdivision, as shown in the Department of Water’s subdivision report to the Planning Department dated July 26, 2006 (Exhibit 2).

Applicant is proposing to develop a private water system to provide for the domestic and irrigation water demands of the proposed subdivision.

Existing SOP No. 53 “Private Potable Water Systems for Lots with Existing County Water Meter Service.” The purpose of this SOP is to restrict the further development and use of dual (County supplied and privately owned) potable water systems servicing a single lot (Exhibit 6). SOP 53 was based on the Board approving the Department’s recommendation to consider adopting and approving an administrative policy restricting private (domestic) well improvements on lots currently serviced by a County water meter at the April 17, 2007 Board Meeting.

Portion of April 17, 2007 Board minutes regarding the Department’s “Request Board Adopt and Approve an Administrative Policy Restricting Private (Domestic) Well Improvements on Lots Currently Serviced by a County Water Meter” which was approved by the Board at their April 17, 2007 meeting is attached for reference (Exhibit 7).

EVALUATION

Legal requirements for the subdivision process is based on the County of Kauai’s Subdivision Ordinance which states the water supply and distribution facilities shall conform to the rules and the construction standards of the Department of Water.

CONCLUSION

REGARDING ITEM “1”

ACTIONS REQUIRED:

- a. Approve George Hoffberg’s June 10, 2008 private water well service application.

The Department will be responding or has responded to George Hoffberg notifying him that the conditions that are included in the Department of Water’s letter dated September 10, 2007 (Exhibit 3) to Laurel Loo regarding subject subdivision are still applicable. In addition, the private water system shall conform to the Rules and Regulations and the construction standards of the Department of Water and be in compliance with all other government agency requirements.

- b. Authorization to utilize both public and private water systems.

Based on SOP 53 (Exhibit 6) and portion of April 17, 2007 Board minutes (Exhibit 7), the Department shall not approve private (domestic) well system improvements on lots that are currently serviced by a County water meter.

RECOMMENDATION

REGARDING ITEM “1”

ACTIONS REQUIRED:

- a. Approve George Hoffberg's private water well service application.

It is recommended that the Board of Water Supply approve George Hoffberg's private water well service application provided that prior to the Department of Water recommending final subdivision approval with water service from a private well water system, the subdivision applicant/lot owner shall:

1. Agree to discontinue County water service. The lot owner shall agree to disconnect all of the existing water meter service connections to the lot. The lot owner shall notify the Department of their intention to discontinue and abandon the water meter service connections. The lot owner shall be responsible for the actual cost to abandon the water meter service connections. The lot owner will be required to prepare and receive DOW's approval of construction drawings for the abandonment of the water service connections and must abandon said water services. The service connection abandonments shall also include the physical disconnection of the service connection laterals at the water mainline.
2. Prepare, execute, and record a "Waiver and Release" document; whereby, the owner and his successors and assigns acknowledge that no County-supplied water service of any kind exists at the lot and agrees to waive, release, and indemnify the DOW from any liability for damages or injuries which may arise from the discontinuation and disconnection of water meter service and the Department approving a building permit or subdivision without County water service being provided. The above restriction must be clearly incorporated into the construction drawings, final map, and deeds of the affected lots.
3. Submit a written request to disconnect (abandon) the water meter service connection to the Department and agree to complete the aforementioned and other conditions as determined by the Department.
4. Be responsible for the design, construction, operation, and maintenance of the private well water system which should provide adequate domestic and fire protection capacity for existing and proposed water demands for the subdivision/lots. A licensed engineer shall certify that the private water system for the subdivision meets DOW Standards.
5. Be made aware that private water system shall conform to the Rules and Regulations and the construction standards of the Department of Water and be in compliance with all other government agency requirements.
6. Construct the private water well system improvements for this subdivision or enter into an agreement guaranteeing the construction of improvements for this subdivision and provide a bond or security. If a bond is filed to secure final subdivision approval, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map and deeds:

“Water service will not be available until the required construction improvements for this subdivision are completed and operational.”

This deed restriction shall be recorded with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.

The above will ensure that if lots are sold prior to the completion of the construction improvements that all future owners are made aware of the water situation at that time.

b. Authorization to utilize both public and private water systems.

It is recommended that the Board of Water Supply deny George Hoffberg's request to use both public and private water systems.

Applicant's Testimony:

Mr. Hoffberg's legal counsel, Mr. Hale, testified that he needed to do a couple of corrections to the facts:

Mr. Hoffberg's application with the Department of Water actually started from the time that Ms. Laurel Loo, his previous attorney, submitted a request letter to the Board in August and asked the conditions that would be imposed on his request. The DOW responded to that letter via letter dated September 10, 2007.

Based on the DOW's conditions, Mr. Hoffberg spent about \$250,000 to prepare plans and engineering drawings to comply with the DOW's conditions. He submitted these plans on June 10, 2008 to the DOW. He then got a letter dated July 14, 2008 that summarized that the DOW 'was not going to do this anymore'. Mr. Hale stated that Mr. Hoffberg was not given a time frame of when a decision was going to be made.

Mr. Hale added that he was concerned as the July 14, 2008 letter included a decision by the DOW that is not consistent with the existing DOW's rules. Part 2, Section XX of the DOW's Rules allows the connection of a private water system or other water source to the public water system. Also, he brought up that DOW's SOP 53 did not comply with Section 91-3 of the HRS and that per Section 91-2 of the HRS cannot apply a rule to Mr. Hoffberg without going through the rulemaking process.

Mr. Hale also wanted to make the Board aware that there is a constitutional requirement to protect the pertinent rights for artesian water supply or the correlative rights. These rights were upheld in a case by the Hawaii State Supreme Court. It states that, "all owners of land under which lies an artesian basin have rights to water under that basin'. Therefore, the Board cannot refuse to allow private water systems.

Mr. Hale also mentioned that they do not think that the DOW's rules allow for the carte blanche statement that you cannot mix these 2 water systems.

Mr. Hale stated that they would want to use the 2 existing water meters for 2 lots of the 11-lot subdivision. There will be no sharing of water as the 2 lots would be on the County water system and the others would be on the private water system.

