

MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, September 25, 2014

The Board of Water Supply, County of Kaua'i, met in regular meeting at the Board Conference Room in Līhu'e on Thursday, September 25, 2014. Chairperson Clyde Nakaya called the meeting to order at 10:06 a.m. The following Board members were present:

BOARD: Mr. Clyde Nakaya, *Chairperson*
Mr. Sherman Shiraishi, *Vice Chair*
Mr. Hugh Strom
Mr. Raymond McCormick
Mr. Michael Dahilig
Ms. Laurie Ho

EXCUSED: Mr. Larry Dill

Quorum was achieved with 6 members present at the time of roll call.

STAFF: Mr. Kirk Saiki
Mr. Val Reyna
Ms. Marites Yano
Mr. Keith Aoki
Mr. Eddie Doi
Ms. Regina Flores
Ms. Sandi Nadatani-Mendez
Ms. Kim Tamaoka
Ms. Mary-jane Akuna
Deputy County Attorney, Andrea Suzuki

GUESTS: Deputy County Attorney, Ian Jung
Mr. Mark Valencia, represented Mr. Chris Singleton, Makaleha Gardens Subdivision
Mr. Chris Singleton, Managing Member, Makaleha Gardens Subdivision
Ms. Kacy Chatfield, Makaleha Gardens, LLC
Ms. Justine Duarte, Private Citizen
Mr. Hall Parrott, Private Citizen
Mr. Galen Nakamura, represented Safeway
Mr. Clifford N. Mukai, W.S. Unemori Engineering, Inc.

ACCEPTANCE OF AGENDA

Chair Nakaya ordered to amend the agenda to move New Business Item #6 Discussion and Possible Action on the Appointment of a Hearings Officer as it Relates to the Petition to Appeal the Decision of the Water Department Regarding TMKs (4)-6-06:17, 19, and 20 for Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton *prior* to Correspondence and Announcements.

Ms. Ho moved to amend the agenda; seconded by Mr. Strom; with no objections; motion was carried with 6 ayes.

Mr. Shiraishi moved to amend the agenda to move up New Business Item #5 *Manager's Report No. 15-13* – Discussion and Possible Action on the Agreement Concerning Demolition of Department of Water,

County of Kauai Potable Storage Tanks Between Property Development Centers, LLC and the Board of Water Supply – Demolition of Grove Farm Tanks *after* New Business Item #6; seconded by Mr. McCormick; with no objections; motion was carried with 6 ayes.

MEETING MINUTES

Review and approval of:

Regular Board Meeting – August 28, 2014

Ms. Ho moved to defer the Regular Board Meeting minutes of August 28, 2014 to check on the vote count on page 7; seconded by Mr. Dahilig; with no objections; motion was carried with 6 ayes.

Review and approval of Executive Session:

Executive Session – August 28, 2014

Mr. Dahilig moved to approve the Executive Session minutes of August 28, 2014; seconded by Mr. McCormick; with no objections; motion was carried with 6 ayes.

H. NEW BUSINESS

6. Discussion and Possible Action on the Appointment of a Hearings Officer as it Relates to the Petition to Appeal the Decision of the Water Department Regarding TMKs (4)-6-06:17, 19, and 20 for Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton

Chair Nakaya requested the petitioner, Mr. Mark Valencia, representing Makaleha Gardens and the Department's representative Deputy County Attorney, Andrea Suzuki to provide their testimony regarding a petition for a Declaratory Ruling pursuant to Section 7 of the Board that granted a hearing on this matter from its last Board meeting (August 28, 2014). The Board will decide at this meeting who will preside over the contested case hearing.

The Board has three (3) options:

- 1) To conduct a hearing before the entire Board.
- 2) Appoint a Board member as a hearings officer.
- 3) Hire a hearings officer through a procurement contract.

Deputy County Attorney, Ian Jung explained the options:

- 1) If the Board conducts the hearing before the entire Board, the Chair would serve as the actual presiding officer/hearings officer to control the proceedings.
- 2) If the Board elects to choose a hearings officer amongst the Board members, that Board member could:
 - a) Take the evidentiary portion of the hearing and make recommendations after both parties submit their Findings of Fact and Conclusions of Law. The Board would then make a recommendation to the full Board. The Board member that makes the recommendation must recuse himself/herself from the full Board in the decision making process.
 - b) If an appointed Board member serves as the hearings officer, that Board member would facilitate the evidentiary hearing portion. Both parties would submit their Findings of Fact and Conclusions of Law to the full Board.
- 3) If the Board does a procurement contract to hire a hearings officer under a Professional Service Contract, it would go through the procurement process which would take some time.

