

REGULAR MEETING MINUTES
BOARD OF WATER SUPPLY
Thursday, December 17, 2009

The Board of Water Supply, County of Kaua'i, met in regular meeting at its office in Lihu'e on Thursday, December 17, 2009. Chairperson Leland Kahawai called the meeting to order at 10:10 a.m. On roll call, the following answered present:

BOARD: Mr. Leland Kahawai, Chairperson
Mr. Ian Costa
Mr. Dee Crowell
Mr. Donald Fujimoto
Mr. Raymond McCormick
Mr. Randall Nishimura

Absent & Excused: Mr. Roy Oyama

STAFF: Mr. David R. Craddick
Mr. William Eddy
Mr. Paul Ganaden
Ms. Gregg Fujikawa
Mr. Keith Fujimoto
Mr. Bruce Inouye
Ms. Faith Shiramizu
Deputy County Attorney Amy Esaki

GUESTS: Ms. Michelle Swartman, Grove Farm
Mr. Shawn Shimabukuro, Grove Farm
Mr. Dave Hinazumi, Grove Farm
Mr. Mike Tresler, Grove Farm
Mr. Paul Curtis, The Garden Island Newspaper
Mr. Edward Tschupp
Mr. Jerry Kaluna
Mr. Max Graham

AGENDA

Chair Kahawai re-ordered the Agenda to have Manager's Report No. H2c moved up, to be taken up before Old Business.

Mr. Nishimura requested that F. Old Business, Item 1, Amendments to the Rules and Regulations, Part 4, Fixing Rates for the Furnishing of Water Service in the County of Kaua'i (Manager's Rep. No. 10-16) be taken off the agenda; seconded by Mr. Costa, the motion was carried.

Mr. Nishimura moved to accept the changes to the Agenda, as amended, seconded by Mr. Costa; the motion was carried.

MINUTES:

Mr. Nishimura moved to defer the Regular Meeting minutes of Thursday, November 19, 2009; seconded by Mr. Costa; the motion was carried.

CORRESPONDENCE:

Re: Letter to Mayor Bernard Carvalho, Jr. on Furlough Plans for the Department of Water.

Mr. Nishimura moved to receive and file the above correspondence and have our Department Head work with the Mayor on this item, seconded by Mr. Crowell; the motion was carried.

MANAGER'S REPORT

Re: Conveyance of Water Facility from David M. Morrow, M.D. and Linda B. Morrow, Trustees of the Morrow Living Trust under Unrecorded Trust Agreement Dated March 23, 1984 and Barry L. Greenfield, Trustee of the Nineteenth Street Trust, under Declaration of Revocable Directional Title Holding Trust of the Nineteenth Street Trust Dated December 23, 1999; for the Water Meter Installation Plan for Lots 111-A & 112, TMK: (4) 5-9-003:010, 044 and 045, S-2006-41, Haena, Hanalei District, Kauai, Hawaii

It is recommended that the Conveyance of Water Facility document be approved; whereby, David M. Morrow, M.D. and Linda B. Morrow, Trustees of the Morrow Living Trust under unrecorded Trust Agreement dated March 23, 1984 and Barry L. Greenfield, Trustee of the Nineteenth Street Trust, under Declaration of Revocable Directional Title Holding Trust of the Nineteenth Street Trust dated December 23, 1999; 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 Water Meter Installation Plan for Lots 111-A & 112, TMK: (4) 5-9-003:010, 044 and 045, S-2006-41, Haena, Hanalei District, Kauai, Hawaii.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility from David M. Morrow, M.D. and Linda B. Morrow, Trustees of the Morrow Living Trust under Unrecorded Trust Agreement Dated March 23, 1984 and Barry L. Greenfield, Trustee of the Nineteenth Street Trust, under Declaration of Revocable Directional Title Holding Trust of the Nineteenth Street Trust Dated December 23, 1999; for the Water Meter Installation Plan for Lots 111-A & 112, seconded by Mr. Nishimura; the motion was carried.

Re: Grant of Easement from Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester for the Koloa Makai CPR Detector Check and Backflow Preventer, TMK: (4) 2-6-04:049, Koloa District, Kauai, Hawaii

It is recommended that the Board approve the grant of easement whereby Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester; grant to the Board of Water Supply, County of Kauai, perpetual easement "DC-1" on, over and under that certain parcel of land located at TMK: (4) 2-6-04:049, 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 Koloa Makai CPR Detector Check and Backflow Preventer, TMK: (4) 2-6-04:049, 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 Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester for the Koloa Makai CPR Detector Check and Backflow Preventer, seconded by Mr. Nishimura; the motion was carried.

