

MINUTES
BOARD OF WATER SUPPLY
Thursday, January 26, 2023

The Board of Water Supply, County of Kaua'i, met in a regular meeting in Līhu'e on Thursday, January 26, 2023. Chair Julie Simonton called the meeting to order at 9:37 a.m. The following Board members were present:

BOARD:

Ms. Julie Simonton, *Vice Chair*
Mr. Tom Shigemoto (*entered at 9:41 a.m. - remote*)
Mr. Ka'aina Hull
Mr. Larry Dill
Mr. Troy Tanigawa

EXCUSED:

Mr. Kurt Akamine, *Chair*

Quorum was achieved with 4 members present at Roll Call. (Board member Shigemoto entered the meeting at 9:41 a.m.) In the absence of the Chair, Vice-Chair Simonton presided over the meeting.

ANNOUNCEMENTS

Next Scheduled Meeting: Thursday, February 16, 2023

APPROVAL OF AGENDA

The agenda was approved with no objections.

APPROVAL OF MEETING MINUTES

1. Regular Board Meeting – December 15, 2022
2. Executive Session – December 15, 2022

The meeting minutes were approved with no objections.

PUBLIC TESTIMONY

1. Letter from Harold Matsunaga dated November 25, 2022 regarding his excessive water bill

Public testimony was received by Harold Matsunaga stating that the bill he received for October 2021 was in the amount of \$1,080.20. His average water bill is \$45 to \$50 per month. Two members of the Water Department checked his meter and claimed it was accurate and explained that it may be a problem with the transponder. Mr. Matsunaga noted that he had a problem with an excessive bill 5 to 10 years ago, which he ended up just paying after the Board advised him there was nothing they could do. Since then, whenever he is out of town he asks his neighbors to check his meter every 3 days, and if they see it continuously running to shut it off. During this billing period, his neighbor reported that the meter was not running. Additionally, his other neighbor reported no running water on the property. Mr. Matsunaga expressed that he cannot understand why he received such a large water bill. According to DOW, the readings indicate his water was running for 13 days, day and night. However, Mr. Matsunaga stated if that was the case, his yard would be flooded which it is not.

Vice-Chair Simonton thanked Mr. Matsunaga for this testimony. Manager Joe Tait stated that he has met with Mr. Matsunaga 3 or 4 times regarding this bill. The findings obtained by the Meter Technicians were that the meter's battery was failing, and the transponder was displaced. Manager Tait explained that there is no Board authority that allows DOW to modify his bill unless there is

an underground leak, and proof that the leak has been repaired. He stated that he is awaiting an opinion from Deputy County Attorney Krafft on whether that authority is inherent in his position. In response to Vice-Chair Simonton, Manager Tait explained that this high amount only occurred for this one month, and once the meter technician reset the transponder and replaced the battery, normal usage was being reported.

Vice-Chair Simonton stated that it seems the Department's position is that this is most likely a mechanical error to which Manager Tait explained that mechanically, the register at the top of the meter recorded the actual waterflow through the meter, but electronically there is an anomaly with the Badger transponder. Either way, even if he wanted to make an adjustment, he cannot make a determination until he receives an opinion from the Deputy County Attorney. Vice-Chair Simonton asked whether the Board could grant Manager Tait the authority to do so. Deputy County Attorney Laura Barzilai explained that Ms. Krafft is currently in the process of researching.

Board member Hull commented that we would more than likely have to draft a rule to grant that authority and added that as this came to the Board in the form of public testimony, it is not a formal appeal of the Water Manager's action. A formal appeal would be something the Board would have the authority to rule on. Manager Tait concurred and added that prior to the meeting, Ms. Krafft did investigate rule vs. inherent authority, but he is awaiting her opinion.

Vice-Chair Simonton explained to Mr. Matsunaga that the Department is working on trying to resolve this issue, but the rules are structured in such a way that it is not easy for the Board or Manager to simply adjust the water bill. The Department is awaiting a legal opinion to determine whether the Manager has the authority to do so and will continue to work with Mr. Matsunaga to resolve the matter.