The hearings officer has the authority to make rulings on the evidentiary issues to make the process go smoothly.

**Mr. Mark Valencia provided his testimony
representing Mr. Chris Singleton, Makaleha Gardens Subdivision.**

Mr. Valencia specified Mr. Chris Singleton reduced his request on the meter requirement from six (6) meters to four (4) meters. On the options presented, Mr. Valencia never experienced a Board member as a hearings officer. He preferred a hearings officer or for the full Board to hear the matter to evaluate testimony collectively versus written submittals of Findings of Fact and Conclusions of Law.

Mr. Valencia commented that mediation is a good idea for both parties to discuss the matter at the same table and to come to a conclusion (Hawai'i Revised Statutes 91-8.5).

DISCUSSION:

Deputy County Attorney, Ian Jung stated the Board could stipulate the Department and the petitioner to go into a mediation session where the matter could be resolved. During a pre-hearing conference, the parties could set a mediation session before the parties start gathering their witness list and pre-hearing statements.

Another option is for the Board to set a hearing date. Both parties could also have an initial meeting to discuss issues before a mediator is selected or they could select a volunteer mediator. Both parties could agree on a mediator (not a Board member). If a mediator is hired, the Board needs to go through the procurement process (could take up to 11 months).

Mr. Valencia preferred to have an informal meeting so that the Department could explain why the petitioner does not comply with the preliminary subdivision approval.

Deputy County Attorney, Ian Jung explained that a petition is filed to hold a pre-hearing conference. The hearings officer would order pre-hearing statements outlining the issues.

**Mr. Chris Singleton, Managing Member
Makaleha Gardens Subdivision provided his testimony.**

Mr. Singleton asked the Board if he has the 1" and 5/8" water meter rights today.

Mr. Dahilig requested a Point of Order because Mr. Singleton's question pertained to the evidentiary elements that could be heard at the contested case hearing.

Deputy County Attorney, Ian Jung commented that testimonies should be limited to the contested case hearing scheduling and the appointment of a hearings officer.

Mr. Shiraishi moved to defer the Discussion and Possible Action on the Appointment of a Hearings Officer as it Relates to the Petition to Appeal the Decision of the Water Department Regarding TMKs (4)-6-06:17, 19, and 20 for Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton until the October Board meeting for the Petitioner and the Department to discuss the mediation process; seconded by Mr. Dahilig.

Mr. Shiraishi clarified that the mediation is non-binding and is resolved with a settlement through mediation and he did not want to involve the Board. Chair Nakaya agreed with Mr. Shiraishi on a mediation session.

Mr. Shiraishi withdrew his 1st motion; Mr. Dahilig withdrew his 2nd motion.

Mr. Dahilig was concerned that the petition may be incomplete regarding the relief on the temporary subdivision approval. The Board granted a contested case hearing and relief is still not defined. Mr. Dahilig was unsure if the Board should grant the petitioner a contested case hearing.

Deputy County Attorney, Ian Jung explained when petitions are filed, they may not have all the relevant facts and a petition may resurface again if it is appealed.

At 10:31 a.m., Mr. Dahilig read the following Executive Session language.

Mr. Dahilig moved to go into Executive Session; seconded by Mr. Strom; with no objections, motion carried with 6 ayes at Roll Call (LH, HS, RM, SS, MD, CN).

J. EXECUTIVE SESSION

Pursuant to H.R.S. §92-7(a), the Board 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).

3. Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to provide the Board with a briefing and consultation with regards to Agenda Item H6 and the procedures regarding appointment of a hearings officer pursuant to Department of Water Rules and Regulations, Part I, Section I (5)(e). (Petition to Appeal the Decision of the Water Department regarding TMK (4)-6-06:17, 19, and 20, Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton). This briefing and consultation with the Board's counsel involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Board as they relate to this agenda item.

At 10:57 a.m., Mr. Shiraishi exited the meeting.

At 11:00 a.m., Mr. Shiraishi re-entered the meeting.

At 11:00 a.m., Chair Nakaya reconvened the Regular Board meeting.

H. NEW BUSINESS

6. Discussion and Possible Action on the Appointment of a Hearings Officer as it Relates to the Petition to Appeal the Decision of the Water Department Regarding TMKs (4)-6-06:17, 19, and 20 for Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton

Mr. Singleton apologized for his earlier comments to the Board.

