

REGULAR MEETING MINUTES  
BOARD OF WATER SUPPLY  
Thursday, February 19, 2009

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, February 19, 2009. Chairperson Leland Kahawai called the meeting to order at 10:15 a.m. On roll call, the following answered present:

BOARD: Mr. Leland Kahawai, Chairperson  
Mr. Ian Costa  
Mr. Dee Crowell  
Mr. Donald Fujimoto (10:30 am – 11:50 am)  
Mr. Randall Nishimura  
Mr. Roy Oyama (left at about 11 am)

Absent & Excused: Mr. Raymond McCormick

STAFF: Ms. Wynne M. Ushigome  
Mr. Paul Ganaden  
Mr. Gregg Fujikawa  
Mr. William Eddy  
Mr. Keith Fujimoto  
Mr. Bruce Inouye  
Ms. Faith Shiramizu  
Deputy County Attorney Jim Tagupa

GUESTS: Mr. Lindsay Crawford, Kukui'ula Development LLC (left at about 11:05 a.m.)  
Mr. Tom Shigemoto, A&B Properties (left at about 11:05 a.m.)  
Mr. Thad Bond, Kukuiula Dev. Co. (left at about 11:05 a.m.)  
Mr. Steve Marks, Trilogy (left at about 11:05 a.m.)  
Mr. Michael Marks, Trilogy (left at about 11:05 a.m.)  
Mr. Randal Howard, Trilogy (left at about 11:05 a.m.)  
Mr. Eric Linthicum, Linthicum (left at about 11:05 a.m.)  
Mr. Matt Taba, Linthicum (left at about 11:05 a.m.)  
Mr. Mike Kobayashi, Self (left at about 11:05 a.m.)  
Mr. Annie McEveety, Self (left at about 11:15 a.m.)  
Mr. John Isobe, Mayor's Office, (left at about 11:30 a.m.)

**AGENDA**

Mr. Costa moved to approve the Agenda, seconded by Mr. Oyama; motion was carried.

**MINUTES:**

Regular Meeting – January 8, 2009:

Mr. Nishimura moved to receive the Regular Meeting minutes of Thursday, January 8, 2009 and place on file, seconded by Mr. Costa; motion was carried.

Special Meeting – January 28, 2009:

Mr. Costa moved to receive the Special Meeting minutes of Wednesday, January 28, 2009 and place on file, seconded by Mr. Oyama; motion was carried.

## **CORRESPONDENCE:**

### **Re: Memo from John Isobe from the Office of Boards and Commissions Regarding Budget Policy Directives (Fiscal Year 2009-10)**

Based on County's financial projections, the County is anticipating a 10-15% decline in revenues from both local and state sources; therefore, the Administration has proposed immediate cost reductions and established guidelines for the formulation of the upcoming 2008-09 fiscal year budget.

Mr. Nishimura requested that a copy of Mr. Isobe's memo be sent to our Waterworks Controller for reference for the drafting of our upcoming budget.

Chair Kahawai discussed that for this fiscal year's budget and next year's fiscal year's budget, he wants the DOW to do some cost-saving efforts to work parallel with the Administration.

### **Re: Hawai'i Water Works Association (HWWA)/DOW Form Letters to our US Representatives and US Senators to Increase the Stimulus Package**

The DOW also requested to increase the stimulus package for water infrastructure funding from \$2 billion to \$10 billion.

### **Re: Memo from Councilmember Lani Kawahara to Mayor Bernard P. Carvalho, Jr. on the Followup Request Regarding C-2009-57 and C-2009-58, Relating to Boards and Commissions**

Memo from Councilmember Lani Kawahara to the Mayor to remind Board Members that although they are serving a volunteer position, it is their duty to be available for meetings to maintain quorum to the greatest extent possible.

### **Re: Memo from Ken Rainforth on the Extension of Set Aside for Development of State Lands for Affordable Housing, Kekaha and Kapa'a**

The Land Board approved an extension of 5 years from December 31, 2008 until December 31, 2013, to meet the original conditions of approval for the set aside of State Lands to the County of Kauai for developing affordable housing purposes.

### **Re: Letter from Planning Director Ian Costa in Response to the Department of Water's Request for Info on Condominium Property Regimes (CPR) Draft Bills**

Mr. Costa stated that the offices of the Mayor, County Council, and Planning Department were working on a final draft to propose legislation to have CPRs conform to subdivision standards. A copy of the final draft was also submitted.

Mr. Nishimura moved to accept all of the above correspondence and placed on file, seconded by Mr. Costa; motion was carried.

## **OLD BUSINESS:**

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

Mr. Lindsay Crawford of Kukui'ula Development, Mr. Tom Shigemoto of A&B Properties, Mr. Thad Bond, Kukuiula Dev. Co., Mr. Steve Marks, Trilogy, Mr. Michael Marks, Trilogy, Mr. Randal Howard, Trilogy, Mr. Eric Linthicum, Linthicum, Mr. Matt Taba, Linthicum, and Mr. Mike Kobayashi were all 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.*

#### **Waiver, Release and Indemnity Agreements**

As reported in December 2008 Board Report, the Department has not signed any additional Waiver, Release and Indemnity (WR&I) Agreements for Subdivision Y and the custom home lots in Subdivision M1/M4. The Department wants confirmation from KDC that they will maintain the circulation of water through their on-site water system and pay for the cost of the water used as proposed in their commission plan (flushing water through the pipes routinely to maintain chlorine residual).

Based on my recollection and understanding, the need to circulate water became apparent when KDC planned to connect the waterlines for Subdivision Y at the Major Project Road intersection. The Department was concerned of stagnation due to the "dead-end" configuration of the subdivision. The circulation plan was KDC's remedy to address the stagnation concern. At the same time, KDC was pushing the Department to sign Waiver, Release and Indemnity (WR&I) Agreements for Subdivision Y, and M1/M4. The Department refused to execute the WR&I for these subdivisions, subsequently KDC elected to appeal to the Board of Water Supply.

In November 2008, KDC was notified via email that additional building permits would not be issued pending the resolution and payment of the water charges associated with the commissioning plan.

On January 21, 2009, KDC submitted payment in full (\$32,591.50) for the water charges, however, requested to revisit this issue to discuss receiving a partial refund. To date, KDC has not agreed or made a commitment to pay for the cost of the water used to flush and circulate water through the on-site waterlines within Subdivision Y and M1/M4. (Reference KDC's letter dated January 21, 2009)

One of the concerns of the Department is that KDC could decide to discontinue circulating water through the subdivisions due to the costs associated with flushing the water through the pipes. Eventually, with increased water usage within the KDC development area, the need to flush will cease, however, until then, there is a

concern that if fresh water does not circulate in the pipes, the water will eventually stagnate causing a potential contamination risk since these waterlines are connected to the Department's Koloa-Poi'pu Water System.

If this issue is not resolved, and if, the Department continues to execute WR&I Agreements for issuing building permits for residential dwellings, should the commissioning operations be terminated prematurely, the Department would have no recourse to valve off or disconnect affected on-site waterlines.

As stated previously, the WR&I Agreement was never intended to be used for residential dwellings in subdivisions. In accordance with the Subdivision Ordinance, the water system improvements should be constructed and completed prior to the issuance of building permits.

In addition, KDC should review the conditions of the WR&I Agreement, 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.

The WR&I Agreement states, 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, promises and covenants to waive any and all rights to pursue any action, claim, lawsuit or demand against the Department of Water.

Despite executing a WR&I for the commercial village project, KDC has not hesitated to appeal to the Board to grant additional building permits. In addition, citing life safety concerns and needing to do the right thing, KDC approached the Board to request the issuance of the detector check meter without completing the required improvements. These actions are inconsistent with the terms and conditions reflected in the WR&I Agreement.