Re: Conveyance of Water Facility from Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester for the Koloa Makai CPR Detector Check and Backflow Preventer, TMK: (4) 2-6-04:049, Koloa District, Kauai, Hawaii

It is recommended that the Conveyance of Water Facility document be approved; whereby, Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester, transfer unto the Board of Water Supply, County of Kauai, all of its right, title and interest to: one (1) each, 6-Inch Ductile Iron Lateral for 6-Inch Detector Check and one (1) each, 6-Inch Gate Valve, including C.I. Valve Box and Cover for 6-Inch Detector Check Lateral, in place complete, for the Koloa Makai CPR Detector Check and Backflow Preventer, TMK: (4) 2-6-04:049, Koloa District, Kauai, Hawaii.

Mr. Costa moved to approve the Conveyance of Water Facility from Ohana Makana LLC, a Limited Liability Corporation and Joseph A. Sylvester & F. Lee Morey-Sylvester for the Koloa Makai CPR Detector Check and Backflow Preventer, seconded by Mr. Nishimura; the motion was carried.

Re: Conveyance of Water Facility from Setsko Karasuda and Shizuka Karasuda for the Second Water Meter Plan for Lot 26-J, TMK: (4) 2-4-14:028, Kalaheo, Koloa District, Kauai, Hawaii

It is recommended that the Conveyance of Water Facility document be approved; whereby, Setsko Karasuda and Shizuka Karasuda, 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 2nd Water Meter Plan for Lot 26-J, TMK: (4) 2-4-14:028, Kalaheo, Koloa District, Kauai, Hawai'i.

Grant of Easement not required.

Mr. Costa moved to approve the Conveyance of Water Facility from Setsko Karasuda and Shizuka Karasuda for the Second Water Meter Plan for Lot 26-J, seconded by Mr. Nishimura; the motion was carried.

The Regular Board Meeting was suspended at 10:17 a.m. and reconvened at 10:30 a.m.

OLD BUSINESS

Re: Supplemental Information Requested by the Board for Manager's Report No. 10-16

Mr. Craddick explained that this was additional information that Mr. Oyama requested.

Mr. Costa added that on behalf of Mr. Oyama, he wanted to make sure that the discussion and recommendation that they had regarding the deferment of payment, the payment plan for backflow for ag lot, be followed though.

Mr. Nishimura asked if the payment plan goes through, does the Department have the mechanics to implement the plan.

Mr. Ganaden replied that they are not a finance company, so they need to develop some type of payment agreement.

On query by Mr. Nishimura if this can be incorporated into their water bill, Mr. Ganaden replied that it was a possibility and they could invoice them under miscellaneous, which should not be a problem.

Mr. Costa moved to proceed with setting of the public hearing date tentatively for January 21, 2010, seconded by Mr. Crowell; the motion was carried.

The Manager added that the rough cost was between \$2,000 to \$2,700 for the sizes that they were talking about, which didn't seem to be a big amount divided over the number of years.

On query by Mr. Nishimura to the Deputy County Attorney on the inclusion of the late payment, which was something that was added on to the discussion at the last meet, he wondered if they needed to do anything further or did they have to go back to the rules before it could be considered. The Deputy County Attorney replied that it wasn't added to the Rules.

Mr. Nishimura again wondered if it would have to be incorporated into the Rules in finalized language. The Deputy County Attorney suggested that at this time they may want to go forward with the public hearing then later on formulate the rule.

The Manager suggested that they have to do the public hearing on the Board's Rules on Practice of Procedures and they could add this on.

Mr. Nishimura added that this item should be highlighted for Mr. Oyama's concern so that he is aware that it won't be at the same time but that it will be addressed.

Mr. Nishimura moved to receive the Manger's Report 10-16 and that it be referred to Rules Committee for implementation into our Rules, second by Mr. Crowell; the motion was carried.

NEW BUSINESS

**Re: Manager's Report 10-38 - Request Board Approval of Resolution No. 5 (09/10),
for Tommy Tokuda**

Mr. Costa moved to approve Resolution No. 5 for Tommy Tokuda, seconded by Mr. Crowell; the motion was carried.