Board member Shigemoto asked whether the bill Mr. Matsunaga received had been paid to which Manager Tait stated yes, he did so through direct deduction. Mr. Shigemoto asked if this is the first time this has ever happened to which Manager Tait stated it has happened in the past which was a result of a mechanical problem.

Public Testimony was received from Roslyn Cummings re: New Business Item Nos. 1. and 2. Ms. Cummings stated she was speaking against BBCP, a foreign corporate entity doing business and seeking contracts with the Department of Water, County of Kauai for the use of water. She stated that the County Proclamation she read talks about stewardship and our resources. She stated her testimony is in regard to taking remedial action against belligerent actions, committing of fraud, perjury, genocide, breach of trust, violations of the oath of office, treason, extortion, falsification of documentation and racketeering. She stated that these damages were determined by government itself, for the violation of all government is inherent in the people; not in the interest of BBCP, who will not have stewardship abilities because they are corporate. She questioned who will utilize "X" amount of water, and what percentage of that water will be returned to its natural course and feed back what is feeding makai and mauka. She commanded everyone who took oath to uphold their oath of office and respect U.S. Constitution, Article 6, Section 2. She cautioned that she is watching what is being stated, noting that if she is not mistaken, only bar members can make legal determination though she hears many people making legal determinations for which she will file a complaint. She questioned where the interest of the County of Kauai is and where their superiority comes from that they can apply it to the lands. She closed by stating that as a

corporate entity, a fictitious character, DOW has no rights. The water utilized by development is at a high percentage amount of about 80 percent, which does not get returned.

Public Testimony was received from Ashley Gutierrez.

Ms. Gutierrez stated that foreigners with no cultural ties have a right to make decisions on how our water should be divided; the Kanaka should have the right and the use of the water and should not be going to public entities for use of commercial doings. The water should go back to the source after it's been used, but not waste water. When water goes to the lo'i, 90% goes back to the rivers, but when water is used by private entities, it is waste that goes to the oceans and kills our reefs.

NEW BUSINESS

1. Manager's Report No. 23-15 Discussion and Possible Action to approve a Grant of Easement from BBCP Kukui'ula Development, LLC and BBCP Kauai Mauka Lands LLC for Parcel I; Subdivision No. S-2021-1; TMK: (4) 2-6-023:038, 2-6-023:039, 2-6-003:001 (POR), and 2-6-003:031 (POR) Koloa, Kaua'i, Hawai'i
2. Manager's Report No. 23-16 Discussion and Possible Action to approve the Conveyance of Water Facility from BBCP Kukui'ula Development, LLC and BBCP Kauai Mauka Lands LLC for Parcel I; Subdivision No. S-2021-1; TMK: (4) 2-6-003:001 (POR), 2-6-003:031 (POR), 2-6-023:038, 2-6-023:039 Koloa, Kaua'i, Hawai'i

Board member Hull moved to approve Manager's Report No. 23-15 and 23-16, seconded by Mr. Tanigawa; motion carried with 5 Ayes.

1. Manager's Report No. 23-17 Discussion and Possible Action for Board Approval on the Eleventh Amendment to Contract No. 427, Job No. 02-14, WP2020 WK-08 Kapa'a Homesteads 0.5 Million Gallon (MG) Storage Tank and Kapa'a Homesteads 325' Tanks – Two 0.5 MG Storage Tanks and Connecting Pipelines, Kapa'a, with Bowers + Kubota Consulting for additional funds in the amount of \$182,400 and a time extension of 900 calendar days

Acting Engineering Division Head Jason Kagimoto provided a summary of the Manager's Report submitted.

Board member Hull asked how long this project has been ongoing to which Acting Deputy Manager Michael Hinazumi replied this project was initiated back in January 2004. At the time the project was to design 2 tanks, and although the project timeline was aggressive, there were a lot of issues with drainage on-site. Mr. Hinazumi stated he was the project manager that started this project, but he was not sure what transpired after he left in 2007, though there were additional challenges, environmental concerns, and public responses that needed to be taken care of.