### **Piwai 0.1 MG Tank**

The Department received KDC's letter dated February 10, 2009, however, since staff not had a chance to review the statements and claims made by KDC, we recommend deferring this discussion to a later date.

On query by Mr. Nishimura, Acting Manager Ushigome stated that she has about six (6) pending Waiver, Release and Indemnity Agreements.

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

Mr. Crawford reported on the following:

Commercial and Residential Openings/Occupancies:

The anticipated grand opening of the Kukui'ula Village Shopping Center is summer of 2009. Water meters (both domestic and fire service) were installed by DOW on February 11, 2009. Mr. Crawford thanked the DOW.

Water Master Plan Update:

As requested by the Water Board, Kukui'ula resubmitted the potable water master plan associated with the Work Force (Gap) Housing Project to DOW on February 12, 2009.

Despite numerous attempts between Kukui'ula and the DOW staff over the last year to negotiate a mutually acceptable 'updated' master plan incorporating Work Force Housing into Kukui'ula, we are now convinced that separating the Work Force Housing Project into its own review and approval cycle is necessary to avoid any additional, unwarranted exactions to the already approved Kukui'ula project. We therefore submitted the new "Potable Water Master Plan for the Work Force Housing Project in Koloa-Po'ipu, Kaua'i" prepared by Tom Nance Water Resources to DOW and have elected to keep in place the previously DOW approved "Kukui'ula Potable Water System Master Plan Report' prepared by Austin, Tsutsumi & Associates, Inc.

Waiver, Release and Indemnity Agreements:

Waivers for the first ten building permits (Subdivision Y Cottages to be built by Kukui'ula) 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 to the DOW in October 2008 but to date have not been signed by the Manager, having cited a specific concern regarding Kukui'ula's commitment of circulating water and the costs associated to do so. Kukui'ula apologizes for any misunderstanding and wishes to reassure both staff and the Water Board of their commitment to both the spirit and the terms of the Waiver agreement and, in addition, their verbal commitment to circulate water.

Kukui'ula therefore respectfully requests that the Manager expeditiously sign these and future Waiver, Release and Indemnity Agreements and specifically sign the associated building permit application for our first Custom Home (Lot 24 in M1M4) that was submitted to DOW in November 2008.

As stated earlier, both the DOW and Kukui'ula are working diligently to finalize all remaining items leading to DOW's final acceptance (and Certification of Completion) and thus soon eliminate the need for additional waivers. However, until such time Kukui'ula must continue to rely on these waivers to allow timely, much needed, starts of construction for these early homes.

Testimony:

Mr. Crawford stated that they initially did not want to do the final lift of paving for a few of their key roads. They paved the first lift around the water facilities including the valve lids and the meters and intentionally left the last 1-1/2-inch paving off of the

roadways not planning to do that for the remainder of this year as it would get scarred and damaged by the construction traffic. However, they were told by the DOW that all of the paving had to be done in order to get Certification of Completion; therefore, they will get it done by next month.

Water System Completion:

All water system improvements were completed, tested and operating where needed to serve current demands in Kukui'ula. They are working together with the DOW to finalize in the next couple of weeks all remaining as-builts, conveyances, grants of easements and cost breakdowns, ultimately leading to issuance of Certification of Completion for each remaining facility. Kukui'ula is targeting mid-April for receipt of Certification of Completion for all remaining offsite system improvements. (for more information, Mr. Crawford referenced a "Water System Completion List" for details.)

The total cost of offsite water system improvements now installed by Kukui'ula is in excess of \$24 million. As they finish these last portions of offsite improvements, Kukui'ula would like to address securing their water usage rights by proposing that a formal 'will serve' water agreement be drafted and executed between DOW and Kukui'ula.

Mr. Crawford added that until such time that all of their conveyances, etc. are done, they would still need to request waiver approvals for the custom homes and cottages.

Piawai 0.1 MG Tank Spillway:

As requested at last month's Board Meeting, Kukui'ula met with DOW staff to address DOW's concern regarding the value of the difference in operating the water storage system with the proposed added altitude valve. Kukui'ula does agree that some amount of additional operational care and maintenance may be associated with the added valve and for that Kukui'ula would be willing to compensate DOW for that value. However, based on information we have gathered, we believe this value to be in the order of magnitude of \$11,500....far less than the (approximately \$344,000) amount of money associated with the 'materials' portion of the pre-agreed reimbursement that DOW staff is currently asking Kukui'ula to forego.

As an alternative, Tom Nance is suggesting that Kukui'ula simply compensate DOW for the 40,000 gallons lost storage at the Akemana Tank. Kukui'ula would be willing to pay DOW \$3/gallon in compensation. DOW could apply this money to the cost of the new 0.5 MGD storage planned at Piawai and, if desired, construct a 540,000 gallon tank thus recovering the loss at Akemama. (Reference a Kukui'ula letter dated February 10, 2009 for more details.)

Waiver, Release and Indemnity Agreement:

Mr. Crawford stated that there are about 5-6 waivers that were submitted in October, 2008 for the cottages and the first custom home on Lot 24, M1M4. Their main concern is the waiver for Lot 24, which has been with the DOW for many months and the building permit has been through every other department, and awaiting approval. Mr. Crawford recollects that the Board did instruct the Manager to sign. Since that time, there were the following concerns: 1) he apologized for the misconception that they were not abiding by the contents of the waiver as they believed that they were

following the contents of the waiver; 2) water has been circulating; and 3) the issue of the escalated rate to pay to circulate the water has been resolved as they have paid it. Therefore, he wondered if the outstanding waivers and the building permits at the DOW could be signed quickly so they could all move forward.

Acting Manager Ushigome responded that per a November, 2008 email to Kukuiula, she stated that she would not sign any additional building permits pending the resolution of the payment of water charges. On January 21, 2009, a payment of \$32,591.50 was paid in full for the water charges. However, attached to that payment was a request to revisit the issue of Kukuiula to receive a partial refund. To date, she has not received a commitment from KDC that they would pay the cost.

Mr. Crawford stated that Kukuiula would pay the bill and they are committed to circulate the water. They only questioned the fairness of paying the escalated rate. Upon Acting Manager Ushigome's suggestion, Kukuiula could use a larger meter to offset the escalated rate.

Acting Manager Ushigome added that she had talked to Mr. Crawford about amending the Waiver, Release & Indemnity Agreement to include assurance that Kukuiula would agree to take care of all future water payments for the circulation of the water. She felt that the added language would resolve any future questions regarding the payment of water.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that the payment of the water charges and the water circulation issue were two of the three issues that were resolved. The 3<sup>rd</sup> issue is for Kukuiula to understand the terms and conditions of the Waiver, Release and Indemnity Agreement that in consideration of the DOW signing the building permits in advance of the completion of the water improvements, the Waiver states that prior to final approval and acceptance of the project water system improvements, Kukuiula agrees to indemnify the County knowing that in the interim there is no fire protection. Acting Manager Ushigome was concerned that Kukuiula did initially request a Waiver, Release, and Indemnity Agreement for the Kukuiula Villages; however, prior to the completion of their meter box, they did request of the Board to get their meter anyways.

Acting Manager Ushigome reiterated that the DOW's Waiver, Release and Indemnity Agreement was typically not for subdivision applications/residential dwellings, only for commercial developments. However, in this case the Waiver, Release and Indemnity Agreement was extended based on the Board's decision.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that Kukuiula is now asking for additional waivers for their proposed residences as their commercial entities already got its Waiver, Release and Indemnity Agreement and its building permits.

Mr. Crawford stated that they were forthright with their original waiver request in October, 2008 that there would be numerous waiver requests. The Department did sign the first 10 building permits; the second waiver request was for 5-6 cottages of Y cottages and for Eric Linthicum's Lot 24. There will be another waiver request

sometime this month behind Mr. Linthicum's lot. There will be some waiver requests for M1/M4 custom homes and about a dozen or so of Y cottages. Mr. Crawford added that he hoped that the rest would not have to go through the waiver process.