**Re: Manager's Report 10-39 - Request Board Approval of Resolution No. 6 (09/10),
for Clarita Remigio**

Mr. Nishimura moved to approve Resolution No. 6, for Clarita Remigio, seconded by Mr. Costa; the motion was carried.

**Re: Manager's Report 10-40 - Request Board Approval of Resolution No. 7 (09/10),
for Stanley Sarmiento**

Mr. Crowell moved to approve Resolution No. 7 for Stanley Sarmiento, seconded by Mr. Costa; the motion was carried.

**Re: Manager's Report 10-41 - Request Board Approval of Resolution No. 8 (09/10),
for Springwater Kaulili**

Mr. Nishimura moved to approve Resolution No. 8 for Springwater Kaulili, seconded by Mr. Costa; the motion was carried.

**Re: Manager's Report 10-42 - Request Board Approval of Resolution No. 9 (09/10),
for Geraldine Yamamoto**

Mr. Nishimura moved to approve Resolution No. 9 for Geraldine Yamamoto, seconded by Mr. Costa; the motion was carried.

Re: Request Board Approval of the Final Slate of Officers for 2010

If the proposed slate of officers is finalized at the Thursday, December 17, 2009 Committee of the Whole Meeting, it will be forwarded to the Regular Meeting also scheduled on Thursday, December 17, 2009 for full Board approval.

The slate of officers will be for Chairperson, Vice Chairperson and Secretary of the Kaua'i Board of Water Supply for the Year 2010.

Chair Kahawai reported that the Committee of the Whole presented the slate of officers for 2010. Mr. Randal Nishimura was chosen as Chairperson, Mr. Dee Crowell as Vice Chairperson and Mr. Roy Oyama as Secretary. Mr. Crowell moved to approve the Final Slate of Officers for 2010, seconded by Mr. D. Fujimoto; the motion was carried.

Re: Manager's Report No. 10-30 - Request Board Approval of Grove Farm's Request to Add Capacity to the Waiahi Treatment Facility

The Staff recommends allowing Grove Farm to increase the existing facility capacity, with reservations.

The reservations are related plant efficiency, available water, granular carbon filtering and resolution of questions about what ratio the Board must financially participate in transmission capacity needed for the new flow rate.

Should the Board decide to include the reservations, its approval should be subject to:

1. Review overall system efficiency to reduce electrical operating costs;
2. A study of the reservoir flow duration during the drought of record;
3. Need for an upgrade to granular carbon finishing;
4. Unless the Board agrees to plant capacity increases for its own needs, there should be no cost sharing for transmission lines needed to bring Grove Farm flow into the distribution system.

To further expand on the reservations, we submit the following:

The facility may not be operating in as efficient a fashion as is possible due to its location or the equipment used. We would request that relocation of the facility be looked at to minimize electrical usage and to use premium efficiency motors as well as looking at solar operation of the facility. The agreement requires KBWS to pay energy costs so there is little incentive to minimize electrical costs under the present agreement although we may be the operator of the system in the future. The language of the present agreement is also unclear.

The unclear language pertains to whether this matter needs to come to the Board at all. Currently the agreement says, "Any expansion of the Treatment Plant and associated equipment beyond its Maximum Capacity or upgrade to the Treatment Plant shall be subject to the Mutual approval of Grove Farm, LLCO and the BWS." (Page 13 Item 12) The plan is to change the Maximum capacity not go beyond it. It appears what

was meant is any expansion beyond present capacity would require Board approval, which staff is recommending with reservations. The second issue required a determination that there is “No Harm to existing Capacity” produced by the facility. (Page 13 Item 12 a)

In a facility supplied by stored, raw or untreated water, any increase in facilities’ capacity dependant on that raw supply will decrease the available supply if there is no increase in storage. Here again the agreement language is unclear. The agreement talks about potable water production as though its capacity is not tied to the available water to treat. In the present case, the reservoir is so large this may not affect water availability, but it is not known at this time. Certainly the plant manufacturer and Health Department discussions would be irrelevant to this matter. There should be a study presented of the reservoir’s ability to provide water during a drought of record. This is especially important because of global temperature issues which could affect local rainfall. Staff has already asked Grove Farm to provide a **Flow Duration Study**. The two remaining matters in the agreement that would allow expansion to occur appear to be met.

The two remaining matters are cost born by Grove Farm and expansion to fulfill requirements. Grove Farm agrees to pay for expansion it needs to fulfill its requirements. There are two items not brought up in Grove Farm’s letter.