Mr. Dahilig moved to have petitioner and the Department enter into a 30-day mediation period by the next Board meeting to revisit this matter; seconded by Mr. Shiraishi; with no objections, motion was carried with 6 ayes.

5. Manager's Report No. 15-13 – Discussion and Possible Action on the Agreement Concerning Demolition of Department of Water, County of Kauai Potable Storage Tanks Between Property Development Centers, LLC and the Board of Water Supply – Demolition of Grove Farm Tanks

BACKGROUND:

Acting Manager and Chief Engineer, Mr. Saiki recommended the Board approve the “Agreement Concerning Demolition of Department of Water (DOW), County of Kauai Potable Storage Tanks” between Property Development Centers, LLC and the Board of Water Supply at the Safeway site.

Mr. McCormick moved to approve *Manager’s Report No. 15-13* – Discussion and Possible Action on the Agreement Concerning Demolition of Department of Water, County of Kauai Potable Storage Tanks Between Property Development Centers, LLC and the Board of Water Supply – Demolition of Grove Farm Tanks; seconded by Mr. Shiraishi; with no objections, motion was carried with 6 ayes.

E. CORRESPONDENCE/ANNOUNCEMENTS

1. Correspondence from Mr. Peter Tausend, Chairperson, West Kaua’i SWCD, regarding Award Ceremony for Steve Sico, Outstanding Water Conservationist for 2014, dated September 2, 2014

At 11:03 a.m., Mr. Dahilig exited the meeting.

Ms. Ho moved to receive the correspondence from Mr. Peter Tausend, Chairperson, West Kaua’i SWCD, regarding Award Ceremony for Steve Sico, Outstanding Water Conservationist for 2014, dated September 2, 2014; seconded by Mr. Shiraishi; with no objections; motion was carried with 5 ayes.

F. BOARD COMMITTEE REPORTS

Report of the Finance Committee of the Kaua’i County Board of Water Supply

1. *Manager’s Report No. 14-16* – Part 4 Section VII, Facilities Reserve Charge, Proposed Rule Amendments

Mr. Shiraishi moved to receive **Report of the Finance Committee of the Kaua’i County Board of Water Supply**, 1. *Manager’s Report No. 14-16* – Part 4 Section VII, Facilities Reserve Charge, Proposed Rule Amendments; seconded by Ms. Ho; with no objections; motion was carried with 5 ayes.

G. OLD BUSINESS

None

H. NEW BUSINESS

1. *Manager’s Report No. 15-10* – Discussion and Possible Action of Resolution No. 15-03, Safe Drinking Water State Revolving Fund (DWSRF) for DW400-0011, Water Plan 2020 Project PLH-39, Lihu’e Baseyard Improvements (Phase I), Lihu’e Water System, Lihu’e, Kaua’i, Hawai’i

BACKGROUND:

Acting Manager and Chief Engineer, Mr. Saiki requested the Board’s approval to adopt Resolution No. 15-03 to complete the DWSRF loan agreements for the Lihu’e Baseyard Improvements project.

Mr. Shiraishi moved to approve *Manager’s Report No. 15-10* – and to adopt Resolution No. 15-03, Safe Drinking Water State Revolving Fund (DWSRF) for DW400-0011, Water Plan 2020 Project PLH-39, Lihu’e Baseyard Improvements (Phase I), Lihu’e Water System, Lihu’e, Kaua’i, Hawai’i; seconded by Mr. McCormick; with no objections, motion carried with 5 ayes.

2. *Manager’s Report No. 15-11* – Discussion and possible action on the Approval of the DOW’s Supplemental Budget FY 14-15

BACKGROUND:

The Operating Budget was approved by the Board at the Regular Board meeting on June 26, 2014. The Capital and Net Rollover Budget was approved at the August 28, 2014 Regular Board meeting.

The Capital Outlay was delayed to allow the staff and the Finance Committee time to reprioritize the capital project list to be presented to the full Board. A list of requested items was submitted for the Board's consideration and approval (page 33 iPads).

Waterworks Controller, Ms. Yano explained that the salary budget request was for one position. The Excluded Managerial (EM) 7 position on the Supplemental Budget was partially funded and budgeted at mid-range. One position was budgeted properly because the salary increase was higher than budgeted. This position is one component with two (2) positions in one division.