Acting Manager Ushigome added that these issues came up about November/December, 2008, after the Board approved the waiver request for Subdivision Y at the October, 2008 Board Meeting. Mr. Crawford stated that there must have been a misunderstanding as Kukuiula always had an intention of circulating the water and in hindsight that may have been language that should have been incorporated in the first place. They understand the rationale on why they need to circulate the water.

Mr. Crawford stated that he felt that Kukuiula is adhering to the spirit and the terms of the Waiver agreement.

Chair Kahawai asked Acting Manager Ushigome if she would be ok if Kukuiula agreed to insert in the Waiver agreement, the language for the circulation of the water and Kukuiula acknowledges their duty to indemnify the Department. She concurred.

On query by Mr. Crawford, Chair Kahawai stated that the revised language would need to be inserted into all of the pending Waiver agreements. Mr. Crawford added that he would be ok to make the changes if it was done expeditiously.

Mr. Thad Bond, Vice President, of Kukuiula Development Company testified that the only issue that KDC had was to pay the accelerated water rate.

On query by Mr. Costa, Mr. Bond stated that they are using the water for circulation purposes, which they initially would have the water dumped; however, since then, they have connected the circulated water to their sprinklers to recycle the water. Mr. Bond added that is all the water being used is not connected to any homes.

On query by Mr. D. Fujimoto, Mr. Crawford stated that their consultant did submit a detailed water plan but apparently not detailed enough to guide them on the cost of the water and how to have the water circulate. Mr. Crawford added that they have been recycling the circulated water by using it for dust control, at their trailer, and filling and testing the rest of the remaining untested, unused pipes and tanks. Lastly, the final option would be to just throw the water on the ground.

On query by Mr. D. Fujimoto, Mr. Crawford concurred that Kukuiula would be responsible to pay for the additional water until such time that the water facilities are conveyed to the DOW.

Mr. Nishimura asked the following questions of Kukuiula:

1. Does Kukuiula agree to pay for the water? Kukuiula stated yes.
2. Does Kukuiula agree to continue flushing/circulating? Kukuiula stated yes.
3. Does Kukuiula agree to indemnify the DOW, which should already be in the Agreement? Kukuiula stated yes.



4. If Kukuiula is under the understanding that protection is given to the DOW, these Waivers should be issued.

Mr. Nishimura also requested that Deputy County Attorney Jim Tagupa review the Waiver agreements. Mr. Tagupa concurred.

On query by Mr. Nishimura, Acting Manager Ushigome stated that she would be comfortable with the Waiver if it recognizes the circulation issue and that they will pay for the water used, and the recognition that the indemnity is to cover the fire protection issue as the project did not get final inspection and certified complete and that building permits were issued.

Mr. Bond discussed that prior to the October, 2008 Board Meeting, they were approached by their commercial team. At that time, the water was already delivered to the meter box for the commercial village. Mr. Bond added that they understood that the original intention of the Waiver was to protect the DOW primarily from the complaints by our customers if their building was done and wanted to move in but could not have water. Mr. Bond added that they may have made a bad assumption that it would be okay to deliver fire water, which was their mistake. Therefore, they have not brought it up at that meeting since and will not bring it up again. Their intention is to abide by the agreements that they have signed.

On query by Mr. D. Fujimoto, Acting Manager Ushigome stated that for the commercial village, the fire detector check meter was not installed, the meter boxes were not completed with no final inspection. Since they needed to test their fire sprinklers, they appealed to the Board at the October, 2008 Board Meeting. Mr. Bond added that the meter boxes were completed a few days after that Board Meeting.

*Mr. Oyama was excused from the meeting at about 11 a.m.*

On query by Mr. D. Fujimoto, Mr. Bond stated that the fire sprinklers were operational since last week.

Mr. Crawford stated that it was a misunderstanding as it was never their intention to not indemnify the DOW. Mr. Bond requested that all of the waivers going forward should be revised and hoped that did not have to go back to the owners that have already signed a waiver agreement.

Mr. Nishimura moved to have the County Attorney review the existing Waiver, Release and Indemnity Agreements and if it addresses the items listed in the Board Report, Page 2, Paragraphs 3 and 4, that the Acting Manager Ushigome be instructed to sign off on those agreements, and to have the Applicant and the staff work out any cost issues, and to not return to the Board, seconded by Mr. Costa.

On query by Mr. Crowell, Mr. Bond stated that in the next few months, he expects to have 10-12 more building permits max to process.

On query by Mr. Tagupa, Mr. Nishimura stated that the circulation of the lines was not necessary to him to be included in the Waiver as it will be public record that Kukuiula has committed to circulate the water and to pay for the water.

Motion was carried.

Mr. Nishimura moved to receive both staff and Kukui'ula's reports and place on file, seconded by Mr. D. Fujimoto; motion was carried.

*Mr. Lindsay Crawford, Mr. Tom Shigemoto, Mr. Thad Bond, Mr. Steve Marks, Mr. Michael Marks, Mr. Randal Howard, Mr. Eric Linthicum, Mr. Matt Taba, Mr. Mike Kobayashi all left the meeting at about 11:05 a.m.*

**Re: Job No. 02-02, LO-04, Piwai 0.5 Million Gallon Tank, Omao, Kaua'i – Amendment No. 1**

RECOMMENDATION: It was recommended that the Board approve the first contract amendment with Fukunaga and Associates for the following items:

1. Verify the overflow tank elevation for the existing DOW Lawai Tank.
2. Prepare and process the necessary National Pollutant Discharge Elimination System (NPDES) with the Department of Health.

**FUNDING:**

Job No. 02-02, LO-04, Piwai 0.5 Million Gallon Tank, Omao, Kauai: .. \$239,400.00

Fukunaga & Associates Contract #436	\$228,000.00	
Amendment #1 .....	<u>\$ 9,796.00</u>	
Total required .....		<u>\$237,796.00</u>

Balance Remaining .....		<u>\$ 1,604.00</u>
Total Contract Amount .....	<u>\$237,796.00</u>	

**BACKGROUND:**

There is a concern that the overflow elevation for the Department's existing Lawai Tank is not at the elevation documented in our files. We, therefore, would like to verify the elevation to be able to provide that correct data for the design of the proposed Piwai Tank.

Additionally, the amount of proposed grading for the tank renovations exceeds an acre, requiring the preparation and processing of a National Pollutant Discharge Elimination System permit with the Department of Health.

The project consultants, Fukunaga and Associates, submitted a proposal of \$9,796.00 for the work, which appears reasonable.

Mr. Crowell moved to approve the first contract amendment with Fukunaga and Associates for \$9,796, seconded by Mr. Costa; motion was carried.

**Re: Discussion and/or Action by the Board on the DOW's Hiring of the Waterworks Legal Advisor**

Acting Manager Ushigome reported on the following:

At the conclusion of the January 28, 2009 Special Board Meeting, the Board asked the Department to inquire whether DPS would consider a contract extension for the Waterworks Legal Advisor position.

Based on their discussion, the Board wanted the opportunity to explore the possibility of funding a full-time deputy attorney's position through the County Attorney's Office, provided that the Board could select an assigned attorney. If the County Attorney is agreeable, it was the Board's intent that this deputy attorney would reside at the Department of Water and service the Water Board and Department exclusively.

The Board recognized timing was a problem since the Waterworks Legal Advisor contract was scheduled to terminate before the new County Attorney could be sworn into office in early March 2009. If a contract extension was approved by DPS, this would allow the Board the opportunity to meet with the new County Attorney and discuss the possibility of hiring an in-house attorney through the County Attorney's Office.