Board member Shigemoto asked where the money is coming from and what is the funding for the project being that it is taking so long. Mr. Hinazumi stated the funding for the design portion of the project is coming from the Water Utility Fund. Upon completion the project will move to construction for which the Department is receiving assistance from State Legislature with a 50% match of \$7.25 million. Mr. Shigemoto asked to clarify that this project has been funded through the Capital Improvements budget to which Mr. Hinazumi replied yes. Mr. Shigemoto

commented that 900 days seems quite long and asked what that would entail. Mr. Kagimoto explained the 900 days would take them through construction. They are looking to bid this project out in the next month, then will be entering the construction phase which is scheduled to last approximately 2 years. Board member Shigemoto stated his recollection at a previous meeting was that an additional \$250,000 was being requested to fund this project and that some of the revisions that needed to be made were due to the owner rescinding his approval prior to the creation of the detention ponds on his property. He asked if that is what the funds are required for. Mr. Hinazumi explained the approximately \$250,000 previously approved was for the construction contract to purchase materials and provide labor and equipment to relocate the detention basin from private property to the Department's tank site. Mr. Shigemoto asked why this project would require an additional 900 days to which Mr. Hinazumi explained that this would be for the design consultant assistance to redo the EA, design and permitting to get the package ready for bid. Approximately 730 of those days are tied to construction project to provide design support during physical construction related to the two 0.5-million-gallon tanks.

Mr. Shigemoto commented that 18 years seems quite a long time for a project to occur, and while he does not know what the problems were but hopes this does not continue to happen moving forward as it takes a lot of time, effort, and additional funding.

Board member Hull moved to approve Manager's Report No. 23-17, seconded by Mr. Tanigawa; with no objections, motion carried with 5 Ayes.

3. Manager's Report No. 23-18 Discussion and Possible Action on the Sixth Amendment to Contract No. 533 Job No. 09-01 WP2020 #K-01, K-12, Phase II – Kalāheo 1111' and 1222' Water System Improvements, Kalāheo, Kaua'i, Hawai'i with Bowers + Kubota Consulting, Inc. for additional design funding in the amount of \$82,700.00 and a time extension of 900 calendar days.

Mr. Kagimoto provided a summary of the Manager's Report submitted. Mr. Shigemoto asked how long this project has been in the works and what are the particular issues with the delays. Mr. Hinazumi stated that the contract was initiated in April of 2011 and the design has been quite challenging for the area. Public comment and EA's were prepared and long-lead items such as easements and land acquisitions from DLNR have been secured. This project went out to construction last year with \$14 million of State aid and is also partially funded by Department of Health Safe Drinking Water Branch State Revolving Fund. Mr. Shigemoto asked to clarify that this project would replace an existing tank and the goal is to improve the water system in and around Kalaheo to which Mr. Hinazumi confirmed. Mr. Shigemoto stated similar concerns that the 900 days is a long period of time before the project comes to fruition. Board member Hull agreed, adding that this may be a contract management concern considering the delays have been over 10 years, 20 years for some. As these reports continue to come to the Board, it behooves them as Board members to start to dig down. He understands that some lead has to be given considering the changes being made to right the ship, but over the next year or two he would like the Department to make a more concerted effort to get contract management under control.

Mr. Hinazumi stated for clarification that though it states 900 days, it's not going to delay the project for that amount of time. They anticipate refreshing the NPDES permits within 3 to 4 months, and the balance of the time would be to provide construction support services by the design team should the contractors have any questions or concerns. In response to Mr. Tait, Mr. Hinazumi stated he left the Department in 2007. Manager Tait then stated when Mr. Hinazumi

returned in 2016, he inherited many of the same projects that were there when he left; there was a 10-year gap of stagnant progress. Civil Engineering VI Dustin Moises also previously left and has since returned, and Jason Kagimoto was not here at the time. Mr. Tait stated that there is a new Engineering team as well as a different culture and he is a part of all of their discussion, project estimations, and budget requests. He assured the Board that they will not see the past repeated while he is the Manager. Mr. Shigemoto expressed his appreciation but noted that 18 years is a lengthy period. Though he understands the staffing challenges as well as the amount of time it takes when reapplying for NPDES and EA's, he would like to see some of the issues with getting easements, or approvals from landowners could be resolved before contracts are actually awarded to prevent lapses for these long-lead items. He appreciates the new staff will be diligent in preventing these issues in the future and has faith that they will do a much better job moving forward.

