

MEETING MINUTES
BOARD OF WATER SUPPLY
Friday, September 29, 2017

The Board of Water Supply, County of Kaua'i, met in regular meeting at the Board Conference Room in Lihu'e on Friday, September 29, 2017. Chair Sherman Shiraishi called the meeting to order at 10:05 a.m. The following Board members were present:

BOARD: Mr. Sherman Shiraishi, *Chair*
Mr. Lyle Tabata
Mr. Thomas Canute
Mr. Michael Dahilig

EXCUSED: Ms. Laurie Ho
Ms. Beth Tokioka
Mr. Lawrence Dill

Quorum was achieved with 4 members present at the time of roll call.

STAFF: Mr. Kirk Saiki
Mr. Valentino Reyna
Mr. Eddie Doi
Mr. Michael Hinazumi
Mr. Dustin Moises
Mr. Bryan Wienand
Deputy County Attorney, Mahealani Krafft

Ms. Marites Yano
Ms. MJ Akuna
Mr. Keith Aoki
Ms. Jonell Kaohelaulii
Mr. Chris Nakamura
Ms. Sandi Nadatani-Mendez

GUEST(s) County Attorney Mauna Kea Trask (*entered the meeting approx. 10:07 a.m.*)
Mr. Hall Parrott, Private Citizen
Ms. Maren Arismendez, Esaki Surveying & Mapping
Mr. Dennis Esaki, Esaki Surveying & Mapping
Mr. Mike Harismendy, representing Mr. Jack Phillips
Mr. Jack Phillips, Kalāheo Macadamia Preservation
Mrs. Margaret Phillips, Phillips Living Trust
Ms. Ida Gatsova, Private Citizen
Mr. Milan Kocak, Private Citizen
Ms. Noi Kanahale, Private Citizen
Ms. Hedy Sullivan, Kula Aupuni Ni'ihau A Kahelalani Aloha, Inc. (Kanaka)
Kanahale Boys, Kula Aupuni Ni'ihau A Kahelalani Aloha, Inc. (Kanaka)
Mr. Steven Sullivan, Kaana Inc.
Mr. Fred Atkins, Private Citizen

C. ACCEPTANCE OF AGENDA

Mr. Dahilig moved to reorder the Agenda to move up New Business Item I, No. 1 – Manager's Report No. 18-72; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

I. NEW BUSINESS

1. Manager's Report No. 18-72 – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirement's for Subdivision S-2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i Hawai'i

DISCUSSION:

Chair Shiraishi mentioned that there was a quorum with four (4) members, but it takes five (5) votes to waive the requirement in Manager's Report No. 18-72.

County Attorney Mauna Kea Trask provided his testimony

County Attorney Trask appeared before the Board to testify and to share the facts on this issue. "Received for the Record" were three written correspondence that were distributed to the Board (dated July 19, 2000 from the Kaua'i Planning Department, February 7, 2001 from Esaki Surveying & Mapping, Inc. and February 14, 2001 from the Kaua'i Planning Department).

County Attorney Trask acknowledged that the County was not the applicant and was representing the Department in front of the Planning Commission. He went before the Subdivision Committee and appeared before the Planning Commission at large regarding the process of this subdivision application. This pertains to two things: 1) the Phillips' and 2) Ihu Road subdivision project and de facto subdivision.

The County dealt with the de facto subdivision for decades which began in the territorial land grant process in the early 20th century when the territory of Hawai'i sold homesteads to people (large agricultural tracts; see map in packet). The agricultural tracts were 100 acres or more. The lots or parcels had ditch or railroad easements running through the lots. In the late 80's and early 90's, a question came up whether or not the easements created de facto subdivisions which are subdivisions of land without going through the subdivisions process. These questions were asked after the Kaua'i County Code was promulgated in the 70's. This was a legal issue because the easements were held by large agricultural companies (Līhu'e Plantation, Grove Farm Company, A&B Properties and McBryde). The State of Hawai'i owned ditches and easements that separated the property. The Fifth Circuit Court, in a case called Allan vs. Fujimoto (to which the County was not a party), held that these easements created de facto subdivisions. The easements running through the land had the effect of subdividing them. The ruling was not appealed. The question arose again in 2011 (R3 Best case), after the Fujimoto case and decided in 1991. When this question came to the Planning Department, they followed the Circuit Court decision in the Fujimoto case.