One of the reasons the Board felt that this option was advantageous was the fact that by securing a deputy county attorney to service the Department, there would be reduction in duplicative legal services. Since the Waterworks Legal Advisor is not considered a deputy or under the authority of the County Attorney's Office, at any given Board meeting a deputy county attorney has to be present. Currently, at Board meetings, there are two (2) attorneys in attendance, the Waterworks Legal Advisor and the assigned deputy county attorney.

The Board was apprised that in the past, the Department did fund a deputy attorney position to secure legal support, similar to the scenario which is again being proposed by the Board. As stated in the Manager's Report dated November 14, 2002 prepared by former Manager and Chief Engineer Ernest Lau, the valuable lessons learned from this arrangement included the following:

- *Our department's demand for legal services is growing due to an improving island economy which is limited by inadequate water infrastructure issues; a large variety of agreements being negotiated (e.g., joint source development, surface water purchase, acquisition of land and easements, etc.); the need to update our Rules and Regulations; labor issues (grievances, HLRB actions, arbitration); and the increased number of design and construction contracts as we continue to implement Water Plan 2020.*

- *Funding a position in the Office of the County Attorney does not ensure that the department would obtain quality and focused legal services.*
- *Creating a department legal counsel position would provide us full control over the hiring of a well-qualified legal counsel.*
- *A department legal counsel working on DOW issues only and located on-site is the most effective and timely method of satisfying the department's growing demand for legal services. He would be able to focus on DOW issues without the normal daily distractions that would occur if located in the Office of the County Attorney.*
- *A department legal counsel would provide better accessibility for the staff to consult with him on various issues requiring his expertise. This would also reduce the need to generate a detailed memorandum to the County Attorney (e.g., a list of eight or more background questions to be answered in the memorandum when submitting a request for a legal opinion from the County Attorney) when only simple direction is needed.*
- *A department legal counsel would be the most cost effective way to obtain quality legal services (i.e., \$42 per hour versus \$250 per hour for private legal counsel).*
- *A department legal counsel would reduce the need to retain outside legal counsel unless dictated by special circumstances.*
- *A department legal counsel would over time be able to develop substantial expertise in water related issues previously unavailable from the Office of the County Attorney.*
- *The department legal counsel would be able to resolve long standing issues more efficiently.*
- *The department legal counsel would be able to advise the Chief Procurement Officer (i.e., the Manager) on matters of procurement.*

We believe that the creation of the department legal counsel position is the most cost effective and efficient way to meet our growing demand for legal services. It would also improve the quality and timeliness of service to our customers.

In their discussions, the Board has indicated they understand and do not dispute the value and importance of having a full-time attorney to service the Department. And, the Board recognized the attorney as a “key” position within the Department; therefore it is their intent that this person serve under the Manager’s discretion. This being the case, it seems ironic that through the course of their proposed actions, the Board will be relinquishing the Water Manager’s ability to select and assign its own attorney. The outcome or unintended consequence of allowing the County Attorney instead of the Water Manager to become the appointing authority may prove to be contrary to the Board’s initial intent.

Other unforeseen consequences of having the County Attorney as the appointing authority is that there is no guarantee that any one deputy will be consistently assigned to the Department. This was noted in Ernest Lau’s Manager’s Report. Typically, the deputy county attorney with the most familiarity and experience on a specific area or topic will be tasked by the County Attorney, the Mayor and/or Council to work on their priority projects (even if that person is technically assigned to DOW).

Based on the Board's direction, the Department submitted a written request to DPS for an extension to the Waterworks Legal Advisor contract. See DOW letter to DPS dated February 3, 2009.

On February 4, 2009, DPS did respond indicating they are willing to extend the current contract for 90 days, with the possibility of another 90 days, provided the request for an extension is accompanied by a written justification. The Department appreciates DPS expediting a response and assisting the Department through this process.

Subsequent to receiving DPS's approval on the contract extension, the Department was informed that our legal advisor was being considered for confirmation by the County Council as the Interim County Attorney on February 11, 2009.

Also, with DPS's approval of the contract extension, DPS cancelled the recruitment for the Waterworks Legal Advisor position and sent written notices to the applicants.

Finally, on behalf of the Department of Water, Acting Manager Ushigome expressed her appreciation for all the work that Amy Esaki has done for us and extend our best wishes to Amy in her future endeavors. The DOW will miss her expertise, knowledge, diligence, work ethic, support, helpfulness and willing attitude which she brought to the Water Department team.

Discussion:

Mr. Tagupa discussed that our new County Attorney Al Castillo will be on board in early March, 2009.

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

Mr. Nishimura moved to defer this matter to the March 19, 2009 Board Meeting only if the new County Attorney is on board and had time to verify with him on the DOW having a DOW-funded Deputy County Attorney position located at the DOW, seconded by Mr. Crowell; motion was carried.

**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**

Mr. John Isobe from the Office of the Mayor was present at the meeting for this agenda item.

Acting Manager Ushigome gave the following report:

The Board at its January 28, 2009 Special Board Meeting directed staff to followup and submit an advertisement to extend the open recruitment for the vacant Manager's position from February 6, 2009 to March 6, 2009.

Human Resources Coordinator Debra Togioka coordinated the revised open recruitment and submitted for the Board's info the final ad for advertising in the Sunday, February 8, 2009 issues of the Honolulu Advertiser, The Garden Island, the Maui News, the West Hawai'i Today and Hawaii Tribune-Herald newspapers. The extended recruitment closing date of Friday, March 6, 2009 was so noted on the ad.

Ms. Togioka has also updated the ads on the University of Hawai'i's and AWWA, HI Section's websites. You can also access the current ad on our website, [kauaiwater.org](http://kauaiwater.org). The ad will also be on the American Society of Civil Engineers (ASCE) website. She also tried to advertise in the engineering newsletter Wiliki but the deadline had passed for the February, 2009 newsletter.

For your information, at Board's request, Building Industry Digest was contacted as an alternative avenue to advertise for our manager recruitment if the Board intends to extend the deadline further. Details on costs, deadlines, etc. were given to the Board for their info.

Thereafter, Ms. Togioka will gather the résumés and the Board can schedule to meet to review the applications and set the interviews.

Discussion:

Chair Kahawai stated that he, Acting Manager Ushigome and John Isobe from the Mayor's Office met with the Mayor on February 13, 2009 to discuss this matter. The Mayor stressed the importance of the Board hiring a new Manager as soon as possible and was hoping that the Board would be ready with a plan in case there is no qualified applicants at the time of the deadline date of March 6, 2009. Chair Kahawai invited Mr. John Isobe of the Mayor's Office, who was present at the meeting, to convey the Mayor's message that the Mayor wants to extend his assistance in any way he can to successfully hire a new Manager.

Mr. Isobe testified that Mayor Carvalho, Chair Kahawai and Acting Manager Ushigome all met recently and he wanted to be at the meeting to reinforce what was previously discussed. He shared the Mayor's high-level of concern and hoped that the Board would continue to move expeditiously toward finding a Water Manager.

Mr. Isobe relayed the Mayor's message that if the Board needed additional support of any type from any other County agency, like the Department of Personnel Services, County Attorney's Office and/or the Salary Commission if the feeling is that the salary may be the stumbling block. The Mayor is willing to assist by meeting with the Board and/or meet with the other agencies with the Board to facilitate this recruitment process.

Mr. Isobe added that the Mayor also offered his assistance in any way to help with the resolution of our Waterworks Legal Advisor/Deputy County Attorney position.

Acting Manager Ushigome also relayed the Mayor's concern and question if the deadline date of March 6, 2009 arrives and there are no qualified applicants, what would be the Board's next steps?

Mr. Isobe summarized that the Mayor is available to the Board to assist in any way he can to expedite this recruitment process.

Mr. Crowell discussed that the biggest hurdle in the past has been the 1-year residency requirement.

Mr. D. Fujimoto stated that Acting Manager Ushigome has done a good job in the interim as Acting Manager and suggested that a possibility would be to hire an Acting Deputy Manager to assist her.