The first item is the current treatment facility is not able to remove taste and odor problems when summer algae growth is high enough to cause taste and odor complaints from the public. To resolve this, we believe a granular carbon finishing filter will remove the taste and odor problems; but we are willing to leave this up to the design engineer. DOW should pay for its prorata share of the additional filtering as this would be considered an upgrade under the agreement.

The second item involves clause “e” in Paragraph 12 of the Agreement which is also unclear and which under one interpretation could have the Board paying for transmission lines that it does not presently need to utilize present capacity. (Page 14, Item e) If the Board agrees to this expansion, there should be no request to pay for pipe transmission capacity needed to bring the water into the distribution system if it doesn’t participate in the expansion.

To further discuss this item, we believe what is being negotiated is an action which will result in the acquisition of public property; and we are in the process of conducting such negotiation. There also may be legal issues regarding the Agreement under which these negotiations are proposed so the Board may want to consult its attorney regarding duties and liabilities.

As such, you are allowed to go into executive session with a 2/3 vote of a quorum of the Board.

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (3) **To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;**

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

In closing the report, we want to work with the request but don't want to place undue financial burdens on our customers or end up with a complaint generating inefficient water source.

The Manager spoke about the long tradition in of working together with Grove Farm on various water facilities, and he believed that the tradition of working together would continue on out in the future. Therefore, he was recommending that they go along with Grove Farm's request to increase the plant capacity. He added that the Department also had some reservations that deal with upgrades to the existing facilities, and there were also some concerns that were brought up after the revised report was prepared and there were even some that they need to talk about that are not on the report and the last issue was whether expanding the plant constitutes an upgrade where the Department would have to participate in a prorated share, which would increase the plant capacity and whether the person needing the increase in the capacity would pay for the entire cost as stated in the agreement.

The Manager also invited Ed Tschupp, the previous Manager, to come to the meeting because he was the person on the Board's side that actually negotiated the agreement. He hoped to avoid an executive session if the Board approved going ahead with negotiating these issue that were unclear in the current agreement and leaving it at that and appointing someone, either him or a Board member, to work with Grove Farm to get these issues clarified, which may be the simplest way to avoid an executive session. He felt that to try to get these issues resolved now may not be possible.

Mr. Nishimura questioned the Manager about the other concerns that he wanted addressed, which he was not aware of. He asked if the intent was to clarify the agreement prior to moving on.

The Manager replied that everyone was aware that on the Department's bond there was money to purchase the treatment plant; and if they do that, they want it to where they don't have shut downs. The Deputy Manager indicated that just about every month Aqua Engineer will call them to say that the plant is down, and he want to understand what was causing the shut downs; if something was needed that could avoid that he wanted those issues resolved. He felt that once the Department takes over the plant, all upgrades becomes their responsibility. Right now, the Department's share is on a prorated basis for the upgrades; and that was why he hoped those issues should be resolved now rather than later on. He felt that the biggest issue was affecting the existing flow capacity. He said he sent a letter to Grove Farm asking if the flow duration curve could be prepared for the reservoir, and he felt that there were enough questions

for Grove Farm that they should sit down with them and get it resolved prior to approving an expansion of the plant.

On query by Mr. D. Fujimoto if the present agreement was the license agreement to buy the water, the Manager replied that it wasn't, it was how the items are paid for and there will be some items that will continue on for the plant and the Department might go back to the Board to say that they want to participate in the expansion too.

Chair Kahawai asked if there has been any communication with the applicant on these five reservations. The Manager replied that they haven't had much communication at this point other than what was reported and they haven't had a chance to talk with them about the plant shutting down once a month, and he felt that they shouldn't have to shut the plant down every month because there is enough redundancy.

On behalf of Grove Farm were Mike Tresler and David Hinazumi.

Mr. Tresler was disappointed to learn that a simple expansion request for approval had other things dragged into this request. He stated that they have a good relationship with the Board, and they have always been very open as developers because he understands that their role has an impact to the community and the island, and they remain open for any suggestions or recommendations or things that they can approve on.