Therefore, he does not know why the DOW is forcing Mr. Hoffberg to give up his 2 water meters as a condition for his private water system being approved.

Acting Manager Ushigome gave some background of SOP No. 53, which was Board approved and an administrative policy that came about due to the concern of cross connection of private and public dual water systems on the same property that may cause contamination of our public water system.

Mr. Hale summarized and addressed the Department's conditions for Item "I" that they object to Conditions 1 and 3 as the DOW already has rules that allows private and public water systems without the discontinuance of the County water system. They are ok with Condition 2 and 4. They are not in agreement with Condition 5 as they will have a private water system and a private water system should be developed with a reasonable standard for a private water system. He stated that private implies that it is not subject to government control. They are fine with Condition 6 on the bonding requirements and deed restrictions.

Acting Manager Ushigome added that the letter from Ms. Laurel Loo indicated that the subdivision would have all been serviced by a private water system. Later a letter was received from PorTech Engineering to offer dual water systems, both private and public for all 11 lots.

Mr. Hale added that initially Mr. Hoffberg was told verbally that it was the rule that he cannot use the 2 water meters so he applied for a private water system and upon further review, the DOW's existing rules, more specifically in Part 2, Section XX, Paragraph b, does allow for dual water systems so Mr. Hoffberg is suppose to be able to use his 2 water meters and a private water system.

Mr. Hale stated that the DOW's rules allow for dual systems as long as they comply with the DOW's existing rules and it is built correctly to avoid cross contamination, etc. He added that it is Mr. Hoffberg's constitutional right to have what he is requesting for; however, if the DOW wants to change the situation via a standard operating procedure then it should be done per 91-3 of the Hawaii Revised Statutes.

On query by Chair Oyama, Mr. Hale stated that the property is presently a 5-unit CPR; however, Mr. Hoffberg is applying for an 11-lot subdivision; so if approved, the CPR rights would be cancelled.

On query by Mr. Nishimura, Mr. Hale clarified that Mr. Hoffberg still wants the 2 water meters for 2 lots of his subdivision and the private water system would be separate to service the other lots and will not be interconnected.

Mr. Hoffberg also clarified that once his subdivision is approved, there will be 11 separate individually-owned lots with 2 lots on the County water system and not on the private water system and the other 9 lots will be on the private water system and not on the County Water System.

On query by Mr. Costa, Mr. Hoffberg stated that this scenario is for only potable water, as irrigation water is a separate issue and will be a completely separate system.

On query by Mr. Nishimura, Mr. Hale stated that the DOW cannot use SOP No. 53 as it was not established pursuant to the Rules and Regulations requirement. Mr. Hale added that the DOW's rules state on the first page of Part 1 that all rules and regulations should be adopted and will be in accordance with Section 91-3 and Section 91-4 of the HRS. Therefore, he cannot understand how the Board can approve SOP No. 53, which changes Part 2, Section XX and is in violation of the first part of the DOW's Rules.

Mr. Nishimura asked the DOW staff if there is a part in our Rules that says adoption of standard operating procedures need not be processed in accordance of the Rules of the Board. Acting Manager Ushigome referenced Part 1, Section II, Procedure for Adoption, Amendment or Repeal of Rules that state: "All rules and regulations of the Department shall be adopted and shall take effect in accordance with Section 91-3 and Section 91-4, Hawaii Revised Statutes; provided, however, that such procedure for the adoption, amendment and repeal of rules shall not be applicable to the adoption, amendment and repeal of rules pertaining purely to the internal procedure of the Department." She stated that the internal procedure referenced in this paragraph could cover the DOW's internal SOP that was developed.

Mr. Hale felt that an internal procedure should not change a current Rule.

Mr. Fujikawa discussed that this application was reviewed to ensure that there is no possibility of cross connections between public and private water systems to avoid any type of contamination. Therefore, the staff's review was to cover various scenarios and how to address each scenario.

However, he added that Part 3 does not bring up the concern about cross connections among subdivided lots unlike Part 2 of the DOW's Rules.

Mr. Nishimura added that SOP 53 restricts dual water systems for a single lot; therefore it could be that Mr. Hoffberg's situation complies with SOP 53.

Mr. Crowell moved to defer this matter to resolve legal issues, seconded by Mr. Nishimura.

Mr. Hale discussed that he hoped that the issue to be reviewed as the use of the 2 water meters as the concept for the basic application for a private water system has already been approved by the DOW. Mr. Hale added that time is money and this issue came up in July, 2008 and Mr. Hoffberg needs to get his subdivision approval so he can move forward. He also added that in order to keep this process moving and not at a stalemate that they would need an approval letter from the DOW and the understanding that the DOW would go through the proper procedures to have this subdivision approval granted pending this decision on the 2 water meters.

Acting Manager Ushigome stated that the staff report recommended approval of Mr. Hoffberg's June 10th application for a private water system and the DOW will notify Mr. Hoffberg of the conditions as per the DOW's September 10th letter to Ms. Laurel Loo.

On query by Acting Manager Ushigome, Mr. Hale stated that they objected to DOW Conditions 1, 3, and 5 on the grounds that it required Mr. Hoffberg to discontinue the use of the 2 water meters.

Mr. Hale felt that there could be some language crafted to ensure the subdivision approval process, with the contingency of whether they can still use the 2 existing water meters. Mr. Costa discussed that the subdivision process could continue with Mr. Hoffberg developing a private water system for the 11 lots.

On query by Mr. Nishimura, Mr. Hale stated that Mr. Hoffberg did not agree with DOW Condition 5 as it was felt that the private water system is private and should not have to adhere to Rules and Regulations.

Acting Manager Ushigome explained Condition No. 5 that the private water system would need to conform to the DOW's Rules and Standards. The Department's Rules and Regulations include a provision or section (Part 3, Section XXII, Modification of Requirements) which allow for modifications. Therefore, the applicant would need to submit to the DOW a request for modifications to our standards and identify what is being requested to be modified. The Board will then decide if it is reasonable to deviate from the DOW's standards. If there are no requests for modifications, then the DOW's standards apply.