The letters that were distributed reflected three (3) parcels that were owned by Mr. and Mrs. Stanley Momohara. In response to Planning Department's May 25, 2000 correspondence, Mr. Momohara wrote a letter to the Planning Department referring to the separate lots and two ditch easements and if they created two separate lots. Planning Director Dee Crowell said in the letter, *"please be advised that it is the Department's practice to recognize ditch right-of-ways as encumbrances on a lot, similar to easements. However, please understand that the Planning Department defers to a registered land surveyor to determine whether a ditch right-of-way is a separate lot or not. If the land surveyor interprets the ditches as separate lots, the Department will uphold their judgment."*

On February 7, 2001, Esaki Surveying & Mapping sent a letter to the Planning Department attention Mr. Keith Nitta which stated *"We have surveyed the three (3) separate lots in Kalāheo. They are detached by ditch Right-of-Ways owned by A & B Properties, Inc. We are currently preparing descriptions of Roadway and Utility Easement over the Ditch Right-of-Ways. Please let me know if you have any problems identifying these lots."* There was no problem identifying these lots.

On February 14, 2001, Planning Director, Dee Crowell wrote a letter to Mr. Mike Harismendy that pursuant to the Registered Land Surveyor, the County recognized three (3) separate lots. Thereafter, these properties obtained three (3) meters for the separate lots under the rules at the time and the lots were conveyed and later CPR'd (Condominium Property Regime) and approved by the County's various agencies and the Department of Water (DOW). The Makai portion was conveyed to Mr. Fred Atkins and the Mauka portion was conveyed to Mr. Marshall McGredy. The second lot was CPR'd into four (4) lots by the Macadamia Trust. The current lot is pending CPR owned by the Phillips who obtained five (5) more meters. In 2004, the Phillips transmitted to the DOW a transfer of water facilities but have not received recorded documents. They have built 1,000 feet of an 8 inch line to accommodate their meters and everyone thought this was subdivided by the determination of the Planning Department in 2001. Recently there was an issue with Mr. McGredy who is trying to sell his lot. A question went to the Planning Department regarding this situation and which viewed this was a de facto subdivision issue.

The R3 Best case came in the Planning Department around 2011 which pertained to a lot located in Wailua with a similar situation and a large parcel separated by two ditch easements and a railroad easement.

Currently, Mr. Fred Atkins has built a house on the Makai lot portion of parcel 1. No other lots are developed but there are recorded utility access easements on Ihu Road to lot 3 and over to lot 2 and utility easements serving all of these issues and the 8 meters of 8 CPR units. This was under the rules and in effect with the DOW in 2004. The question that came up with the R3 Best case (east side of Kaua'i) was whether the R3 Best property was a de facto subdivision. The County Attorney's office was not aware of this issue but under case law, it did not appear that de facto subdivisions were legal. As discussed by Mr. Crowell in his 2000 letter, the Department's practice is to recognize ditch right-of-ways as encumbrances similar to easements and not effectuating subdivision. Because this was owned by one person and no development was done, it was litigated. The issue went before the Fifth Circuit Court and the County was part of that case and Judge Valenciano said the County was right and ruled that a de facto subdivision was not created; the rights of way were encumbrances on the property and did not subdivide the property. In the R3 Best case, the owner of the property appealed the Circuit Court decision to the Intermediate Court of Appeals (ICA) and the ICA sent the case to Court Annexed Arbitration Program (CAAP) arbitration which was mediated at the ICA level. The result of this arbitration was that the owner was to submit a subdivision application to the Planning Commission and to go through the subdivision process in 2013.

As of 2013, the County of Kaua'i, pursuant to rules, agrees that the decision of the Fifth Circuit Court applies and there are no de facto subdivisions. However, there still exists an unknown number of cases where land owners relied on similar letters that were distributed to the Board. From the early 90's up to 2011, where de facto subdivisions were granted. This is the first one County Attorney Trask has seen. They have been conveyed to separate parties, have been CPR'd and developed in every single Department in the County that relied upon this determination. County Attorney Trask did not think anyone is at fault due to this complex issue.

County Attorney Trask asked how do we go forward? Early 2017, the Planning Department was contacted by the owners regarding this issue since there was no de facto subdivision and the land was not subdivided. This had a big effect and County Attorney Trask was speaking on behalf of his client and not the Phillips. The Planning Department currently legally determined that this was not legally subdivided. There are other issues in this case relating to the conveyance and to the development that did not exist in R3 Best case. The client was contacted and said this did not make sense and based on the letters that were distributed recognized the subdivision which was subdivided. Questions of vested rights and of equitable estoppel came up and the parties are at a potential impasse. The only way County Attorney Trask said to settle this is to go to court and fight it. It is possible that this would get litigated and sent to the ICA to be mediated and the landowners may be required to file a subdivision application (like the R3 Best case).

Considering time and resources, the County Planning Department and the County Attorney's office decided this is either a problem or an opportunity. Every agency in the County recognized the 2001 subdivision. There could be a proposed agreement to record and put everyone where they thought they were at in 2016. County Attorney Trask discussed and reviewed with his client and the Phillips' and reached an agreement to submit a subdivision application to the Planning Commission Subdivision Committee with the recommendation to approve "as is" which the Subdivision Committee granted. Because the issues of equity and without contesting or giving any legal posturing, they wanted to settle this.