Vice-Chair Simonton asked a question that was posed to her from the public to confirm whether this project is replacing facility components that are there and improving existing water systems, adding capacity to the system, or a combination of both. Mr. Hinazumi stated for the most part it is replacing it, but there will be an upgrade to current standards.

Board member Dill asked to confirm whether substantial completion of construction is anticipated within the 900 days of this contract amendment. Mr. Hinazumi stated it is anticipated to be completed within the 900 days but noted that supply chain issues have delayed their construction contractors from starting which is out of their control.

Board member Hull moved to approve Manager's Report No. 23-18, seconded by Mr. Shigemoto; with no objections, motion carried with 5 Ayes.

Manager's Report No. 23-19 Discussion and Possible Action on approval of additional funds for the purchase of three (3) Emergency Generators per Solicitation GS-2023-02

Chief of Operations Val Reyna provided a summary of the Manager's Report submitted. Vice-Chair Simonton asked how many bidders they had to which Mr. Reyna stated they received one response. In response to Board member Dill, Mr. Reyna stated these trailer-mounted generators are stored at the sites: Puhi well site, Kilohana site, and the smaller one at the base yard to replace the Microlab generator. Mr. Dill asked if they are equipped with automatic transfer switches to which Mr. Reyna replied no. Mr. Dill then asked how many sites do not have permanent, fixed emergency standby generators with automatic transfer switches. Mr. Reyna stated they do not install automatic transfer switches at this time. Mr. Dill would like to get a response from the Department at some point as to whether they think there is a benefit to installing automatic transfer switches at locations where possible.

Board member Shigemoto moved to approve Manager's Report No. 23-19, seconded by Mr. Tanigawa; with no objections, motion carried with 5 Ayes.

Manager's Report No. 23-20 Discussion and Possible Action on approval of additional funds for the purchase of one (1) 2-Wheel Drive 18,000 LB. GVWR Truck Cab and Chassis with Service Body, Underhood Air Compressor and Accessories per Solicitation GS-2023-03

Chief of Operations Val Reyna provided a summary of the Manager's Report submitted. Mr. Shigemoto asked how many of these vehicles does the Department have to which Mr. Reyna

stated they have 5 of these types of vehicles, but only one needs to be replaced at this time. In response to Vice-Chair Simonton, Mr. Reyna stated they only received one bid for this solicitation. Ms. Simonton stated that though she understands the County's procurement process is different from private industry, as someone who purchases these types of vehicles for her company, she has some heartburn with the price. Mr. Shigemoto asked what the Department's policy is on getting bids and how long they wait before they receive two or three. Mr. Reyna stated they post a solicitation with a deadline, and though they received inquiries from various vendors, come the deadline they had received only one bid. The bid notice is posted on a public purchase website. Mr. Reyna added that their specifications may include things that other companies may not have. Mr. Hull added that there are also certain vendors that they can use, noting there are few things that are more frustrating than government procurement. Ms. Simonton stated she is in no way faulting the Department for this but expressed frustration with the system and rules that increase these costs. She asked the Department to try and make sure they the most competitive and cost-effective bids while still complying with all procurement laws. She added that while there is an obligation to comply with the law, there is also an obligation to be fiscally responsible. Mr. Hull pointed out that half of the vendors that the private sector can utilize, and who offer more competitive rates refuse to be part of our procurement list because of the State requirements.

Board member Tanigawa moved to approve Manager's Report No. 23-20, seconded by Mr. Hull; with no objections, motion carried with 5 Ayes.

STAFF REPORTS

1. Fiscal - Statement of Revenues and Expenditures
 - a. November and December Monthly Summary Budget
 - b. Accounts Receivable Aging Summary

Assistant Waterworks Controller Marcelino Soliz noted that the December dashboard had not been provided. Vice-Chair Simonton requested that the font in the dashboard be adjusted to change the formatting of the font and table colors to make it easier to read. Mr. Soliz provided an overview of the November and December budget summary reports.