As Mr. Hale wanted to resubmit the private water system construction drawings, Mr. Costa explained that the DOW would need to get the review and approval first before asking for final subdivision approval and that the private water system plans would have to meet County standards. Mr. Hale concurred.

Motion was carried.

Mr. Hoffberg and Mr. Hale both left the meeting at about 1:42 p.m.

OLD BUSINESS:

Re: Board Discussion on Setting their 2009 Goals

As part of the Job Performance Evaluation process for Acting Manager Wynne Ushigome, the Board requested that this matter be on the next Board Meeting Agenda to begin discussion on the Board's goals for 2009. Once the Board's goals are finalized, it will be communicated to Acting Manager Ushigome to ensure clarity by both her and the Board.

This matter will be deferred to after the last Executive Session. (This matter was deferred at the November 13, 2008 Board meeting.)

Re: Discussion, deliberation and decision-making or action regarding steps, actions, procedures and processes necessary to select a new Manager and Chief Engineer for the Kauai Water Department

This matter will be handled in Executive Session. (This matter was deferred at the November 13, 2008 Board meeting.)

NEW BUSINESS:

Re: Job No. 05-03, WK-25, Kapilimao 0.5 Million Gallon Tank and Job No. 03-03, Hardening of Generator Shelters at the Kapilimao Well Site, Kekaha, Kauai, Hawaii, First Contract Amendment with Brown and Caldwell

RECOMMENDATION: It was recommended that the Board approve the first contract amendment with Brown and Caldwell, consultants for this project to verify the tank levels between the existing Paua Valley Tanks with the proposed Kapilimao Tank and to compensate the consultant, Kodani & Associates, Inc., for the review, modifications and as-needed construction support and consultations.

It was further recommended that the Board reallocate \$2,720.00 from Account No. 106b CIP Reserve to fund the balance required.

FUNDING:

Total Funds Available, Job No. 05-03, WK-25, Kapilimao 0.5 Million Gallon Tank, Kekaha, Kauai, Hawaii.	\$318,700.00
Contract 460, Brown and Caldwell.	\$303,436.00
Current Estimate, Amendment #1	<u>\$ 17,984.00</u>
Total Required	< <u>\$321,420.00</u> >
Balance Required from Account 106b CIP Reserve	<\$ 2,720.00>

BACKGROUND:

The intent of the proposed Kapilimao Tank is to “float” with the existing storage tanks in Kekaha at the Paua Valley Tanks. The consultant utilized the bench mark elevation at the Kapilimao Well site in its design of the tank, however the Department would like to verify that the elevation used matches the existing Paua Valley Tanks to avoid the situation there the existing tanks do not match the proposed Kapilimao Tank.

Additionally, the Department has consolidated Job No. 03-03, Hardening of Generator Shelters at the Kapilimao Well Site with Job No. 05-03, WK-25, Kapilimao 0.5 Million Gallon Tank. The generator housing project was prepared under a contract with Kodani and Associates and has since closed. Therefore, Brown and Caldwell has agreed to compensate Kodani for the necessary review and modifications to the construction specifications and drawings and for as-needed construction support and consultation required by combining the projects with a contract amendment with the Board.

Mr. Costa moved to approve the first contract amendment with Brown and Caldwell, consultants for this project to verify the tank levels between the existing Paua Valley Tanks with the proposed Kapilimao Tank and to compensate the consultant, Kodani & Associates, Inc., for the review, modifications and as-needed construction support and consultations and to also approve the reallocation of \$2,720.00 from Account No. 106b CIP Reserve to fund the balance required, seconded by Mr. Kyono; motion was carried.

Re: Request for Approval for Second Amendment to License Agreement with Bank of Hawai'i, Trustee for the Walter D. McBryde Trust

The Department requested the Board's approval for the Second Amendment to License Agreement with Bank of Hawai'i, Trustee for the Walter D. McBryde Trust, to use the 1968 tank site, located in Kalaheo.

The Second Amendment extends the license period until December 31, 2009 to allow for the Department to complete the subdivision process for the said property. The base license fee for the next year will be \$1,450 based on the computation that was utilized in arriving at the initial base fee and subsequent rate change. The Department is working towards completing the land exchange with the Walter D. McBryde Trust.

Mr. Nishimura moved to approve Second Amendment to License Agreement with Bank of Hawai'i, seconded by Mr. Costa; motion was carried.

Re: Request Board Approval to Execute a Letter of Approval for Conservation District Use Application (CDUA) KA-3475, County of Kaua'i, Board of Water Supply, Consolidation and Resubdivision of Water Tank Parcels, TMK: (4) 2-3-05:06 (por) and (4) 2-3-05:07 and Lot 12 of TMK: (4) 2-3-05:02 and (4) 2-3-06:02, Kukuiolono Subdivision, Situated at Kalāheo, Kauai

It was recommended that the Board approve the Department's execution of the conservation District Use Permit (CDUP) KA-3475 for public purpose, consolidation and resubdivision of land located at Kukuiolono, Kalāheo, Koloa, Kaua'i. The Department is named "Applicant" for this permit and is asked to execute and return a copy of the signed letter to DLNR, Office of Conservation & Coastal Lands.

The Department has reviewed the conditions of the permit and finds no exceptions.

Further, Board approval was specifically requested for the indemnification provision in this agreement, wherein the Board agrees to indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage and personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit.

Mr. Costa moved to approve the Department's execution of the conservation District Use Permit (CDUP) KA-3475 for public purpose, consolidation and resubdivision of land located at Kukuiolono, Kalāheo, Koloa, Kaua'i, along with the indemnification provision, seconded by Mr. Nishimura; motion was carried.

Re: Final Annual Audit Report

RECOMMENDATION:

It was recommended that the Board approve the final annual audit for July 1, 2006 to June 30, 2007.

FUNDING: n/a

BACKGROUND:

The Board of Water Supply, at its November 13, 2008 Finance Committee Meeting, accepted the draft report on the Department of Water's annual audit. Our auditor, KMH, LLP, has finalized the annual audit, which is enclosed separately in your binder.

Mr. Nishimura moved to approve the final annual audit, seconded by Mr. Costa; motion was carried.