Mr. Isobe also offered his personal assistance. *He left the meeting at about 11:30 a.m.*

Mr. Nishimura moved to receive the Board Report and Mr. Isobe's report and placed on file, seconded by Mr. D. Fujimoto; motion was carried.

### **NEW BUSINESS:**

**Re: Request Board Approval of a Conveyance of Water Facility from James E. Nishida Jr. and Naomi J. Nishida, for the Waterline Improvements for James Nishida (Based on 4-Lot Subdivision), Subdivision No. S-2001-40, TMK: (4) 4-2-22:015, 069, 070, 071, Kawaihau, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby James E. Nishida Jr. and Naomi J. Nishida transfers unto the Board of Water Supply, County of Kauai, all of its right, title and interest to the following item:

#### **Waterline:**

- 160 L.F. of 6" Ductile Iron Pipe, in place complete
- 20 L.F. of 3" PVC Pipe, in place complete
- 10 L.F. of 3" Copper Pipe, in place complete
- 1 Ea. 2-1/2 Inch Copper Quadruple Service Lateral for 5/8-Inch Water Meters
- 1 Ea. 2-1/2 Inch Copper Quintuple Service Lateral for 5/8-Inch Water Meters
- 1 Ea. Fire Hydrant Assembly with one (1) 4 1/2" and one (1) 2 1/2" outlet, in place complete.
- 2 Ea. 6" Gate Valve, including valve box and cover, in place complete.
- 1 Ea. 3" Gate Valve, including valve box and cover, in place complete.

in place complete, in accordance with the as-built construction drawings for WATERLINE IMPROVEMENTS FOR JAMES NISHIDA (BASED ON 4-LOT SUBDIVISION), prepared by Kodani and Associates, Kawaihau, Kauai, Hawaii.

**A Grant of Easement is not required at this time.**

Mr. Costa moved to approve the Conveyance of Water Facility document from James E. Nishida Jr. and Naomi J. Nishida, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Conveyance of Water Facility from William M. Scott, Carolyn S. Scott and Kimberly Pitt, for the Water Meter Servicing Lot 43, TMK: (4) 2-7-06:033, Omao, Koloa District, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby, William M. Scott, Carolyn S. Scott and Kimberly Pitt, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1-inch copper single service lateral for 5/8" water meter, in place complete, for the Water Meter Servicing Lot 43, TMK: (4) 2-7-06:033, Omao, Koloa District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility document from William M. Scott, Carolyn S. Scott and Kimberly Pitt, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Conveyance of Water Facility from Charles B. Carter and Liane J. Carter, TMK: (4) 3-3-04:078, Puhi Road, Puhi, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby, Charles B. Carter and Liane J. Carter transfers unto the Board of Water Supply, County of Kauai, all of is right, title and interest to a single service connection for 5/8" water meter, in place complete, in accordance with the as-built construction drawings for DOUBLE SERVICE LATERAL FOR LOT 516-B, prepared by Portech Engineering, TMK: (4) 3-3-04:078, Puhi Road, Puhi, Kauai, Hawaii.

A Grant of Easement is not required.

Mr. Costa moved to approve the Conveyance of Water Facility document from Charles B. Carter and Liane J. Carter, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Conveyance of Water Facility from Lee A. Evslin, Trustee of the Lee A. Evslin Trust, dated January 19, 2005 and Monica C. Evslin, Trustee of the Monica C. Evslin Trust, Dated January 19, 2005; Chris V. Gamby and Tanya E. Gamby; Joseph C. Clifford and Judith D. Irons; and Charles H. Petterson and Catherine Petterson; for the First 5/8-Inch Domestic Quad Service Connection for TMK: (4) 4-6-04:030 & (4) 4-6-04:033, Kapaa, Kawaihau District, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby, Lee A. Evslin, Trustee of the Lee A. Evslin Trust, dated January 19, 2005 and Monica C. Evslin, Trustee of the Monica C. Evslin Trust, Dated January 19, 2005; Chris V. Gamby and Tanya E. Gamby; Joseph C. Clifford and Judith D. Irons; and Charles H. Petterson and Catherine Petterson; transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 2 ½-Inch Copper Quadruple Service Lateral for 5/8" water meter, in place complete, for the Installation of Double Service Lateral for the First 5/8-Inch Domestic Quad Service



Connection for TMK: (4) 4-6-04:030 & (4) 4-6-04:033, Kapaa, Kawaihau District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility document from Lee A. Evslin, Trustee of the Lee A. Evslin Trust, dated January 19, 2005 and Monica C. Evslin, Trustee of the Monica C. Evslin Trust, Dated January 19, 2005; Chris V. Gamby and Tanya E. Gamby; Joseph C. Clifford and Judith D. Irons; and Charles H. Petterson and Catherine Petterson, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Conveyance of Water Facility from Richard A. Hummer, for the Installation of Double Service Lateral for Lot D, TMK: (4) 2-8-07:002, Koloa District, Kauai, Hawaii**

It was recommended that the Conveyance of Water Facility document be approved; whereby, Richard A. Hummer, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 1 ½-inch copper double service lateral for 5/8" water meter, in place complete, for the Installation of Double Service Lateral for Lot D, TMK: (4) 2-8-07:002, Koloa District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility document from Richard A. Hummer, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Right of Entry Agreement for the Waha, Wawae and Niho Roads Main Replacement, Job No. 05-07, Water Plan 2020 Project No. K-7, LO-13 (Phase I), Affecting the Following Landowners in Kalaheo, Kauai, Hawaii**

1. Dennis H. Fujimoto, Keith F. Fujimoto, Stanley S. Fujimoto, Ronald Y. Fujimoto, and Donald M. Fujimoto affecting Portion of TMK: (4) 2-3-09:005 and (4) 2-3-09:067, Kalaheo, Kauai, Hawaii
2. Alan Soares, affecting Portion of TMK: (4) 2-4-01:066, Kalaheo, Kauai, Hawai'i
3. Kei Hirano, Trustee of the Kei Hirano Trust and Jessie M. Hirano, Trustees of the Jessie M. Hirano Trust, affecting Portion of TMK: (4) 2-3-15:001, Kalaheo, Kauai, Hawai'i
4. Susan A. Matsumoto, Trustee of the Susan A. Matsumoto Trust, and Joyce Y. Kubota, Trustee of the Joyce Y. Kubota Trust, affecting Portion of TMK: (4) 2-4-02:004, Kalaheo, Kauai, Hawaii

**RECOMMENDATION:**

It was recommended that the Board approve the Right of Entry documents; whereby, the above landowners, grant to the Board of Water Supply, County of Kauai, a right

of entry, on, over and under that certain parcel of land located as specified above in Kalaheo, Kauai, Hawaii, for the following work:

1. Relocation of existing water meters from private property to County of Kauai right of way, together with the right of ingress and egress at any time to and from the said lot with or without vehicles or other equipment as the Department of Water shall deem necessary to complete the work.

Further, Board approval was specifically requested of the indemnification provision in this agreement; wherein, the Board agrees to indemnify and hold harmless the Grantor 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.

**FUNDING:** Not applicable.

**BACKGROUND:**

Portions of the existing waterlines along Waha, Wawae, and Niho Roads will be replaced in 2009. During the waterline design phase, it was observed that existing water meters are currently installed outside of the County of Kauai Right of Way. The construction contract for this work has been awarded and the right of entry will allow the contractor to relocate all affected meters to within the County of Kauai Right of Way.

Mr. D. Fujimoto recused himself from this matter due to a conflict of interest.

Mr. Nishimura moved to approve the Right-of-Entry document from Dennis Fujimoto, etal, Alan Soares, Kei Hirano and Jessie M. Hirano, Susan A. Matsumoto, Joyce. Y. Kubota, along with its indemnification provision, seconded by Mr. Costa; motion was carried.