Two spiral notebooks were mentioned by County Attorney Trask which were the process and procedure and permits relating to this issue; the second notebook contained receipts. The applicants claim to have invested or spent \$5M into the subdivision costs from the 2001 determination but County Attorney Trask could only confirm \$3.9M. This is a potential problem with a number of potential unknown subdivisions. The County Planning Department and the County Attorney's office do not want to litigate individually but want to address the problem and settle the matter. The Planning Department, the Public Works Department and DOW recognized the 1, 2, 3 lot de facto subdivision to be approved. The previous maps could be recorded with the Bureau of Conveyances. Based on the 2013 R3 Best case, it is hoped this does not happen again. From 1991 to 2010, there are a number of unknown cases to deal with.

This provides the opportunity to do the right thing by the Momoharas, Mr. McCredy, Mr. Atkins, this Trust and the Phillips', and to chart a clear course for the entire island of Kaua'i and the Fifth Circuit Court. The DOW's

job is public safety and welfare. In 2007 & 2008, the standards were changed and fire flow regulations now exist (which did not exist in 2001) and which the DOW is asking the applicant to comply with. This will require another 1,300 feet of line to be paid by the applicants which they cannot afford to do and feel it is inequitable. The DOW requirements will not promote settlement but will lead to litigation. A house has been built but does not have the 2007, 2008 fire flow requirements and is being serviced by a meter under the standards in the Department existing at the time that the house was built. County Attorney Trask walks on this road frequently and these houses do not have the fire flow requirement and are asking not to apply the current rules but to apply the rules according to what the applicants and what the County recognized in 2004 when they got the CPR's that did not include the 1,300 feet of line. This was understood by the Momohara's which they relied on that the market conveyed and the parcels were developed. Arguments on both sides could be made and the County could take a hard line and lose. County Attorney Trask would like to find a resolution and to defer the applicability of fire flow rules to an appropriate time.

DISCUSSION:

The applicants and current owners of the CPR units who are present at this meeting were Mr. Atkins, Mr. & Mrs. Phillips (Mr. McCredy was not present).

Chair Shiraishi asked for a clarification on the reference of stare decisis and precedent. This is only binding on the Fifth Circuit Court on the first case and only to the parties in the case. The County was not a party and so is not bound by the first case. County Attorney Trask added the County relied on the decision and used it as a basis for the de facto subdivisions in 1991 and in this case in 2001.

Chair Shiraishi asked if Manager's Saiki's recommendation differ? Manager Saiki asked what if the County and the DOW's liability on fire flow is not provided? Mr. Dahilig requested Chair Shiraishi to take this question in Executive Session. County Attorney Trask said he is not advising the Board today as the DOW has their Deputy Attorney. If asked Manager Saiki's question in the court of law, the DOW does not have that liability County Attorney Trask replied. DOW grants water and DOW does not warrant its service which was approved already, and the subdivision was dated in 2001. At that time the DOW did not have fire flow requirements.

As part of the subdivision and if the DOW waives the requirement of 1,300 feet of pipeline, Chair Shiraishi asked if a condition could be imposed that the applicants accept current water flow and it may be inadequate for fire protection? Mr. Dahilig added this should be answered in Executive Session which are his Charter required duties.

Mrs. Margaret Phillips, Phillips Living Trust provided her testimony.

Mr. and Mrs. Phillips are the co trustees of the Kalāheo Macadamia Preservation Trust which owns parcel 2 and the Phillips Living Trust which owns parcel 3. Mrs. Phillips pointed out certain items in the binders she left for the Board titled "Compliance with Water Department's Requirements to Obtain Five Additional Water Meters in addition to the existing three (3) meters)" and "Received for the Record." Three (3) parcels were purchased at different times from the same seller in 2001 and 2002. Parcel 1 was purchased from another trust that they own in 2009 by Mr. Fred Atkins and Mr. Marshall McCredy. Mrs. Phillips said based on the letters that County Attorney Trask passed out dated 2000 and 2001, they would not have bought the three parcels on behalf of the trust, family and friends. As a result, they spent between \$3M - \$5M as collective owners. In 2016, the Planning Department stated the parcels were all one and not three separate lots which the owners were not happy about. The owners provided lots of extensive historical and legal documents plus had lengthy discussions with the Planning Department.

The owners would like to make peace instead of litigating this matter in court. The owners have gone into a binding settlement agreement with the County and the Planning Department. The settlement agreement is signed and notarized by all the owners and the Planning Department. In the settlement agreement includes: 1) the County's recognition of the three parcels, with separate TMKs, were de facto subdivisions and is treated that way by all County agencies as subdivisions for 15 years and 2) an expedited procedure to ratify the subdivision. The tentative approval was given by the Subdivision Committee of the Planning Commission in late June and she hopes that the rest of this could be expedited more.