Re: Resolution No. 7, (08/09), Mahalo and Aloha Steven Kyono

Mr. Costa moved to approve Resolution No. 7 (08/09), Mahalo and Aloha Steven Kyono, who will be retiring from government service as of December 30, 2008, seconded by Mr. Nishimura; motion was carried.

Re: Grant of Easement from Regency Villas, LLC, a Limited Liability Company; for the Water System at Regency Villas at Poipu Kai, Phase II, TMK: (4) 2-8-27:021, Koloa, Kauai, Hawaii

It was recommended that the Board approve the grant of easement whereby Regency Villas, LLC, a Limited Liability Company; grant to the Board of Water Supply, County of Kauai, perpetual easement "W-1" on, over and under that certain parcel of land located at TMK: (4) 2-8-27:021, Koloa, Kauai, Hawaii, for the construction, installation, reinstallation, maintenance, repair and removal of potable water pipelines, related meters, valves, and other associated waterworks facility improvements and appurtenances, together with the right of ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Department of Water shall deem necessary for the proper operation of its water system for the Water System at Regency Villas at Poipu Kai, Phase II, TMK: (4) 2-8-27:021, Koloa, Kauai, Hawaii.

Further, Board approval is specifically requested of the indemnification provision in this agreement, wherein the Board agrees to indemnify and hold harmless the Grantee from property damage and injuries to person (including death), when such damages and injuries are caused by the Department's negligence while using the area.

Mr. Kyono moved to approve the Grant of Easement from Regency Villas, LLC, a Limited Liability Company, along with its indemnification provision, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Regency Villas, LLC, a Limited Liability Company; for the Water System at Regency Villas at Poipu Kai, Phase II, TMK: (4) 2-8-27:021, Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Regency Villas, LLC, a Limited Liability Company, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) 2 ½ inch copper single service lateral for 2-inch water meter; one (1) 4-inch ductile iron lateral

for 4-inch detector check meter; and one (1) 4-inch gate valve, including C.I. valve box & cover for 4-inch detector check lateral; in place complete, for the Water System at Regency Villas at Poipu Kai, Phase II, TMK: (4) 2-8-27:021, Koloa, Kauai, Hawaii.

Mr. Kyono moved to approve the Conveyance of Water Facility from Regency Villas, LLC, a Limited Liability Company, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Hokuaina Development, LLC, a Hawaii Limited Liability Company; for the Hokuaina Beach Estates (S-2005-24), TMK: (4) 1-2-013:001, 039, 040 & 041, Kekaha, Waimea District, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Hokuaina Development, LLC, a Hawaii limited liability company, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: two (2) each, 8-inch gate valve, incl. C.I. valve box & cover; one (1) ea. fire hydrant assembly w/ 1-4 ½" and 1-2 ½" outlet; one (1) each 6-inch gate valve, incl. C.I. valve box & cover; one (1) each, 1-inch copper single service lateral for 5/8" water meter; and two (2) each, 1 ½" copper double service lateral for 5/8" water meter, for the Hokuaina Beach Estates (S-2005-24), TMK: (4) 1-2-013:001, 039, 040 & 041, Kekaha, Waimea District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility document from Hokuaina Development, LLC, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from McBryde Sugar Company, Limited, a Hawaii Corporation and Kukuiula Development Company (Hawaii), LLC, a Hawaii Limited Liability Company; for the Paanau No. 2, 0.5 MG Tank (S-2004-45), TMK: (4) 2-6-03:001 (por.); Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby McBryde Sugar Company, Limited, a Hawaii corporation and Kukuiula Development Company (Hawaii), LLC, a Hawaii limited liability company; transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to:

Water System Potable:

- 500 lineal feet of 12-inch Ductile Iron Pipe
- 3 Ea. 12-inch Gate Valve with box and cover
- 1 Ea. 6-inch Blow-off with flap valve
- 1 Ea. Control Valve Station, 6" concrete slab and supports with trust blocks, valves, fittings and appurtenances
- 1 Ea. Instrument House
- 1 Ea. Electrical equipment and wiring at the new 0.5 MG tank site
- 1 Ea. 0.5 MG reinforced concrete storage tank and all appurtenances

<u>Storm Drain</u>	32 lineal feet of 18-inch High Density Polyethylene Culvert Pipe 2 Ea. Type G4 Drain Inlet 1 Ea. Concrete Headwall w/ grouted rip-rap protection
<u>Tank Drainage</u>	160 lineal feet of 12-inch Ductile Iron Drain Line 270 lineal feet of 4'-wide Concrete Gutter
<u>Base & Paving</u>	2,350 square yards of 6" Aggregate Basecourse 690 square yards of 2" AC Pavement
<u>Sitework Concrete</u>	700 lineal feet of 6" Concrete Curb 100 square feet of 5'-wide Concrete Walkway
<u>Fencing</u>	450 lineal feet of 6'-high Chain Link Fence 2 Ea. 6' high Standard Double Swing Chain Link Gate

in place complete, for the Paanau No. 2, 0.5 MG Tank (S-2004-45), TMK: (4) 2-6-03:001 (por.); Koloa, Kauai, Hawaii.

Grant of Easement not required.

Mr. Kyono moved to approve the Conveyance of Water Facility document from both McBryde Sugar Company, Limited, a Hawaii corporation and Kukuiula Development Company (Hawaii), LLC Kukuiula Village LLC, seconded by Mr. Costa; motion was carried.

Re: Grant of Easement from McBryde Sugar Company, Ltd., a Hawaii Corporation; for Paanau Tank No. 2, 0.5 MG Tank (S-2004-45), TMK: (4) 2-6-03:001, Koloa, Kauai, Hawaii

It was recommended that the Board approve the grant of easement; whereby, McBryde Sugar Company, Ltd., a Hawaii corporation; grant to the Board of Water Supply, County of Kauai, a perpetual easement "25" on, over and under that certain parcel of land located at TMK: (4) 2-6-03:001, Koloa, Kauai, Hawaii, for the construction, installation, reinstallation, maintenance, repair and removal of potable water pipelines, related meters, valves, and other associated waterworks facility improvements and appurtenances, together with the right of ingress and egress at any time to, from, and through the easement area, with or without vehicles or equipment, as the Department of Water shall deem necessary for the proper operation of its water system for Paanau Tank No. 2, 0.5 MG Tank (S-2004-45), TMK: (4) 2-6-03:001, Koloa, Kauai, Hawaii.