He stated that basically they own the plant and they do have an agreement with the Department. He knows that there are things in the agreement that are not clear, but in every agreement there are things that are not clear all the time. In his mind, one thing this is very clear, and the attorneys have written an opinion on that, on how to go about expanding the plant, and they showed that they met those conditions. He did not feel that the Department's staff argued that they haven't met those conditions and so it was brought up that they should go before the Board asking to expand the plant. To answer a point that was brought up, he did not see in the agreement where the expansion is subject to conditions or reservations. They have always been open to addressing concerns that the Department may have whether or not it turned out to be legitimate or not they would do the research and respond to it. He stated that there has been no shut downs to the plant; and they called and confirmed it, but there were massive electrical outages. He stated that they are not aware of the things that were brought up, and they were requesting the Board to approve their request for expansion.

He also mentioned that now the Board or the Department may be interested in participating in the expansion, but they don't have a response to that, they just wanted to do their expansion. He also brought up the subject of a nonpotable water system that they were designing and have been working with the Department to implement, whereby it would reduce their potable water requirement and thereby freeing up more capacity for the Department. Basically all the water that they are creating is the Department's water, and they are getting a credit for the water source. They have a 3.0 million gallon capacity action four and within that footprint they can expand more on that existing footprint.

The question is, is it an upgrade or is it an expansion. They felt that it was a pure expansion; they have been telling the Department that they can take water if they need water up to 3.0 million now. He added that they could expand the plant now and provide them more water now but they need the source credits in order to do the expansion and then there are issues about transmission.

One of the solutions is in the agreement, which he felt was very relevant, is this bypass line, which they call the Ehiku bypass line, down Maalo Road, this pipeline will be connected in front of the Kapaia power plant, along our cane haul road connecting to Ehiku and Isenberg Roads. He mentioned in Section 4A5 of the agreement, that the parties acknowledge, through my discussions with our attorneys, other people including Ed Tschupp who were involved with this agreement, that it is very clear that the “the parties acknowledge that a portion of the BWS water transmission system located in the Hanamaulu area in Kuhio Highway (from Kapaia Bridge to Wilcox Hospital and running toward Kapaa), which is intended to transport portions of the delivered water, may require upsizing or replacement, due to a physical size constraint, in order to accept the quantity of delivered water contemplated by this agreement. The parties have agreed that any mutually approved cost required to upsize or replace the described portion of the transmission system or to install an additional transmission line along the cane haul road/Ehiku Street route, as each are shown on the map attached as Exhibit 3 (the “Pipeline Improvement Map”) shall be borne 66.67% by BWS and 33.33% by Grove Farm.” He felt that this statement was very clear with any legal agreement with the map showing the bypass line. He stated that is their position in order to expand this plant and they need to install this line now.

Mr. Tresler added that they have been in discussion about their Water Master Plan and they continue to be in discussion because there are a lot of aspects in the plan that need to be resolved, and they appreciated the expedited approval process when the Manager came in and pushed things forward, good or bad they had an answer to get movement. In their analysis, there were some issues in the water pressure and lines in the Kapaia Valley area, and the existing waterline has a capacity of 5.2 million gallons of water; and during their analysis, it did show that the line could then carry more than 3.0 million gallons and could accommodate their planned expansion without having to put in additional lines. This is very relevant to the expansion. Recently they went with Tom Nance to do a study that they agreed to for their Water Master Plan for the Department, and he is helping them with the nonpotable water. He felt that there were many options to get to the solution, but the one thing that is clear is that this line that they identified in their Water Master Plan, and then it was identified as a solution way back in the past, was the cost sharing rate.

He felt that they do a good job in operating the plant, and they were willing to do different things if requested by the Department; but he felt the solution remains in the rate of the water being paid and if it is rolled in, it helps everyone with cash flow, etc. He understood there was an issue with the Department’s focus on the 2020 Plan, but they didn’t mind taking the debt and the risk; and sell water to the Department who has the ultimate authority to control rates and create revenues. It’s an offer that they commit to and have done when they put it in writing.

Mr. Nishimura stated that there were a number of issues that were brought up, and he asked for a short Executive Session to consult with their attorney so that he could understand where the Board is, and he felt that some of the things that will be discussed need to be kept in Executive Session.

On query by Mr. Crowell on the capacity of the plant, Mr. Tresler stated that it is currently tested and rated at 4.0 million gallons, but actual capacity is more than that, but it is rated at 3.0 million gallons to service.

Mr. Crowell asked if they were trying to expand to it; Mr. Tresler replied that it was identified in their Water Master Plan as their source.