**Re: Grant of Easement from Alexander and Baldwin, Inc., a Hawaii corporation; for the Piwai Wells, Tank, and 16" Transmission Line (S-2004-45), TMK: (4) 2-5-01:002, (4) 2-5-01:008 and (4) 2-5-01:011, Omao, Koloa District, Kauai, Hawaii**

It was recommended that the Board approve the grant of easement; whereby, Alexander and Baldwin, Inc., a Hawaii corporation; grant to the Board of Water Supply, County of Kauai, perpetual easement "A" on, over and under that certain parcel of land located at TMK: (4) 2-5-01:002, (4) 2-5-01:008 and (4) 2-5-01:011, Omao, Koloa District, 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 Piwai Wells, Tank, and 16" Transmission Line (S-2004-45), TMK: (4) 2-5-01:002, (4) 2-5-01:008 and (4) 2-5-01:011, Omao, Koloa District, 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. Costa moved to approve the Grant of Easement from Alexander and Baldwin for the Piwai Wells, Tank and 16" Transmission Line, along with its indemnification provision, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Grant of Easement from Kauai Bible Church; for the Piwai Wells, Tank, and 16" Transmission Line (S-2004-45), TMK: (4) 2-5-01:012, Omao, Koloa District, Kauai, Hawaii**

It was recommended that the Board approve the grant of easement whereby the Kauai Bible Church; grant to the Board of Water Supply, County of Kauai, perpetual easement "A-1" on, over and under that certain parcel of land located at TMK: (4) 2-5-01:012, Omao, Koloa District, 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 Piwai Wells, Tank, and 16" Transmission Line (S-2004-45), TMK: (4) 2-5-01:012, Omao, Koloa District, 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. Costa moved to approve the Grant of Easement from Kaua'i Bible Church for the Piwai Wells, Tank and 16" Transmission Line, along with its indemnification provision, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Request Board Approval of an Agreement to Sell and Purchase Koloa Water Tank Site, TMK: (4) 2-7-03:08, Situated at Koloa, Kaua'i, Hawaii**

Recommendation:

The Department recommends that the Board approve the *Agreement to Sell and Purchase Koloa Water Tank Site*. The agreement specifies the terms and conditions of procuring and retaining a land appraiser to determine the fair market value of the subject property. See attached *Agreement to Sell and Purchase Koloa Water Tank Site*.

Funding: n/a at this time.

Background:

The Department constructed the Koloa (1.0 MG) water storage tank in 1986 pursuant to a Consent Agreement. The agreement between the Board of Water Supply and Knudsen Trust was executed with the intent that the Board would purchase the property from the Trust.

In 1990, final subdivision approval was granted for a 1.337 acre parcel; however, the land acquisition was never finalized. It is the desire of the Department and the owners (Aukahi Farms LLC) to complete the transfer of ownership of the Koloa Tank site.

In order to initiate action to purchase the tank site, the parties have agreed to hire a mutually agreed upon land appraiser to determine the fair market value of the land. The subject agreement memorializes the representation and considerations discussed to allow the Department to procure the selection and services of an independent MAI appraiser, in compliance with the State of Hawai'i Procurement Code.

Mr. Costa moved to approve that the Agreement to Sell and Purchase Koloa Water Tank Site Agreement, seconded by Mr. D. Fujimoto; motion was carried.

**Re: Update on Procedures and Implementation of Practices as the Result of the Investigation**

Acting Manager Ushigome reported on the following:

The Board requested that the Department review their policies for potential disciplinary or personnel actions. In accordance to the collective bargaining agreement(s), the Department is required to follow the discipline process.

The employer's action cannot be arbitrary, capricious and/or discriminatory. The employer needs to conduct an investigation to verify the incident, talk to witnesses and anyone having information that could substantiate the allegation or claim of misconduct prior to issuing a disciplinary action.

The standard practice or basic underlying principle in disciplinary cases involving Departmental personnel or property is whether the employer must have "just cause". Typically, I rely on the "just cause" guideline to determine whether discipline and/or counseling is required.

- Did management adequately warn the employee of the consequences of his conduct?
- Was management's rule or order reasonably related to be efficient and safe operations?
- Did management investigate before administering the discipline?
- Was the investigation fair and objective?
- Did the investigation produce substantial evidence or proof of guilt?

- Were the rules, orders, and penalties applied evenhandedly and without discrimination to all employees?
- Was the penalty reasonably related to the seriousness of the offense and past record?

Other factors considered may include whether there were mitigating circumstances? Has the employee been previously counseled or disciplined for the same offense or misconduct? In most instances, disciplinary actions are corrective in nature and are intended to get the employee back on track.

If friendly reminders do not correct the behavior, the next step would be to issue a verbal warning, provide counseling on expectation and consequences. Usually, at this point the employee makes significant attempts to correct the misconduct, however, if the same offense or misconduct continues written warning(s) are issued, followed up with counseling and progressive discipline on each occurrence or incident.

**J. EXECUTIVE SESSION:**

*2. ES-2007 (12-13-07 & 2-14-08) - 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 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.*

Mr. Nishimura moved to go into Executive Session at about 11:40 a.m. to discuss the above Agenda Items No J2 that was formally noticed under Executive Session and was read by Mr. Nishimura, seconded by Mr. Crowell.

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

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

*The Regular Meeting was called back to order at 11:50 a.m. (Recess: 11:50 to 11:55 a.m.)*

**REPORTS**

**Re: Manager's Update for January, 2009 to February, 2009**

Acting Manager Ushigome reported on the following:

CONTRACTS AWARDED BY THE MANAGER:

- I. Job 05-04, WP 2020 Project No. KW-27, Kaumuali'i Highway 12-Inch Main Replacement, 'Elepaio Road to Huakai Road – Awarded to Earthworks Pacific in the amount of \$4,273,432.00

Funding:

Account No. 101b, CRP, Kaumuali'i Highway 12-Inch Main Replacement,  
'Elepaio Road to Huakai Road .....  
\$7,200,000.00

Koga Engineering & Construction, Inc. .... \$4,273,432.00  
Contingency, approximately 5% ..... \$ 226,568.00  
Total ..... <\$4,500,000.00>

Balance Remaining, Account 101b, CRP, Kaumuali'i Highway 12-Inch Main Replacement,  
'Elepaio Road to Huakai Road ..... \$2,700,000.00

- II. Job 05-07, WP 2020 Project K-7, LO-13 (Ph. 1)-Waha, Wawae & Niho Rds. Main Replacement, Kalaheo Water System, Kalaheo, Kaua'i, Hawai'i – Awarded to Koga Engineering & Construction in the amount of \$1,826,000.00

Funding:

Account No. 101b, CRP, Waha, Wawae & Niho Rds. Main Replacement  
\$3,000,000.00

Koga Engineering & Construction, Inc. .... \$1,826,000.00  
Contingency, approximately 5% ..... \$ 94,000.00  
Total ..... \$1,920,000.00

Balance Remaining, Account 101b, CRP,  
Waha, Wawae & Niho Roads Main Replacement ..... \$1,080,000.00

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, November 10, 2008 at Pi'ikoi Conference Room A.

Updates on AHTF Projects:

1. DHHL – Anahola Residence Lots Unit 6, "Pi'ilani o Kekai, Phase 1: DHHL anticipates building construction will start in March or April 2009. Phase 1 has received final subdivision approval from Planning.
2. Habitat - Eleele I Luna Subdivision Phase 2 Project includes 106 lots and one park. County Attorney reviewing road lots. Habitat intends to develop Phase 2 into multiple increments.
3. Kauai Lagoons – Courtyard at Waipouli: Revised final subdivision map includes the "parking lot", map will be circulated to the agencies for review.

Housing agency may consider the request for a waiver for a sidewalk along Kuhio Highway.