Further, Board approval is specifically requested of the indemnification provision in this agreement, wherein the Board agrees to indemnify and hold harmless the Grantee from property damage and injuries to person (including death), when such damages and injuries are caused by the Department's negligence while using the area.

Mr. Kyono moved to approve the Grant of Easement document from McBryde Sugar Company, Ltd., along with its indemnification provision, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Kukuiula Village LLC, a Delaware Limited Liability Company; for Kukuiula Village (S-2004-45), TMK: (4) 2-6-15:010, Koloa, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, Kukuiula Village LLC, a Delaware limited liability company; transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 8-inch ductile iron lateral for 8" detector check meter and one (1) each, 6-inch ductile iron lateral for 3" compound meter, in place complete, for Kukuiula Village (S-2004-45), TMK: (4) 2-6-15:010, Koloa, Kauai, Hawaii.

Mr. Kyono moved to approve the Conveyance of Water Facility document from Kukuiula Village LLC, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from Eugene G. Pillard II, Carina B. Lange and Stewart N. Husband, TMK: (4) 2-4-02:002 019, Wawae Place, Kalaheo, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby Eugene G. Pillard II, Carina B. Lange and Stewart N. Husband transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to a double service connection for 5/8" water meter, in place complete, in accordance with the as-built construction drawings for INSTALLATION OF 2nd SINGLE SERVICE LATERAL FOR LOT 68-B, prepared by Portech Engineering, TMK: (4) 2-4-02:002 019, Wawae Place, Kalaheo, Kauai, Hawaii.

A Grant of Easement is not required.

On query by Acting Manager Ushigome, Deputy County Attorney Tagupa stated that if the conveyance document is correct and the error on the TMK No. is a typographical error only in the report that it would be okay to approve this conveyance.

Mr. Kyono moved to approve the Conveyance of Water Facility document from Eugene G. Pillard II, Carina B. Lange and Stewart N. Husband, seconded by Mr. Costa; motion was carried.

Re: Conveyance of Water Facility from John Paul Hawthorne, Donna Apisa, William Kreutzmann, Tahn Hyun, Margaret Hyun, Andrew J. Smith and Jill S. Smith, for the Water Service Installation Plan for Units B, C, and D, Lot 12-A, TMK: (4) 5-1-05:014, Hanalei, Kauai, Hawaii

It was recommended that the Conveyance of Water Facility document be approved; whereby, John Paul Hawthorne, Donna Apisa, William Kreutzmann, Tahn Hyun, Margaret Hyun, Andrew J. Smith and Jill S. Smith transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following item:

Waterline: 1 ea. 1-1/2 Inch Copper Double Service Lateral for 5/8-Inch Water Meters
1 ea. 1 Inch Copper Single Service Lateral for 5/8-Inch Water Meter

in place complete, in accordance with the as-built construction drawings for WATER SERVICE INSTALLATION PLAN FOR UNITS B, C, AND D, LOT 12-A, prepared by Wagner Engineering Services, Inc., Hanalei, Kauai, Hawaii.

A Grant of Easement is not required at this time.

Mr. Kyono moved to approve the Conveyance of Water Facility from John Paul Hawthorne, Donna Apisa, William Kreutzmann, Tahn Hyun, Margaret Hyun, Andrew J. Smith and Jill S. Smith, seconded by Mr. Costa; motion was carried.

Re: Election of Officers

At its previous Committee Meeting on Thursday, December 11, 2008, the Water Board's Committee of the Whole unanimously concurred on the following slate of officers for 2009:

Chairperson: Leland Kahawai
Vice Chairperson: Randall Nishimura
Secretary: Dee Crowell

Mr. Costa moved to approve the above slate of officers for 2009, seconded by Mr. Kyono; motion was carried.

REPORTS

Re: Statement of Kaua'i County Water Department's Revenues and Expenditures

Mr. Nishimura moved to receive the Statement of Kaua'i County Water Department's Revenues and Expenditures report and placed on file, seconded by Mr. Costa; motion was carried.

Re: Public Relations Specialist's Monthly Update Regarding DOW Public Relation Activities

Public Relations Specialist Faith Shiramizu gave the following report:

DWSRF Projects: As SRF projects continue to move forward, we continue to work toward submitting the items on our pending list. It's truly a team effort with contributions mainly from Keith F. and Dustin, Wynne, Paul, Amy, Emi, Bekki and Margie.

Met with EPA staff members, Eric Byous, Manager of the Infrastructure Office in San Francisco, and Susan I. Polanco de Couet, Environmental Protection Specialist out of Honolulu. They briefed us on additional SRF funds that may become available if a Stimulus Bill passes so we can be prepared with projects that are ready to go since they will be looking for a quick turnaround. Because EPA deals not only with water,

they discussed energy saving possibilities, and an energy audit could be included in the loan amount for our construction projects.

Employee Council: The Employee Council was asked to support the 10th Annual Lights on Rice Parade with manpower for crowd control. A request was made to DOW employees (no takers to date).

At the November meeting, it was uncertain if the new Administration will support the Employee Council so holiday events have been put on hold.

Fun Committee: The Mahaulepu hike with the Sierra Club on November 9th was enjoyed by five of our DOW employees. The views were spectacular; having the guide was informative and it was a fun adventure for those that participated.

Water Reuse Conference: Hui Laulima Palekana Wai, "Partnership in Conserving Hawaii's Water Resources," was the theme for the Hawai'i Water Reuse 2008 Conference, held on November 20 and 21st at the Hilton Kauai Beach Resort. There were nearly 100 attendees from around the state, ready to learn more about ways that water is currently being reused. Reuse ranged from R1 and R2 water on golf courses to inland desalination and storm water capturing. It was a successful conference with sharing of information and networking.