Of the 3.0 million gallons currently pumping, Mr. Crowell wondered what is County's and what is Grove Farm's water. Mr. Tresler replied that it is 2/3 County; and they have 1/3 credit, but it is all County's water. They have credit for 1.0 million gallons, and they need credit for 3.4 million gallons, and that's where the nonpotable comes into play. It would reduce their potable needs by 50%, and if this goes through and is approved, then they would need 1.7 million gallons or less of potable water; thereby making it 4.7 million gallons, which is their goal.

The Manager stated that in his Manager's Report there were more than one reason to go into executive session, there was also the reason to deliberate concerning the authority of person designated by the Board to conduct or to negotiate the acquisition of public property, or during the conduct of such negotiations, because ultimately they could end up with this plant.

Mr. Nishimura asked the Deputy County Attorney if the purchase is not on the agenda, would they be limited from discussing that item. The Deputy County Attorney replied, "yes."

Mr. Nishimura asked Mr. Tresler if he would have any objections to working with the Water Department on the issues; Mr. Tresler replied that they would definitely work with the Department because there are major issues that they feel are not substantiated.

Mr. Nishimura moved to go into executive session pursuant to Hawaii Revised Statutes, Sections 92-4 and 92-5(a)(3), the purpose of this executive session is to deliberate, which 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, seconded by Mr. Costa.

Mr. Costa added that they have to thank Grove Farm for opening up this resource, a huge surface water and our limitations for years of trying to find wells; and now that they see the potential here, he felt that they should not lose what it takes to get it to that point. It is a reservoir but that comes through a series of ditches and tunnels and doesn't magically happen. It is a potential not only for Grove Farm but it is island wide. They are using surface water, which is opening some doors, but it is going to take permission with the landowners for the rights to the water to get there.

The Regular meeting was called back to order at 12:15 p.m.

Mr. Nishimura stated that all of the discussion that have been presented seem to be basically three major issues, and ultimately it all comes back to the agreement and there is enough ambiguity in the agreement that he would like to see Grove Farm and someone representing the Department/Board to review the agreement and come to an agreement before they address any of this other issues. He felt that if they start addressing the other issues it would spin out of control, which would ultimately end up costing both Grove Farm and the Department major amounts of time and maybe drag the Department into some type of litigation.

Mr. Nishimura moved that the Board delegate its authority to the Manager and a member of the County Attorney's office to work with Grove Farm to come to an agreement; and if they cannot do it within 60 days, that they immediately go to arbitration; and if there is sufficient progress made, then they can extend that time frame.

For clarification, Mr. D. Fujimoto asked if the 60-day period included the 30 day review period by the Board. He felt that the intent of the report was to come back to the Board at the next meeting. Mr. Nishimura replied that he would like to afford them 60 days because they are sufficiently far apart, and he did not believe that they could conclude meaningfully negotiations in one month.

Mr. D. Fujimoto emphasized again that the Board is the last appeal process and they have the last say before it is referred to arbitration. They were not given all of the facts, and they are entrusting this to the Manager and County Attorney. Mr. Nishimura added that the intent is if they cannot come to some meaningful agreement within 60 days then maybe it should go to arbitration.

Mr. D. Fujimoto disagreed, and stated that the purpose of the Board is to act as the final appeal, and he would like to hear the case or positions. He felt that he has a deference in opinion right now, and he would like to see what the Manger has accomplished before it is referred to arbitration because no one wins once it goes there.

Mr. Costa added that Mr. Nishimura started the motion by saying, he would delegate the Board's authority, and he did not feel that it was necessary. He wanted the motion to read, requesting the Manager or Department to resolve.

Mr. Fujimoto asked for clarification of the motion. Because it is ambiguously put out on what they are trying to accomplish to clear up the agreement, so that it is clear enough, that conditions, operational issues that was imposed as conditions of approval can somehow to be addressed in a normal situation where it doesn't have to be a leverage in the approval process and if that was clear enough where the Board can address operational issues and it is not attached as a condition for approval.

He further stated that they have two perspective, one from the developer and one is based on the Department who has a perception that the condition was based on an

intent that would need to be done, and hopefully those issues can be clarified by both parties and then they can precede again if those issues can be addressed without having to attach it as a condition of approval.

Mr. Costa added that they recognize that this is a long-term partnership, and they don't want any reoccurring issues.

Mr. Tresler repeated that they are here for an expansion request for approval, but now they are discussing the agreement.