4. Kauai Lagoons – Kapule Project - The 31-unit affordable housing project's building permits were approved by DOW on October 10, 2008. DPW has not issued the grading permit to date. Building permits are currently being processed at DPW-Engineering.
5. 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.
6. Kohea Loa (Hanamaulu Triangle) - DOW received and is reviewing the revised December 22, 2008 draft version of the Grove Farm Amfac/JMB Lihue Hanamaulu Potable Water Master Plan. Community Lands. DR Horton has downsized and does not intend to construct the 444-unit Hanama'ulu Triangle development in the near future, but would like to complete the permit conditions during this economic downturn.
7. Paanau Village, Phase 2 - The Housing Agency will be contacting Public Works and Planning to discuss the lots access provision on the subdivision map.

Next meeting of the AHTF is scheduled for Monday, February 9, 2009, at the Pi'ikoi Conference Room A at 10:00AM-11AM.

Recap of On-going and Upcoming WP2020 Projects:

Acting Manager Ushigome provided a Powerpoint Presentation, which was initially shown at the DOW's Annual Employee's Meeting on January 30, 2009, which reflected the highlights of 2008 and with the Water Plan 2020 Projects that are upcoming for 2009.

Water Director's Meeting:

The Water Director's from all the counties will be meeting on Wednesday, February 23, 2009 on the Big Island. The meeting was proposed by the Big Island Director Milton Pavao to re-acquaint ourselves and to discuss common concerns relating to the water industry.

The meeting agenda includes legislative bills, collective testimony, funding requests, staffing, budget, and other miscellaneous concerns.

DOW Response to December Storm:

The Department has been meeting with FEMA and conducting site visits to the affected DOW facilities which may be eligible for restoration and repair funding. The FEMA funding requires 25% matching funds. These are the sites that may qualify for FEMA funding:

- Menehune Road, Waimea Valley
- Kalāheo Nursery Deep well connecting waterline, repair damaged ARV
- Kekaha Shaft repair/replace SCADA equipment
- Hanapepe River Crossing, debris cleaning to gain access to Wells A & B
- Hanapepe River Crossing & Well #2 access road
- Kalāheo Clearwell and Backwash Tank access road
- Kapilimao Well access road in Kekaha
- Paua Valley Well and Tank access road in Kekaha
- Koloa Wells C, D and F access roads
- Kalepa Tank access road in Hanama‘ulu
- Makaleha Tunnel access road in Kapa‘a Homesteads
- ‘Anini Water System supply pipeline
- Maka Ridge access road in Hanalei
- Kekaha Well B access road and site

#### Monthly Employee Meetings

On the last working day of each month, the Department holds an employee meeting to catch-up on happenings or to learn about work processes within the different divisions. We normally have 2 sessions to ensure office coverage, starting from 7:45 a.m. to 8:15 a.m. and 8:30 a.m. to 9:15 a.m. This Employee Meeting will take the place of the end of the month

Mayor Bernard Carvalho will be our guest speaker for February’s meeting. He will be sharing his vision, priorities and plans for the next two years. We welcome any Board members who wish to attend.

Prior to the March 19, 2009 Board Meeting, we will be having our monthly Employee Meeting and Chair Kahawai requests that all Board Members attend these sessions. Chair Kahawai will run these informational briefing sessions. This special meeting will replace the Employee Meeting that would have been held on March 31, 2009.

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

#### **Re: Statement of Kaua‘i County Water Department’s Revenues and Expenditures**

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

#### **Re: Public Relations Specialist’s Monthly Update Regarding DOW Public Relation Activities**

Public Relations Specialist Faith Shiramizu gave the following report:



**Fun Committee:** The Fun Committee is an ambitious and enthusiastic group.  
Upcoming events:

**1<sup>st</sup> Quarter** – Sleeping Giant Hike (includes lunch and tennis), and a clean up the office day. **2<sup>nd</sup> Quarter** –Fishing with a cookout. **3<sup>rd</sup> Quarter** – Golf tournament and cookout and a Kokee Trail Hike. **4<sup>th</sup> Quarter** - Christmas Pot Luck and a Lokahi event.

**McGruff:** Will be attending a training session on O‘ahu on March 11<sup>th</sup>.

**Community Groups:** Several groups have approached the department with requests to participate in their group meetings or activity.

**Kaua‘i Planning & Action Alliance** is in the process of reviewing and updating their 2006 Community Indicators that covers a wide range of topics from Business Climate and Education to Community Well-Being, Health, Land Use, Natural Environment and Cultures and Arts. In the 2006 Indicators, there was no information regarding water. They are asking for our assistance in providing information on “Lots with agriculture rates” and “Number of Water Meters and New Water Meters”. Discussions regarding capacity versus daily usage are in progress to determine if this is something that can be reported accurately.

**Apollo Kaua‘i** has requested a presentation from the department with a brief overview of where our water comes from and water security as it pertains to energy and the cost of water and what happens if and when our supply of diesel is diminished. Gregg and I have been working on a Power Point presentation to be used at their February 19<sup>th</sup> meeting. The Board is welcome to attend. It will take place at 7pm at the Lihu‘e Neighborhood Center.

**Contractors Association of Kaua‘i (CAK)** will be having a special meeting on March 5<sup>th</sup> and has requested representation from the department by Wynne or Gregg to provide an overview of where the department is at, more specifically as it relates to the construction industry. There will then be a follow up meeting in May that will discuss more specifics from the overview presentations.

Mr. Nishimura stated that the same Powerpoint Presentation given to the Board would be great to also do for the CAK so the CAK would be aware that the DOW has been and continues to actively working on our own water projects.

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

**Re: Acting Chief of Operations’ Summary Report on the Monthly Operational Maintenance Report**

Mr. Crowell moved to receive the Monthly Operational Maintenance Report and placed 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. Crowell moved to receive and place on file, seconded by Mr. Costa; motion was carried.

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

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

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

No report.

**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. Fun Committee will be meeting in mid January to plot out 2009 activities.
- b. Rewards Committee will meet to evaluate the WATER Bucks program.
- c. Fourth Quarter WATER Bucks were awarded to the following employees: 1) Margie Loo for assisting at a moment's notice in gathering necessary bid documents so they could be mailed out in a timely manner. 2) Bekki Malapit, for preparing and processing final subdivision reports that need to be done ASAP. Bekki assisted in this manner on more than one occasion in one month. 3) *Congratulations to Stanley Sarmiento, Employee of the 4<sup>th</sup> Quarter!* Stanley was recognized for doing an outstanding job of repairing a waterline break when it wasn't in his line of duty. Also to be commended is his crew, Peter, Serf and Clyde, for their quick response in getting the job done.
- d. Facilities Plan Committee will be formed while awaiting the Professional Services List.

**Issue No. 2, Strong and Qualified Workforce:**

- a. Recruitment
  - 1) Auto Mechanic II: Start date scheduled for Friday, January 16, 2009.
  - 2) Civil Engineer I (Special Projects Division): D.O.W. is awaiting the pre-employment exam results from DPS; start date will then be scheduled.

- 3) Engineering Drafting Technician III: Posted at a range on Continuous Recruitment. Currently, no names on eligible list.
  - 4) Water Meter Mechanic: Interviews are scheduled for Friday, January 9, 2009.
  - 5) Waterworks Inspector Aid: Department of Personnel Services has reviewed & approved the creation of this new classification.
  - 6) Waterworks Inspector: Department of Personnel Services to conduct written examination on January 5, 2009.
- b. Training
- 1) National Rural Water Association (NRWA) will be holding 9 days of Ops Certification Training Classes on site (in D.O.W. Board Room) throughout the year 2009.
  - 2) Ray Ohta of Pacific Training is scheduled to return to the Department of Water & facilitate a follow-up meeting with the Operations Division in the latter part of January 2009 on Employee Development Training.
  - 3) There was a request to have the Manager or Board talk to the Mayor to assist with speeding up the process on DOW personnel requests.