The binder documents include water infrastructure and water issues. In Mr. Crowell's 2001 letter, there were three (3) water meters which supplied the three lots. Mr. & Mrs. Phillips applied for five additional meters. The DOW required improvements to the water main on Puhu Road to add 1,000 feet of pipeline. A letter from the former DOW Manager Mr. Ernest Lau stated that *"the DOW would allow a total of 8 units to parcels 1, 2, & 3 provided that the 8 inch main extension and other conditions are completed. The existing 3 inch and 4 inch main along Ihu Road are adequate to provide normal domestic service to the lots."* This was the DOW's standard in 2001. It took about 2+ years to complete the infrastructure and the documented costs totaled over \$200,000 in materials and legal payments to the developer, Makai subdivision as a proportionate share of the refund and meter installation charges that the DOW required. The owners granted the DOW an easement to maintain the meters, conveyed the new 1,000 feet of 8 inch pipeline as required, and activated water service to all the meters, which have been paid for over 10 years.

Several documents in the binder contain written statements by the former DOW Manager Ernest Lau. Mrs. Phillips mentioned if the 8 inch line was constructed, it would be sufficient to support an additional 15 units in the area. All water requirements were done and the DOW never questioned the existence three separate lots. This is not a new subdivision in which the 2017 standards should be applied. This was to confirm and ratify it is an existing de facto subdivision.

On behalf of the two different trusts that currently own parcels 2 and 3, the Board should accept the water infrastructure work done in 2003 – 2004 and the cost of obtaining the five additional water meters were treated as an existing subdivision. Mrs. Phillips said the DOW would not use an existing subdivision, for example Kakela Makai, to upgrade the water infrastructure now in order to continue to exist as a subdivision which relates to this situation. Mr. Fred Atkins and Mr. Marshall McCredy co-owners of parcel 1 has lived with the water supply for about 7 or 8 years have joined the Phillips in this request.

Mr. Fred Atkins, Owner of Parcel 1 provided his testimony.

Mr. Atkins built a home on this property (parcel 1) and has been there eight years since his realtor told him about this property. He has owned land abutting this property and sold it before Hurricane Iniki which he told the realtor he was interested in purchasing another parcel in that area (6 acres). The parcel had water and two meters, he purchased and subdivided it. Esaki Surveying & Mapping got the CPR, and got approval from the State and County. When he was about to build his home, Mr. Atkins needed approval from the gentleman who owned the same CPR. It wasn't until the gentleman went to get building permits that Mr. Atkins had to get permits from the other six land owners and realized their parcel was not separate. Title Guarantee gave Mr. Atkins clear title for a separate parcel which was researched to be what the Board has heard today. This has been going on for 14 months and the gentleman wants to purchase the parcel. Mr. Atkins thought this was done when the papers were signed by the County. From an individual who bought the parcel, the reliance of everything he got from Title Guaranty and the County process it has been very frustrating.

Mr. Atkins understands there needs to be a water pressure reducer that goes into the homes for water conservations. The three water lines going into his Macadamia trees are very strong and does not have any weak power.

Mr. Atkins spoke to Title Guarantee which would represent him if there was legal action because it has a lot of liability regarding this situation. This is not what Mr. Atkins wants to do. Living on his property has been very stressful the last year. He bought the property, with one partner but now has to deal with 6 or 7 land owners which is unacceptable. He appreciates that the DOW is separate from the County and has its own Water Board and if he does not agree with what the Department says, the public can go to the Board and say "we've been grieved and this is why." Mr. Atkins appreciates the Board and is aware that they volunteer as a commission.

Mr. Dennis Esaki, Esaki Surveying & Mapping provided his testimony.

Mr. Esaki was present regarding the subdivision and mentioned there were other de facto subdivisions on Kaua'i and behooves the County to not un-subdivide them. The CPR process the owners have gone through with the County is on the density base on the lot determination. This DOW gives the meter based on density on the lot.

The County Attorney referenced the R3BST vs. the County case, as the settlement was on the increased number of lots not based on one big lot. The owners have paid the Facilities Reserve Charge and put in a water line. The proportional share refund to Kakela Makai of which the Department has eliminated.

DISCUSSION:

Chair Shiraishi reminded everyone that it takes five (5) Board votes to waive the land owners requirement of the water line on the Department's recommendation. This matter was deferred as a procedural step when the Board has at least five members.

At 10:54 a.m., Chair Shiraishi called for a five minute Recess.

At 11:02 a.m., Chair Shiraishi called the Regular Board meeting back to order.