Mr. Nishimura stated that there is sufficient disagreement on the element of the agreement, and Mr. Costa also felt that there were areas of vagueness; and without making an attempt to clear up those uncertainties, it would only become more unclear.

Mr. D. Fujimoto questioned the applicant on how time sensitive this issue was and if they could live with a 60-days review period. Mr. Tresler responded that the question should be, why does it harm the Board to approve the expansion and then work the rest of it out. He wondered if there was a disagreement on the expansion itself or are they talking about other issues. He didn't recall requesting the Board's approval on all those other issues on the agreement. He requested approval of the expansion.

Mr. Tresler was not opposed to sitting down and trying to clarify the ambiguity of the agreement, but he wondered why that would behoove them from getting approval to expand the plant and attaching all those things to the expansion. He felt that per their requirements by the Department, they were required to identify the source and they identified it at the time it was approved, so he felt that it would be mechanical. If the Department would like to renegotiate the entire agreement, he was willing to do so; but he felt that it would open up a can of worms with the intent of coming to an agreement to clarify the agreement.

Mr. Nishimura added that specifically there was the issue of the Ehiku line, and he felt that it was clear that there was a disagreement on that. He asked the applicant if they do the expansion would it require this line to go in; Mr. Tresler replied, "yes."

Mr. Nishimura wondered where the water goes; if that is Grove Farm's call or the Department's, the Manager replied that it was Grove Farm's call as far as where they are going to use it, and Mr. Tresler agreed.

Mr. D. Fujimoto questioned the staff for clarification as to the intent of why they have to put this as a condition and wondered if it was possible to enforce those issues without attaching it to the approval.

The Manager replied that they could for some of the upgrade issues but they still need to talk about the plant shutting down. He believed from the beginning, the generator was an issue because every month the staff would write on the invoice, what about the generator. This has been dragging on for years now. On an upgrade to the plant that the Department pays 2/3 and Grove Farm pays 1/3, maybe it is not a big dollar item, but it is one of the items. He felt that those items could be worked out whether they do this

upgrade or not; but it is how you bring the water in, what constitutes all of the costs of an expansion. He felt that it includes the cost of getting the water to where they need it. He added that he was not saying it would be a 16-inch line even though the agreement talks about the 16-inch line to bring the initial water in; and if they reduce their needs down, maybe a 16-inch line is not needed to bring the water in. And if they don't ask for the plant to be expanded further on our own behalf, there are still a number of things that needs to be resolved because it all comes into under Section 12 of the agreement where it talks about expanding the plant, Section 12 a, b, c, d, e, f.

Mr. D. Fujimoto felt that the applicant did have urgency and wondered if they needed a decision today.

Mr. Costa wondered if they were trying to get their Water Master Plan. Mr. Tresler replied that it was approved and their source was sited as Waiahi. He said they won't shut down if they don't get approval today; but at the same time, he couldn't understand why they couldn't get an approval today because it is an important aspect when you go to lenders and they ask if you have water, but they don't have the papers from the Department of Water approving this.

Mr. Costa wondered if this has a bearing on Wailani project. Mr. Tresler replied that it does and includes Ahukini Makai and Kohealoa, and they have to move quickly once it is closed.

Mr. D. Fujimoto said that there is one member that feels it should go to arbitration, but he didn't want to go there. And since the applicant was willing to work out the issues, he felt that they should work things out first before they go into the field situation; but if it becomes unworkable then the Board.

Mr. Tresler repeated that they are asking for an expansion not to settle the Ehiku bypass line, and they never knew there were other issues and he still didn't know what the issues are. One issue that was brought up is the Department doesn't want to pay for the line, cost share, and it is in the agreement.

Mr. D. Fujimoto questioned the staff if they were unmovable on these conditions. The Manager replied that there is the pipeline issue, how are they going to bring the water to the plant if it is expanded. There's an expansion but nowhere to bring the water in, as far as the upgrade goes, who is going to pay for it and whether they are going to pay for all the cost of the upgrade.

Mr. Nishimura asked about the Ehiku pipeline and Water Master Plan if it was designed to fulfill the requirements for the various projects in Puhī, Hanamaulu and Lihue and if the surface water was running at 4.0 million gallons or 6.0 million gallons or whatever the case may be, at what point would that transmission line need to be upsized.