A correction will be made on the description submitted for the Supplemental Budget: WU-Plan-Adm-Salaries (\$76,100 – for two (2) positions) and WU-Plan-Adm-FICA (\$5,822) and WU-Plan-Adm-ERS (\$11,796) are the corresponding employee fringe benefits associated with the proposed salary supplemental budget.

Mr. Shiraishi moved to approve as amended Manager's Report No. 15-11 – Discussion and possible action on the Approval of the DOW's Supplemental Budget FY 14-15 to include fringe benefit increases on the Supplemental Budget Request for WU-Plan-Adm-Salaries and WU-Plan-Adm-FICA; seconded by Mr. McCormick; with no objections, motion carried with 5 ayes.

3. Discussion and Possible Action of Resolution No. 15-01, the DOW's FY 14-15 Budget

BACKGROUND:

Acting Manager and Chief Engineer, Mr. Saiki recommended that the Board adopt Resolution No. 15-01, DOW's FY 14-15 Budget which included the Supplemental Budget.

Mr. Shiraishi moved to approve and adopt Resolution No. 15-01, the DOW's FY 14-15 Budget; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

4. Manager's Report No. 15-12 – Discussion and Possible Action of Resolution No. 15-04, Request to Expend funds from the American Resort Development Association (ARDA) for the 2014 Make a Splash (MAS), Project WET Water Festival

Chair Nakaya thanked Public Relations Specialist, Ms. Kim Tamaoka for the successful 2014 MAS, Project WET Water Festival. Vice Chair, Mr. Shiraishi and Ms. Ho participated during the festival.

Mr. Shiraishi moved to approve Manager's Report No. 15-12 – Discussion and Possible Action of Resolution No. 15-04, Request to Expend funds from the American Resort Development Association (ARDA) for the 2014 Make a Splash (MAS), Project WET Water Festival; seconded by Mr. McCormick; with no objections, motion carried with 5 ayes.

I. STAFF REPORTS
MONTHLY

1. Statement of Kaua'i County Water Department's Revenues and Expenditures

BACKGROUND:

Waterworks Controller, Ms. Yano presented the new Monthly Budget Summary vs. Actual report format. The report did not include the Capital Budget because when the report was uploaded and the accounting program was not updated.

Ms. Yano will highlight major expenses with an explanation on the future Monthly Budget Summary vs. Actual report.

Ms. Ho moved to receive the Statement of Kaua'i County Water Department's Revenues and Expenditures; seconded by Mr. Strom; with no objections, motion carried with 5 ayes.

2. Report by the Public Relations Specialist on Public Relations Activities

BACKGROUND:

Public Relations Specialist, Ms. Tamaoka thanked all the volunteers for participating in MAS. This year was the largest MAS attendance with 750 5th grade students in attendance. A full report on MAS will be presented at the October Board meeting.

Ms. Ho moved to receive the Report by the Public Relations Specialist on Public Relations Activities; seconded by Mr. Strom; with no objections, motion carried with 5 ayes.

3. Chief of Operation's Summary Report on Monthly Operational Activities Report

BACKGROUND:

Mr. Reyna commented that the contractor who was sent to repair the Kīlauea Well recently returned to continue repairs on Well #1 in Kalāheo. During the repairs, the contractor's equipment experienced failure. As of today, the equipment is okay and the temporary pump is being pulled out of Well #1 which will be completed this week. Within three (3) days, the installation of the new pump will be completed. Both pumps in Well #1 and Well #2 will be in full operation. The temporary line will also be pulled when Well #1 is in operation. There will be a no cost time extension to complete the repairs.

Mr. Strom moved to receive the Chief of Operation's Summary Report on Monthly Operational Activities Report; seconded by Ms. Ho; with no objections, motion carried with 5 ayes.

4. Manager's Monthly Update Regarding Activities of Note of the Kaua'i County Water Department

BACKGROUND:

Acting Manager and Chief Engineer, Mr. Saiki highlighted the following:

1. Summary of Warrant Vouchers Paid: \$2,369,760.74.
2. Council Meeting Correspondence Update: The Department provided a response to Council's questions on Friday, September 19th.

Mr. Strom moved to receive the Manager's Monthly Update Regarding Activities of Note of the Kaua'i County Water Department; seconded by Mr. McCormick; with no objections, motion carried with 5 ayes.

a. Report of the BAB pay down as of July 2014

Mr. Strom moved to receive the BAB pay down as of July 2014; seconded by Mr. McCormick; with no objections, motion carried with 5 ayes.

At 11:15 a.m., Deputy County Attorney, Andrea Suzuki read the Executive Session language.