**Issue No. 3, Water Quality:**

- a. Sample site work order for Kuamoo Rd. submitted in September, but no work yet.
- b. New sites chosen for routine sampling to replace sites that were hard to access or have been removed
- c. Main break monitoring on hold, pending finalizing procedures and followup between both the Lab and Operations
- d. New Issue #3 champion or co-champion should be from Operations.

**Issue No. 4, Workplace Efficiencies:**

- a. There are just a few more AMR meters to be installed then the project would be complete.
- b. Jeff Mendez continues to work to broaden our information base for our Geographic Information System

**Issue No. 5, Accountability:** Cell phone policy implementation pending.

At the last Issue Champions meeting, it was suggested that the opportunity to participate as an Issue Champion should be shared with other employees for renewed energy. It was also suggested to have each division head look for volunteers from their division and if none, they should designate a minimum of one person to serve as an issue champion. Each division needs to be represented.

Re: Affordable Housing Projects – Summary Status February 2009 (formerly prepared by RW Beck)

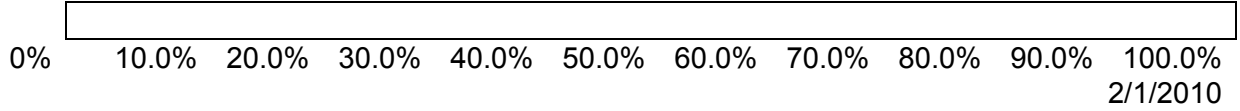
This report is a summary of progress on the Affordable Housing Projects.

**Job No. 05-03, KW-25, Kapilimao 0.5 million gallon tank:**

- A. Consultant completed tank level confirmation with the existing Kekaha (Paua) Valley Tanks, which was determined to be 0.14 feet higher (196.14' msl overflow). The discrepancy seems insignificant and shouldn't warrant additional costs to revise.

- B. Pre-construction meeting with contractor (Kauai Builders, Ltd.) for 2/18 with notice to proceed issued shortly after.

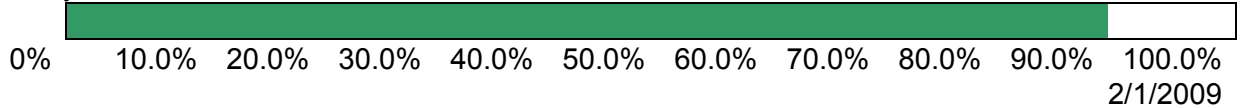
Construction



**Job No. KW-28, Amfac Shaft:**

- A. Awaiting consultant's proposal to clean and seal the shaft from any external influences.

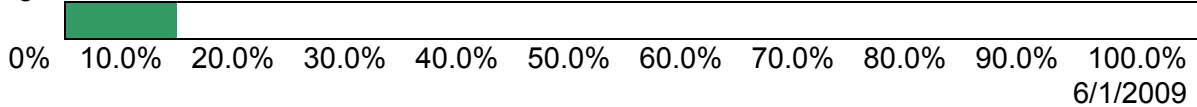
Feasibility Study



**Job No. 02-14, WK-08, Kapahi 1.0 million gallon tank:**

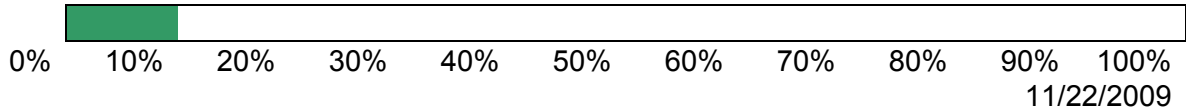
- A. Negotiating with landowner (Al Alamodin) for alternate site.

Design



**Job No. 02-14, WK-09, Kapaa Homesteads 0.5 million gallon tank:**

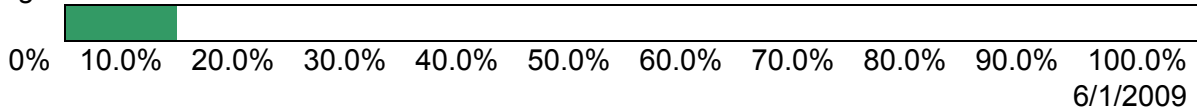
- A. Under construction.



**Job No. WK-39, Kapaa Homestead Well #4:**

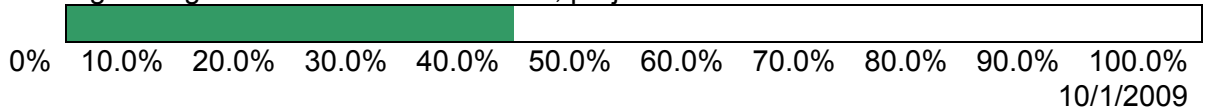
- A. Negotiating with landowner (Al Alamodin) for alternate site.

Design



**Job No. 02-24, WK-02, Akulikuli Tunnel:**

- A. Negotiating additional work with SSFM, project consultants.



Mr. Crowell moved to receive the report and placed on file, seconded by Mr. Costa; motion was carried.

**J. 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:** (deferred)

- a. Regular Meeting: Thursday, November 13, 2008
- b. Regular Meeting: Thursday, December 11, 2008, Parts 1-3
- c. Regular Meeting: Thursday, January 8, 2009
- d. Special Meeting: Wednesday, January 28, 2009

1. ES-2008-22 - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with Department staff and Board's legal counsel to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kauai Department of Water by First Insurance Company of Hawaii, Ltd. For their insured Hawaii Kailani et al. This legal consultation on the aforementioned claim involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Board and the County as they relate to this agenda item.
2. ES-2007 (12-13-07 & 2-14-08) - 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 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.

Mr. Costa moved to go into Executive Session at about 12:22 p.m. to discuss the above 2 agenda items, J2 and J3 that were formally noticed under Executive Session and read by Mr. Nishimura, seconded by Mr. Nishimura. There was no Board discussion and no public testimony. Motion was carried. Staff was excused from the meeting, except for Waterworks Controller Ganaden. (Recess: 12:22 to 12:30 p.m.)

The Regular Meeting was called back to order at 12:53 p.m.

ES-2008-22 - Pursuant to Haw. Rev. Stat. Sections 92-4 and 92-5(a)(4) and Kauai County Charter Section 3.07(E), the purpose of this executive session is to consult with Department staff and Board's legal counsel to receive briefing and recommendations for purpose of obtaining Board action on the claim filed against the County of Kauai Department of Water by First Insurance Company of Hawaii, Ltd.

*For their insured Hawaii Kailani et al. This legal consultation on the aforementioned claim 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. Crowell moved that negotiations start at \$250 and not to exceed the amount of the claim provided that we get the required disclaimers/waivers, seconded by Mr. Costa; motion was carried.

Mr. Tagupa will check with the County Attorney's Office on how to handle the negotiations and resolution of this claim since the DOW does not presently have a legal advisor and because this claim was submitted differently as it was sent directly to the DOW and not to the County Clerk's Office. Mr. Tagupa stated that since the DOW is semi-autonomous and has its own budget, claims could actually be sent directly to the DOW.

Mr. Crowell moved to amend his motion for reconsideration, seconded by Mr. Nishimura; motion was carried.

Mr. Nishimura moved to approve settling the claim between \$250 and \$1,655.82 and that this claim be referred to the County Attorney's Office for approval and processing, seconded by Mr. Crowell.

Mr. Crowell discussed that the Board wanted to be assured that the settlement adequately protects the DOW, Board and the County.

Motion was carried.

**ADJOURNMENT**: There being no further business, Mr. Costa moved to adjourn the meeting at 1:10 p.m., seconded by Mr. Nishimura; motion was carried.

Respectfully submitted,

Rona Miura, Secretary

APPROVED:

Wynne M. Ushigome  
Acting Manager and Chief Engineer

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