Mr. Tabata moved to approve the rearrangement of the agenda and to up the Consent Calendar next on the Agenda; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

H. CONSENT CALENDAR

1. Manager's Report No. 18-69 - Discussion and Possible Action to approve a Grant of Easement for Construction Plans for Makahuena Subdivision, Planning Department Subdivision S-2015-14, Kaua'i, affecting the following landowner:
 - a. CIRI Land Development Company, on TMKs: 2-8-021:041 (por.), 2-8- 021:044 (por.) 2-8-021:047 (por.), and 2-8-021:049 (por.) thru 2-8-021:054 (por.) as specified above in Kōloa, Kaua'i, Hawai'i

Mr. Dahilig moved to approve Manager's Report No. 18-69 - Discussion and Possible Action to approve a Grant of Easement for Construction Plans for Makahuena Subdivision, Planning Department Subdivision S-2015-14, Kaua'i, affecting the following landowner: a) CIRI Land Development Company, on TMKs: 2-8-021:041 (por.), 2-8- 021:044 (por.) 2-8-021:047 (por.), and 2-8-021:049 (por.) thru 2-8-021:054 (por.) as specified above in Kōloa, Kaua'i Hawai'i; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

2. Manager's Report No. 18-70 - Discussion and Possible Action to approve a Grant of Easement for Service Lateral for a New 1-Inch Water Meter, Kula Aupuni Ni'ihau A Kahelelani Aloha Public Charter School Remodel, Kauai, Affecting the Following Landowner:
 - a. Kanaka Aupuni A Ni'ihau Aloha Inc., TMK: 1-3-09:001 as specified above in Waimea, Kaua'i, Hawai'i

Mr. Dahilig moved to approve Manager's Report No. 18-70 - Discussion and Possible Action to approve a Grant of Easement for Service Lateral for a New 1-Inch Water Meter, Kula Aupuni Ni'ihau A Kahelelani Aloha Public Charter School Remodel, Kauai, Affecting the Following Landowner: a) Kanaka Aupuni A Ni'ihau Aloha Inc., TMK: 1-3-09:001 as specified above in Waimea, Kaua'i, Hawai'i; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

3. Manager's Report No. 18-71 - Discussion and Possible Action to approve a Grant of Easement for Construction Plans For 8" Reduced Pressure Detector Assembly for Lot 1115, Kaua'i, Affecting the Following Landowner
 - a. Jared and Donna Murayama 1997 Trust dated January 8, 1997, TMKs 3-4-13:027, Lihu'e, Kaua'i, Hawai'i

Mr. Dahilig moved to approve Manager's Report No. 18-71 - Discussion and Possible Action to approve a Grant of Easement for Construction Plans For 8" Reduced Pressure Detector Assembly for Lot 1115, Kaua'i, Affecting the Following Landowner: a) Jared and Donna Murayama 1997 Trust dated January 8, 1997, TMKs 3-4-13:027, Lihu'e, Kaua'i, Hawai'i; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

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2. Manager's Report No. 18-70 - Discussion and Possible Action to approve a Grant of Easement for Service Lateral for a New 1-Inch Water Meter, Kula Aupuni Ni'ihau A Kahelelani Aloha Public Charter School Remodel, Kauai, Affecting the Following Landowner:
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At 11:04 a.m., Mr. Dahilig moved to go into Executive Session; seconded by Mr. Tabata; with no objections, motion carried with a unanimous vote by a show of four (4) hands raised.

K. 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).

1. *Pursuant to Hawai'i Revised Statutes §92-4 and §92-5 (a)(4), the purpose of this Executive Session is for the Board to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities as they may relate to this agenda item K1.a.*
- a. Manager's Report No. 18-72 – Discussion and Possible Action on the Denial of Mr. Dennis Esaki's request to Waive the Department of Water's requirement's for Subdivision S-2017-12, Jack Phillips, TMK: 2-3-7: 01, 02 & 03, Kalāheo, Kaua'i Hawai'i

At 11:55 a.m., Chair Shiraishi called the Regular Board meeting back to order.

Mr. Dahilig moved to refer Item K, 1a back to the Manager for reconsiderations on this request and to report back to the Board and include any conditions to a potential agreement; seconded by Mr. Tabata; with no objections, motion carried with 4 ayes.

Chair Shiraishi commented that the Board would keep the land owners informed.

D. MEETING MINUTES

Review and approval of:

Regular Board Meeting – August 21, 2017

Mr. Dahilig moved to approve the Regular Board Meeting minutes of August 21, 2017; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

Audit Committee Meeting – August 15, 2017

Mr. Dahilig moved to approve the Audit Committee Meeting minutes of August 15, 2017; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

Review and approval of:

Executive Session – July 28, 2017

Mr. Dahilig moved to approve the Executive Session minutes of July 28, 2017; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

Executive Session – August 21, 2017

Mr. Dahilig moved to approve the Executive Session minutes of August 21, 2017; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

E. CORRESPONDENCE/ANNOUNCEMENTS

1. Correspondence from Mrs. Irene Morgan regarding Facilities Reserve Charge for ADU No. 82706 from November 20, 2006, dated September 13, 2017

Chair Shiraishi disclosed he has done work for Mrs. Morgan in the past.