Mr. Shiraishi moved to go into Executive Session; seconded by Ms. Ho; with no objections, motion carried with 5 ayes at Roll Call (LH, HS, RM, SS, CN).

J. EXECUTIVE SESSION

1. Pursuant to Hawaii Revised Statutes (HRS) Section 92-4, 92-5(a)(4), the purpose of this executive session is to review executive session minutes dated **August 28, 2014**. This consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Board and the Department as they relate to this agenda item. [Approved in open session]

2. Pursuant to Hawaii Revised Statutes Sections 92-4, 92-5(a)(4), the purpose of this executive session is to provide the Board of Water with a briefing regarding the process of hiring a new Manager and Chief Engineer. Furthermore, this briefing and consultation with the Board of Water's legal counsel involves the powers, duties, privileges and/or liabilities of the Board of Water as it relates to this agenda item.

At 11:35 a.m., Chair Nakaya reconvened the Regular Board meeting.

Agenda Items K, L, & M was accepted with no objections.

K. TOPICS FOR NEXT WATER BOARD MEETING (October 2014)

1. Discussion on suggestions for Capital Improvement Projects (CIP) for 2015 Legislative Session
2. Manager's Report 15 - 03 – Discussion and Possible Action to Negotiate Proposed Agreement with the Honolulu Board of Water Supply (HBWS) to furnish Computer Services for the use of the Customer Care & Billing (CC&B) Program
3. Discussion and Possible Action on the Manager's Recommendation regarding the Reallocation of Water Capacity Approved for Industrial Use from Eleele Industrial Park Subdivision, TMK: 2-1-01:51 to 28-acre Eleele Urban Residential Development, TMK: 2-2-1:Por. 3, A&B Properties, Inc., Eleele, Kaua'i
4. Discussion and Possible Action of Proposed Delegation of a Meter Restriction Board Policy
5. Discussion and Possible Action on the Appointment of a Hearings Officer as it Relates to the Petition to Appeal the Decision of the Water Department Regarding TMKs (4)-6-06:17, 19, and 20 for Subdivision No. S-2013-23, Makaleha Gardens LLC., filed by Christopher Singleton

L. TOPICS FOR FUTURE WATER BOARD MEETINGS

1. Discussion and Possible Action on the DOW's Draft Annual Audit for FY 13-14 (*Special Board Meeting, November 5, 2014*)
2. Manager's Report No. 11-28 – Discussion and Possible Action regarding Part 5 of the Rules, Facilities Reserve Charge – Proposed New Rule, SBRRB Results (awaiting Part 4 Section VII, Facilities Reserve Charge to be submitted together)
3. Manager's Report No. 14-24 – Discussion and Possible Action regarding Part 4 Section I of the Rules, General Use Rates Proposed Amendments, SBRRB Results (awaiting Part 4 Section VII, Facilities Reserve Charge to be submitted together)

At 11:40 a.m., Mike Dahilig re-entered the meeting.

4. Billing Reconciliation Standard Operating Procedures (SOP)
5. Emergency Standard Operating Procedures (SOP)

M. UPCOMING EVENTS

1. Table of Organization Workshop (Manager's Update to include updated TO)
2. HWWA 2014 Conference, Kaua'i, HI *(October 15-17, 2014)*
3. DOW Annual Meeting *(December 12, 2014)*
4. AWWA Annual Conference, Anaheim, CA *(June 7-10, 2015)*

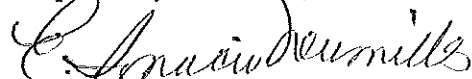
N. NEXT WATER BOARD MEETING

1. Thursday, October 23, 2014, 10:00 a.m.
2. Wednesday, November 5, 2014, *Special Board Meeting, 1:00 p.m.*
3. Thursday, November 20, 2014, 10:00 a.m.
4. Thursday, December 18, 2014, 10:00 a.m.

O. ADJOURNMENT

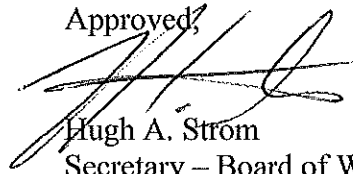
Mr. Shiraishi moved to adjourn the meeting at 11:44 a.m.; seconded by Ms. Ho; with no objections.

Respectfully submitted,



Edie Ignacio Neumiller
Commission Support Clerk

Approved,



Hugh A. Strom
Secretary – Board of Water Supply