M410 Facilitative Instructor: Attended a week long Facilitative Instructor class that was sponsored by the Department of Land and Natural Resources. Although it was geared for DLNR and Firefighter Supervisors, the main objective of the class was to train attendees to be able to facilitate as well as instruct a class on whatever topics fall into their given line of work. There were students from the Big Island, O'ahu, Maui and Kaua'i.

Mr. Nishimura commended staff for looking at the stimulus package that may come to Kaua'i and recommends that staff actively seek these funds to support Water Plan 2020.

Mr. Nishimura moved to receive the Public Relations Update and placed on file, seconded by Mr. Kahawai; motion was carried.

Re: SUMMARY REPORT OF MONTHLY OPERATIONAL MAINTENANCE:

As Acting Chief of Operations William Eddy is on leave, there was no monthly report submitted for the DOW's Operations Division.

Re: Manager's Update for November, 2008 to December, 2008

CONTRACTS AWARDED BY THE MANAGER: None.

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

WAIVER, RELEASE AND INDEMNITY AGREEMENTS SIGNED BY THE MANAGER: None.

Affordable Housing Update:

Affordable Housing Task Force (AHTF) meeting was held on Monday, October 13, 2008 at Pi'ikoi Conference Room A.

Updates on AHTF Projects:

1. DHHL – Anahola Residence Lots Unit 6, “Pi'ilani o Kekai, Phase 1: No report by DHHL.
2. Habitat - Eleele I Luna Subdivision Phase 2 Project includes 106 lots and one park. Habitat Manager, Stephen Spears and Wayne Wada, Esaki Surveying, briefed the group on their plans to phase the 106-lot, Phase 2 into Phases A, B and C over the next eight (8) years. Their schedule calls for revised subdivision approval with phasing of the subdivision into three phases. Dale Cua from Planning stated that Habitat should prepare and execute a MOA with all affected agencies in order to receive approval for incremental subdivision improvements from the Planning Commission. Phase A would include 34 houses after final subdivision approval in October 2010. Phase B would include 45 houses after final subdivision approval in August 2013. Phase C would include 27 houses after final subdivision approval in August 2016.
3. Puhi Self-Help Subdivision – Barbara Pendragon from Housing confirmed that the next 14 building permits are scheduled to be submitted to the Building Division shortly. Grove Farm's Puhi Booster Pump and 16-inch waterline project was issued its certification of completion on October 1, 2008 by DOW.
4. Kauai Lagoons – Courtyard at Waipouli: County issued building permits. Construction of four of the multi-family structures is underway. According to Public Works, roadway and shoulder improvements have not started.
5. Kauai Lagoons – Kapule Project - DOW recently approved the Kaua'i Lagoons' revised Engineering Report dated July 16, 2008. The 31-unit affordable housing project's building permits are currently being processed at DOW.
6. Kukui'ula Employee Housing - “Gap” Housing subdivision and zoning permit: Amended water Master Plan was returned to the developer for revisions. The developer met with DOW and said that they will be resubmitting the amended Water Master Plan shortly. The developer has not resubmitted the revised WMP to DOW to date.
7. Koheha Loa (Hanamaulu Triangle) - DOW completed its review of the May 15, 2008 draft WMP for the Grove Farm former “Amfac/JMB Lihue Hanamaulu Master Planned Community Lands. DOW's comments were transmitted to Kodani & Associates on August 26, 2008 and the Department's staff met with Grove Farm and their consultant's on August 27, 2008. Grove Farm is currently addressing the DOW's comments and is working to address several other outstanding items.
8. Paanau Village, Phase 2 - The Housing Agency will be contacting Public Works to require the subdivider to revise the subdivision map to include an “at grade” access provision. The subdivision currently has tentative subdivision

approval from Planning. Recommended that the Housing Agency contact DOW regarding the water meter location for the project.

Next meeting of the AHTF is scheduled for Monday, November 10, 2008, at the Pi'ikoi Conference Room A at 10:00AM-11AM.

DOW'S Claims Procedure

A copy of the Board of Water Claims Procedure was given to the Board for their review and comments.

Upcoming DOW/Board Events:

To avoid the hustle and bustle of the holiday season, it was decided to change tradition by moving the December Employee Annual Meeting and Brunch to January. The Annual Employee Brunch will be on the same day as our January, 2009 Employee Monthly Meeting, which will be on January 30, 2009.

In its place of the December Brunch, we want to have a Board Coffee Hour starting from about 8:30 am prior to our December 11, 2008, 10:00 a.m. Board Meeting. There will be two (2) sessions to accommodate the attendance of all of our employees while ensuring office coverage. Each session would be about ½ hour. Coffee and pastries would be served. This will provide an opportunity for Board members to reacquaint themselves with the employees, meet and spend some time dialoging with the staff. We encourage all Board members to be present for both sessions. Please check your calendars to verify your 8:30-10:00 a.m. schedules on December 11, 2008, as well as your attendance to the Board Meeting.

Mr. Kahawai moved to receive the Manager's Update and place on file, seconded by Mr. Nishimura; motion was carried.

Re: Report of the Finance Committee of the Kaua'i County Board of Water Supply

Mr. Kyono moved to receive and place on file, seconded by Mr. Kahawai; motion was carried.

Re: Report of the Rules Committee of the Kaua'i County Board of Water Supply

Mr. Kyono moved to receive and place on file, seconded by Mr. Kahawai; motion was carried.

Re: Report of the Sub-Committee of the Whole Committee of the Kaua'i County Board of Water Supply

Mr. Kyono moved to receive and place on file, seconded by Mr. Kahawai; motion was carried.

STRATEGIC AND BUSINESS PLAN AND NEEDS ASSESSMENT:

Re: Updates on the Kaua'i Water Department's Strategic and Business Plan and Water Plan 2020 Program Sustainability Services

Acting Manager Ushigome reported on the following:

Updates of Strategic Goals and Implementation Status Report from the Issues Champion:

Re: Report from Issue Champions

Issue No. 1, Morale:

- a. Mahaulepu Hike took place on November 9th with 5 employees participating.