DISCUSSION:

Manager Saiki's correspondence response back to Mrs. Morgan was denial. A copy of the correspondence was distributed to the Board and "Received for the Record" but was not part of the agenda item. This agenda item will be on the October agenda as New Business.

Mr. Dahilig moved to refer this correspondence back to the Manager for further consideration and to report back to the Board; seconded by Mr. Tabata; with no objections, motion carried with 4 ayes.

F. BOARD COMMITTEE REPORTS

None.

H. OLD BUSINESS

1. Manager's Report No. 17 – 40 (Update) – Discussion and Possible Action on the First Amendment to Contract No. 614, Job No. 15-08, WP2020 HW-11 Construct Hā'ena 0.2 MG Storage Tank, Hā'ena with Brown and Caldwell for additional funds in the amount of \$27,401.00

BACKGROUND:

Manager Saiki commented that the Department recommended the Board to re-approve \$27,401.00 in additional funds. These Capital Improvement Project funds were not rolled over at the end of the year but are available to be rolled over now.

DISCUSSION:

Civil Engineer Bryan Wienand explained the funds were approved by the Board at the end of the fiscal year. The contract was not executed until July due to additional questions that came up that delayed the actual execution of the amendment when the fiscal year rolled over. This was an oversight by Engineering which was not communicated to the Fiscal Division to issue the purchase order (P.O.) before the end of the fiscal year.

Mr. Tabata moved to approve Manager's Report No. 17 – 40 (Update) – Discussion and Possible Action on the First Amendment to Contract No. 614, Job No. 15-08, WP2020 HW-11 Construct Hā'ena 0.2 MG Storage Tank, Hā'ena with Brown and Caldwell for additional funds in the amount of \$27,401.00; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

2. Manager's Report No. 18-66 (Update) - Discussion and Possible Action for Job No. 17-11, WP2020 WKK-02, Drill and Test Kīlauea Well No. 3, Kīlauea, Kaua'i, Hawai'i for additional design funding in the amount of \$18,339.35

BACKGROUND:

Manager Saiki commented that the Department recommended the Board approve the additional funds and justified why the project is needed. Kīlauea currently has one well site with two wells at this site. Well No. 3 would be in a different area of Kīlauea that would allow reliability and increased service.

DISCUSSION:

Chief of Water Resources and Planning Mr. Doi added that Kīlauea currently has a water restriction limiting service to five dwellings or five meters. In 2001, Water Plan 2020 was done and the tank and the pump were identified as needed. In 2007, Water Plan 2020 was updated which is still a priority project. Currently there is no well at this site.

Mr. Tabata said why is only 5% being asked; 5% may not be enough? Mr. Wienand commented 5% is the standard contingency to execute a new contract possibly today but could execute the contract without the 5%.

Mr. Dahilig was concerned about design projects, the possibility of forfeiting the design or to commit to a large amount of money and priorities have not been weighed appropriately. From last month's meeting, he asked 1) how does this compare to other needs, 2) is there appropriate density to justify a big project, and 3) does it make sense to follow a track of investing, even if it is a design contract which has not been executed yet? To put in an additional well in Kīlauea, knowing the conditions there are based on availability of land and demand for meters. Mr. Dahilig was not convinced this was the way to go.

Mr. Doi appreciated the Board for letting Engineering reassess the Kīlauea area. Engineering looked at what is existing, the liabilities, and potential growth. The existing consumption exceeds the Department's capacity. There are 80+ empty meter boxes coming on line which would put the Department at a deficit. There is potential development with agricultural zone lands. A rough count for density of agricultural lots totaled approximately 200. If the project is not done, Mr. Doi said, Kīlauea would go into a moratorium so that the Department does not go into a negative. Mr. Dahilig does not want that conclusion. The total potential construction cost could be \$6M as the report reads. He referred to the last time the Department did a bond outlay and the cost was \$60M. The large amount does not yield the benefit as an engineering problem. Mr. Dahilig did not disagree with the assessment. He was looking at the value comparison and to obligate ourselves to \$6M in construction (i.e., other districts like Kōloa or Waimea). A concern is housing, revenue and how to offset the cost.

Manager Saiki sees the purpose as operationally. Kīlauea is like Kalāheo which has two wells. There is only one Motor Control Center (MCC/electrical panel) to run both wells in Kīlauea. The capability of having well sites in different locations with efficient MCC's increases liability. If the electrical is blown out or the roof leaks, MCC would be down for six months which is the weak link.