2. Public Relations Activities – updates on Public Notices & Announcements, Community Outreach & Education and Upcoming Events

Information and Education Specialist Jonell Kaohelaulii provided a summary of the Public Relations report submitted. She highlighted the recent in-kind donation received from Ferguson Facilities Supply who donated a Pro Flow toilet model. She thanked their West Region Manager, Ron Lumen, and the Kauai office branch Manager Sean Andrade for this donation to DOW's education program. This toilet model has been placed in the front lobby area in honor of National Sanitation Week, and has piqued the interest of customers.

3. Operational Activities – Monthly service dashboard & highlights, Monthly comparison of water produced, customer meter read, and water loss

Chief of Operations Val Reyna provided a summary of the Operations monthly division dashboard, highlighting their current vacancies as well as an overall staffing profile. He noted that because of licenses and special skill requirements, it may take years to find good, quality people. Mr.

Reyna stated that as of December 31, they are about 8% over-budget on overtime, but most of it is due to emergency response.

4. Manager and Chief Engineer – update on monthly activities, personnel matters, and required communications to the Board

Manager Joe Tait provided a summary of the Manager’s Update submitted. He noted that Assistant Waterworks Controller Marcelino Soliz will be resigning at the end of the month, and his supervisor Marites Yano will be retiring at the end of February. Though the Department will be undergoing a turnover in leadership in the Fiscal division, the Fiscal staff under them have continued to keep things running consistently so there are no anticipated disruptions. He added that the Department as a whole is about 31% vacant, which is one of the higher numbers he has seen in a public agency. The Department is working with County DHR to try and fill those vacancies as quickly as possible.

QUARTERLY REPORTS

1. Build America Bond – Statement of Expenditures
2. Claims Settled by Department of Water
3. Engineering – updates on quarterly accomplishments, Water Plan 2020 Construction Project status, and IDIQ service contracts
4. Information Technology

Due to time constraints, the Board agreed to forego the formal presentations of the Quarterly Reports.

TOPICS FOR NEXT BOARD OF WATER SUPPLY MEETING: *(February)*

1. Department of Water’s (DOW) Draft Audit Report by N&K CPAs, Inc. for Fiscal Years 2022-2021
2. Update regarding DOW’s Water System Investment Plan

TOPICS FOR FUTURE BOARD OF WATER SUPPLY MEETING

1. Report from Manager and Chief Engineer – Manager’s DOW Performance Audit
2. Updates on various DOW Programs identified in December, 2021-22

EXECUTIVE SESSION:

Pursuant to Hawai‘i Revised Statutes (HRS) §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 HRS §92-4 and shall be limited to those items described in HRS §92-5(a).

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 it relates to:

1. Goodfellow Bros.’ Request for Reimbursements, Job No. 15-07, Reorganize Water System: Kaunualii Highway 16-Inch Main and Emergency Pump Connection, Hanapēpē Road 6-Inch Main Replacement, Job No. 15-07, Water Plan Project No. HE-01, HE-10, Hanapēpē, Kaua'i, Hawai'i (Civil No. 5CCV-21-000098)

The Board invited Manager Tait, Deputy Manager Michael Hinazumi, Deputy County Attorney Hugo Cabrera and Deputy County Attorney Chris Donahoe into Executive Session as Resources

The Board entered into Executive Session at 11:01 a.m.

The Board resumed in open session at 11:46 a.m.

Board member Tanigawa moved to ratify actions taken in Executive Session, seconded by Mr. Dill; with no objections, motion carried with 5 Ayes.

ADJOURNMENT

The meeting was adjourned at 11:46 a.m.

Respectfully submitted,

Cherisse Zaima

Cherisse Zaima
Commission Support Clerk

Approved,

Tom H. Shigemoto
Tom H. Shigemoto (Mar 2, 2023 18:20 HST)

Tom Shigemoto
Secretary







01-26-23 RBM Open Session Minutes

Final Audit Report

2023-03-03

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