Issue No. 2, Strong and Qualified Workforce:

- a. Recruitment
 - (1) Auto Mechanic II selected and conditional notification letter to be sent out.
 - (2) Engineering Drafting Technician III posted at a range on Continuous Recruitment- waiting for the list of eligibles.
 - (3) Water Meter Mechanic – request for additional names pending from Dept. of Personnel Services.
 - (4) Civil Engineer I in Special Projects Division selected and conditional notification letter to be sent out.
 - (5) Waterworks Inspector Aid – Request to create class and recruit for position is pending action with DPS. This type of position does not exist in the County of Kauai's Plan and is yet to be created.
- b. Training
 - (1) National Rural Water Association (NRWA) will be holding nine (9) days of classes onsite (in DOW Board Room) throughout the year 2009.
 - (2) Ray Ohta of Pacific Training is scheduled to return to the DOW to facilitate a follow-up meeting with OPS personnel in January 2009.

Issue No. 3, Water Quality: Continue to work on switching some of our routine sample sites in preparation for the new ground water rule. We are getting rid of sites that may take coliform hits.

Issue No. 4, Workplace Efficiencies: No changes

Issue No. 5, Accountability: No changes

Affordable Housing:

An updated Affordable Housing Projects – Summary Status prepared by Mark Salmon with RW Beck is attached for your review. This memorandum is a summary of progress on the Affordable Housing Projects for your reference. Please see the attached progress report for each project.

Details are provided below.

- ✓ The Kapilimao 0.5 MG Storage Tank final design is complete. The construction contract was advertised for bids on July 10, and bids were opened August 21. Recently a question has been raised over whether or not the correct elevation datum was used to design the tank. A contract amendment for surveying services to answer this question

should be before the Board this month. Depending on the results of the survey, changes to the construction drawings may be needed.

- ✓ AMFAC Shaft 11 Renovation Phase 1B field pump testing is complete. The engineering reports drafted for submittal to the Department of Health recommended certain well renovation activities to isolate the well from potential contamination. It was decided that rather than submit the reports to DOH with the expectation that they'd simply order that the contamination isolation activities be completed and the reports resubmitted, the decision was made to complete the isolation work first. A proposal for engineering and construction services for these activities is being prepared.
- ✓ Engineering work for the Kapahi Tank is at a virtual standstill pending investigation of the Porters Condominium site. Work will not resume until a site is selected.
- ✓ The final outstanding permit for the Kapa'a Homesteads 0.5 MG Storage Tank is complete and construction is inderway.
- ✓ Staff has directed that HDR suspend all work on the exploratory well for Kapa'a Homesteads Well No. 4 until a site for the Kapahi 1.0 MG Tank is selected.
- ✓ Engineering and environmental work continues on the Akulikuli Tunnel. The Corps of Engineers has still not completed review of the wetlands delineation, which limits the progress that can be made on features affected by wetlands.

Mark Salmon's Affordable Housing Projects' Reports:

Although not directly a part of Plan Implementation, a summary of the Affordable Housing Project activities was included for the Board's reference.

1. (KW-25), Kapilimao 0.5 MG Tank-Summary Project Status: Dec. '08

Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: spillway elevation confirmation

Work ahead: Construction

Current Major Area of Focus: spillway elevation confirmation

Potential obstacles: none currently

Tentative Date Project in Service: January, 2010

- Summary: Bids were opened August 21, 2008. Construction contract award and NTP are pending verification of elevation datum used for design. A contract amendment for surveying services is scheduled for Board consideration in December.
- Contract Status: Amendment to extend time for contract completion was approved by Board in October.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: If elevation datum used for design was incorrect, some design drawing modifications may be required prior to construction.

2. (KW-28), Amfac Shaft 11 Renovation--Summary Project Status: Dec. '08

Project Manager: Mark Salmon -- Design Consultant: Brown and Caldwell

Work underway: DOH and Basis of Design Report Preparation

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: verifying influence of groundwater

Potential Obstacles: water under the influence of surface water – may affect project configuration

Tentative Date Project in Service: Spring 2010 (earliest)

- Summary: The engineering reports prepared for the shaft recommended certain measures to isolate the shaft from potential sources of contamination and subsequent water quality testing to verify the effect of the isolation measures. Rather than submit the reports to the Department of Health with the expectation that they would order completion of the recommended measures before further consideration of approving the shaft as a water supply, the decision was made to complete the recommended measures and testing prior to submittal of reports. A proposal for engineering services has been requested from Brown and Caldwell for this extra work.
- Contract Status: No issues.
- Schedule: See Problems and Proposed Mitigation below.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: None.
- Problems and Proposed Mitigation: More restoration work on Shaft 11 is planned prior to continuing with DOH permitting. The project has generally been less straightforward than anticipated, delaying completion.

3. (WK-08), Kapahi 1.0 MG Storage Tank–Summary Project Status – Dec. '08

Project Manager: Mark Salmon -- Design Consultant: Belt, Collins

Work underway: site selection

Work ahead: final design, environmental/permitting, construction

Current Major Area of Focus: Final design, easement acquisition

Potential obstacles: easement acquisition from private landowner

Tentative Date Project in Service: August, 2009

- Summary: Land acquisition and tank configuration issues remain unresolved. Potential new tank site identified. Contract amendment to enable investigation of new site approved last month.
- Contract Status: Amendment No. 3 is being executed.
- Schedule: Schedule slips as site remains undetermined.
- Permits: No issues.
- Land & Easements: Site for tank not selected.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Site not selected. Land not acquired. New site under investigation.

4. (WK-09) Kapa'a Homesteads 0.5 MG Storage Tank–Summary Status Report–Dec. '08 Project Manager: Mark Salmon --- Design Consultant: Belt, Collins

Work underway: Construction

Work ahead: Construction

Current Major Area of Focus: Mobilization, permits

Potential obstacles: none currently

Tentative Date Project in Service: December 2009

- Summary: Bids received and opened on May 29, 2008. Contract awarded in June, 2008. NTP issued in September, 2008. Final permit received and construction is underway.

- Contract Status: No issues.
- Schedule: No issues.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

5. (WK-39) Kapa'a Homesteads Well No. 4–Summary Status Report – Dec. '08

Project Manager: Mark Salmon
 Design Consultant: HDR Engineering (Hawaii Pacific Engineers)

Work underway: Work on Hold.