Mr. Doi said this is not just a single look at Kīlauea or Waimea. There was a plan which was amended in 2007 which looked at all the rankings of the facilities. Part of the ranking was the conditional assessment, health and safety and level of service. When these are analyzed, then move into further growth by looking into the General Plan and to speak to large consultants. In 2007, this was high priority and considered under design. Through different administrations, different Board members, and different goals, as of today, this got pushed to the side. By putting the tank and pump on opposite sides, would provide more efficiency and would eliminate transporting water across Kīlauea. Their system is one of the largest and most vulnerable systems operating. The Department understands it needs housing and growth and to look at what is most efficient for the Department.

Mr. Wienand added that this is an expansion project and is Facilities Reserve Charge (FRC) funded and is an operational issue which crosses the boundary of FRC and Water Utility. System redundancy is critical in engineering. What are the areas of the island that are vulnerable and is very important for operations? This poses a question on issues of areas of expansion, housing and funding.

Chair Shiraishi asked if the well were to be built without the additional storage tank, would there still be a restriction in Kīlauea? Regarding affordable housing, is the storage more important than the well? Would the restriction be lifted? Mr. Doi said there would be a restriction because the storage is also deficient. The well is more important, but Kīlauea would need both. There are existing tanks but if there is a high capacity pump, pumping can continue and use the existing tank.

Mr. Dahilig said this is being funded with FRC and asked what is being expanded? If the Department is asking for \$6M, this would come from FRC also. The money that is being held back from the meter drops for expansion and for its intended purpose. Mr. Doi added there is a lot of land available in the agricultural zone lands. Based on the count of potential single family dwellings that could be developed on agricultural zone lands, using a count of several hundred (425 to be exact), if 30% of the count (approximately 130) is used, then the number is still large. Mr. Dahilig added all these details need to be thought out carefully and he is not convinced this request is the right call.

For clarification, Chair Shiraishi stated both the well and the tank go together. The tank and well has been considered since 2004. This is needed in the Kilauea area and understands the Departments concerns. He asked what would be the consequence if this request does not move forward? Manager Saiki mentioned there is a budget for this project and based on the 5% contingency and negotiations, the Department could proceed with the design of the exploratory well. Once design is done, the funds would be put in the budget or to get approval from the Board for construction. The tank would need additional design and funding. If funding is not approved, the tank design would be cancelled.

Failed due to lack of a motion.

Chair Shiraishi and Mr. Tabata requested an Executive Summary of the priorities in bullet form and the Department's accomplishments and what is planned for the future.

3. Manager's Report No. 18-67 (Update) - Discussion and Possible Action on the 5th Amendment for Contract No. 440, Job No. 02-06 WP2020 #WKK-15, Kilauea, Kaua'i, Hawai'i, 1.0 Million Gallon Storage Tank and Connecting Pipeline with Kodani & Associates Engineer, LLC for the additional design funding of \$25,260.00

DISCUSSION:

Refer to the same discussion on Manager's Report No. 18-66.

Failed due to lack of a motion.

Chair Shiraishi and Mr. Tabata requested an Executive Summary of the priorities in bullet form and the Department's accomplishments and what is planned for the future. This will be discussed at the next Agenda Meeting.

J. STAFF REPORTS **MONTHLY**

1. Discussion and Receipt of the Kaua'i County Water Department's Statement of Revenues and Expenditures
 - a. August Monthly Summary Budget

BACKGROUND:

Waterworks Controller Ms. Yano stated the auditors learned that the Employee Retirement System (ERS) auditors will present their draft to the ERS board on October 24th. The draft audited financial statements will be presented in the November 22nd Board meeting instead of the October Board meeting.

- Due to the County: November 15, 2017

The Board received the Kaua'i County Water Department's Statement of Revenues and Expenditures, a) August Monthly Summary Budget; with no objections from the 4 members present.

2. Discussion and Receipt of the Report by the Public Relations Specialist on Public Relations Activities

Chair Shiraishi complimented Information Education Specialist Ms. Kaohelaulii on a great Make A Splash (MAS). She appreciated the Board's support at MAS.

BACKGROUND:

Ms. Kaohelaulii has been focusing on positive communication relations and education outreach since September. An outreach presentation in the community was done in Kekaha. She also met with Liliuokalani Trust to prepare a water conservation for their clients (families with children of Hawaiian ancestry).

The Board received the Report by the Public Relations Specialist on Public Relations Activities; with no objections from the 4 members present.

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

DISCUSSION:

Mr. Tabata is currently signing an emergency procurement for liquid chlorine. He asked if Operations converted everything to liquid chlorine? Gas has been cut off. Mr. Reyna said they have not converted to liquid chlorine yet. He added by the end of this year, Operations will no longer procure gas chlorine according to Brewer Environmental Industries (BEI). Mr. Reyna procured a conversion kit and parts for Hanapēpē Well.

The Board received the Chief of Operation's Summary Report on Operational Activities; with no objections from the 4 members present.

4. Discussion and Receipt of the Manager and Chief Engineer's Monthly Update Regarding Activities of Note of the DOW

BACKGROUND:

Manager Saiki highlighted the following:

1. **CONTRACTS AWARDED/EXTENSION/AMENDMENTS:**

(1) ***(UPDATE)*** CONTRACT NO. 644, JOB NO. 11-07, WP2020 KP-09, MCC, CHLORINATION FACILITIES, KŌLOA WELL 16A & 16B SITE AND BUILDING IMPROVMENTS, KŌLOA WATER SYSTEM, KŌLOA, HAWAII, AWARDED TO UNLIMITED CONSTRUCTION SERVICES, INC. IN THE AMOUNT OF \$3,576,241.00

2. Personnel Matters:

Selected - Computer Support Technician I *and* Inspector I

The Board received the Manager and Chief Engineer's Monthly Update Regarding Activities of Note of the DOW; with no objections from the 4 members present.

a. Report of the BAB pay down as of August 2017

The Board received the Report of the BAB pay down as of August 2017; with no objections with 4 members present.

L. TOPICS FOR NEXT WATER BOARD MEETING *(October 2017)*

1. *Manager's Report No. 18-65 (Update)* - Discussion and Possible Action on Part 2 Rules and Regulation for Water Service Connection to address Landlord and/or Property Managers and Tenant issues
 - a. Section I – Definitions
 - b. Section III – Conservation Measures and Interruption of Water Supply
 - c. Section IV – Elevation Agreement, Pressure Controls
 - d. Section V – Application for Water Service and Service Connection
2. Discussion and Suggestions of the Department of Water's Capital Improvement Projects the 2018 Legislative Session
3. Board Meeting Dates for 2018
4. Election of Officers for 2018
5. Discussion and Possible Action on the Manager's Response to Mrs. Irene Morgan, dated September 21, 2017 regarding Facilities Reserve Charge for a Proposed Additional Dwelling Unit on TMK: 2-3-14:021, Alelo Road, Kalāheo, Kaua'i, Hawai'i
6. Discussion and Possible Action on Water Plan 2020 Priority Accomplishments and Goals as it Correlates to the General Plan

DISCUSSION:

Mr. Tabata said at the time the General Plan was done and much development was proposed to be coming on line, he asked if you did something, did you meet the goal and the needs? Mr. Doi added that the Water Plan 2020 would be 1) condition assessment, 2) health and safety, and 3) level of service. Next would be future needs of large developers and the General Plan.

Mr. Dahilig mentioned the current Water Plan 2020 prioritizes by each of the systems not across all projects. Mr. Doi commented that when the rating is done, everything is looked at. Water Plan 2020 is written in segments but before the segments are look at, it is reviewed over all. The system drawings and base line language the Department is using (the same) will be sent to the Board’s Drop Box folder for review.

Add to Executive Session for October 2017:

1. Annual Evaluation of the Department of Water’s Manager and Chief Engineer from December 18, 2016 to December 17, 2017
2. Discussion and Possible Action on the 18” Kapaia Waterline and the State’s Disclosure Law
3. Discussion and Possible on the Surface Water Treatment Plant Agreement

M. TOPICS FOR FUTURE WATER BOARD MEETINGS

1. Discussion and Possible Action on Proposed Board Policy for Delegating Routine Actions from the Water Board to the Department of Water’s Manager and Chief Engineer regarding Right of Entry
2. Workshop presentation regarding the Long Range Plan of the Department of Water’s former Administration Building
3. Discussion and Possible Action on Utility Agreement No. 2257 between the State of Hawai’i Department of Transportation and the Board of Water Supply, County of Kaua’i for the upcoming Hanapēpē River Bridge, Kaumuali’i Highway, Route 50, HI STP SR50 (1) Project, Hanapēpē, Kaua’i Hawai’i Water System Improvements
4. Discussion and Possible Action on the Department of Water’s Standard Operations Procedures as it relates to the Board of Water’s Rules and Regulation
5. Discussion and Receipt of the Department of Water’s Draft Audit by Accuity, Inc. for FY2016-2017 *(November 2017)*

N. UPCOMING EVENTS

1. HWWA & HRWA Conference, Hawai’i, HI *(Kona, Hawai’i, November 1 – 3, 2017)*
2. Annual Meeting *(Friday, December 8, 2017)*
3. Project Wet Make A Splash *(September 20, 2018)*


O. NEXT WATER BOARD MEETING

1. Friday, October 27, 2017, 10:00 a.m.
2. **Wednesday**, November 22, 2017, 10:00 a.m.
3. Friday, December 22, 2017, 10:00 a.m.


P. ADJOURNMENT

Mr. Tabata moved to adjourn the Regular Board Meeting at 12:38 p.m.; seconded by Mr. Canute; with no objections, motion carried with 4 ayes.

Respectfully submitted,


 Edith Ignacio Neumiller
 Commission Support Clerk

Approved,


 Beth Tokioka
 Secretary – Board of Water Supply