Work ahead: well design, environmental/permitting and construction

Current Major Area of Focus: None

Potential obstacles: Kapahi Tank site selection

Tentative Date Project in Service: December 2009

- Summary: Initial well siting study completed. Consultant began EA and design of an exploratory well at the Ornellas Tank Site, but was put on hold by DOW pending analysis of new site for Kapahi 1.0 MG Tank.
- Contract Status: No issues.
- Schedule: Project on hold pending site selection for Kapahi Tank.
- Permits: No issues.
- Land & Easements: No issues.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: Project on hold pending site selection for Kapahi Tank.

6. (WK-02) Akulikuli Tunnel Renovation–Summary Status Report – Dec. '08

Project Manager: Mark Salmon -- Design Consultant: SSFM Int'l

Work underway: final design

Work ahead: final design, environmental/permitting and construction

Current Major Area of Focus: EA, design

Potential obstacles: water quantity and quality unknown – potential addition of treatment

Tentative Date Project in Service: June, 2011 (longer if treatment required)

- Summary: Work on EA and final design continues.
- Contract Status: Contract amendment addressing additional environmental and design work approved at November, 2008 Board Meeting.
- Schedule: No issues.
- Permits: The Corps of Engineers announced in November, 2008 that a 2-month delay in wetland delineation processing. Progress on access road and pipeline design will be affected.
- Land & Easements: Investigation into alternative pipeline alignment along Akulikuli and Ahiahi Roads underway. Ownership of roads is unknown.
- Agency Coordination: No issues.
- Problems and Proposed Mitigation: No issues.

Mr. Tom Jacobs of RW Beck submitted a letter to confirm their receipt of our letter to not extend their Contract No 463 with the DOW to provide project management assistance on the Affordable Housing Projects beyond December 31, 2008. In

addition to their normal activities, RW Beck intends to perform the following activities and services between the present and December 31, 2008 to aid in a smooth transition of project management duties from RW Beck to DOW personnel.

1. RW Beck will provide a status report for each of the Affordable Housing projects they have been managing which will describe the current situation of each project. This status will include discussions regarding budgets and schedules along with the design firms involved.
2. RW Beck will provide a list of upcoming activities required on each Affordable Housing projects to aid the new project manager in continuing to move the projects along to completion. Where appropriate, they will also provide target dates for completing selected tasks and activities.
3. RW Beck will forward any deliverables we have in our files. We do not anticipate this to be a significant number of documents. Since in most all cases, the DOW has jointly received any project deliverables at the same time that we received them and have these deliverables in our files. These deliverables include such documents as meeting summaries, letters, reports, contract documents, and invoices.
4. RW Beck will inform all of the design consultants on each of the Affordable Housing projects that there will be a change in project managers on January 1, 2009 and will so notify them of who the project manager s will be if the DOW desires their notification. If RW Beck does not hear from the DOW, they will assume that the DOW took care of it.

Mr. Jacobs added that if there are any other close-out activities that the DOW would like for RW Beck to complete prior to December 31, 2008, to please let him know.

On query by Mr. Nishimura, Acting Manager Ushigome stated that the DOW staff will take over once the RW Beck contract ends on December 31, 2008. She added that the Department will be going out for a solicitation of statement of qualifications to seek a new consultant to take over the affordable housing projects.

Mr. Nishimura moved to receive the above report and place on file, seconded by Mr. Kyono; motion was carried.

EXECUTIVE SESSION:

Pursuant to H.R.S. §92-7(a), the Commission may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a).

REVIEW OF EXECUTIVE SESSION MINUTES:

- a. Regular Meeting: Thursday, June 5, 2008, Part 1
- b. Regular Meeting: Tuesday, September 16, 2008
- c. Regular Meeting: Thursday, October 9, 2008
- d. Special Meeting: Tuesday, October 21, 2008
- e. Regular Meeting: Thursday, November 13, 2008 (*deferred*)

J2: ES-2007 (12-13-07 & 2-14-08) - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-(a)(4), the purpose of this executive session is to consult with Legal Counsel regarding questions and issues pertaining to the Board's and Department of Water's liabilities, powers and duties regarding personnel, labor and employment issues. This consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and

the County as they relate to this agenda item and/or liabilities, claims and/or potential claims, as they relate to the foregoing and to take such action as the Board deems appropriate.

J4: ES-2008-8 (June 5, 2008)– Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(2), (4), (6) and (8), one of the purposes of this executive session is to consider matters that require confidentiality under state law, to wit, to meet with the Board’s legal counsel with regard to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims as they relate to the selection of an individual to be given supervisory and/or managerial and/or developmental and/or consultation duties over the Kauai Department of Water and/or the Kaua’i Department of Water’s Water Plan 2020. The further purpose of this executive session is to meet with the Board’s legal counsel on questions and issues relating to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities. The further purpose of this executive session is to meet with the Board’s legal counsel on questions and issues relating to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities

Mr. Nishimura moved to go into Executive Session at about 2:02 p.m. to discuss the above 2 agenda items that were formally noticed under Executive Session, seconded by Mr. Kahawai; motion was carried. There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting.

The Regular Meeting was called back to order at 2:38 p.m.

J4: ES-2008-8 (June 5, 2008)– Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(2), (4), (6) and (8), one of the purposes of this executive session is to consider matters that require confidentiality under state law, to wit, to meet with the Board’s legal counsel with regard to the Board’s powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims, as such powers, duties, privileges and immunities and/or liabilities, claims and/or potential claims as they relate to the selection of an individual to be given supervisory and/or managerial and/or developmental and/or consultation duties over the Kauai Department of Water and/or the Kaua’i Department of Water’s Water Plan 2020.

Mr. Costa moved to have the DOW initiate open recruitment statewide only for the vacant DOW’s Manager’s position and to concurrently have the County Attorney’s Office research and provide the Board with recommendations on having a personal services contract, seconded by Mr. Kyono; motion was carried.

ADJOURNMENT: There being no further business, the meeting was duly adjourned at about 2:40 p.m.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome
Acting Manager and Chief Engineer
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