Mr. Tresler replied that he understood that there is a velocity issue. The current line on Maaalo Road is a 16-inch line and the capacity is 5.2 million gallons; and when it gets down to Kapahi, it starts blowing out customers' pipe and waterlines because there is too much pressure and that is why they contemplated the Ehiku bypass line. The

Department knew that it was needed and that is why it was put into the agreement and that is why it was settled at that time. In their minds, that was needed and that is why there is a cost sharing. He went on to say that they knew if they were to expand the plant, they would have to put in the Ehiku line to address the pressures and the velocity going down that line on Maalo Road. In their Water Master Plan, they looked at options of upgrading certain lines in Kapaia and different places, and they were close to resolving that. He added that there is some aspects of the Master Plan that needs to be resolved, storage and transmission line flow, elevation and the bottom line is the Ehiku line needs to go in if we expand the plant.

The Manager stated that this item was on the agenda back in June, and he didn't know what the urgency is now because this 2/3 and 1/3 issue is part of Section 12, and he thought that it needs to be resolved since it is part of the expansion because it clearly brings in the entire plant's existing capacity as it is right now. And if an expansion is needed, he felt that they were going to pay for all the cost of the expansion, which includes the cost to bring in the water to where they need it.

Mr. D. Fujimoto questioned the Manager if there was a way of withholding permits where they could approve the expansion for projects contingent upon these other issues. The Manager replied that they could do that but they would get more remote from the issues since time is of the essence and instead of doing 60 days they could go down to 30 days.

Mr. D. Fujimoto said that technically even though they were given approval for the expansion, the actual permit would not be issued until all of the requirements for the expansion are completed before actual water distribution and there is an issue with the transmission section, it still affects the distribution that would affect their ability to build, and with that said, there is no reason to have it in the conditions. He also added that Mr. Tresler mentioned that if worse comes to worse, they were going to pay for it, but why would they pay for it if when they feel they don't have to based on this agreement.

Chair Kahawai asked the Manager if Grove Farms' contention about 2/3 Board and 1/3 Grove Farm in the agreement if it was unclear. The Manager replied that how he reads it, if they are going to expand the plant they pay 100% of the cost; and there is a question whether the line, as it is bringing in all the water, could handle all of that water; and if it couldn't, the Department was going to have to pay 2/3 to bring in the other line to bring the water in. In fact, the system brings all the water in, so if they need an expansion, whatever the line sizes, maybe not the 16-inch line size since they might not need the 16-inch line to bring all the water in that they need; but the Department shouldn't be paying unless the Department is going to expand the plant for the Department's own use and then if they can use that same line, then the Department would pay their share in that line to bring it in.

At this point, Mr. Nishimura asked Ed Tschupp to come forward because he was the counter signature to Grove Farm and there appears to be a disconnect with the terms under which the Department would share in the cost of the Ehiku pipeline. Depending on how it is put before them, they may or may not have that obligation; and when they read though the strip language of the agreement, it does not indicate what triggers it

except that Grove Farm is responsible for bringing water to a certain point that is actually ahead of this additional pipeline.

Mr. Tschupp stated that he did not actually go back and look at anything but he recalled that it was a complex agreement to craft and it took a lot of discussion between the Department and Grove Farm. They were trying to consider the eventualities of what happens if Grove Farm wants to do an expansion and what happens if the Department wants to do an expansion. The 1/3-2/3 payment was really the capitalization of the cost of the plant. He remembered that part of the discussion on the Ehiku line was about the hydraulic capacity down at the Hanamaulu area. The case was the 16-inch transmission line coming down Maalo Road was constructed prior to the plant by the Department with Department funds, so it was actually that the location of the plant over where it is made a lot of sense and made for a relatively short connecting pipeline for a big transmission main that the Department already installed. But once the water reached the junction of Kuhio Highway and Hanamaulu, Maalo Road, one of the sets of the hydraulic analysis done by Grove Farm and reviewed by the Department, did indicate that the transmission system in that area, relies upon a 12-inch main in Kuhio Highway that comes in from a 16-inch and connecting to a 12-inch.

He recalled that there was discussion at that time of a very good way to solve that problem would be to come along the backside and tie into the Lihue system, which then also created a much greater redundancy and there would be some Department benefits. He believed that it may have been part of the whole thought process that went into that agreement four or five years ago, which made a provision for a more robust distribution system on the Department's end and recognizing that coming from a 16-inch main to a 12-inch main to get over to the main part of Lihue was problematic. He felt that it was a complex agreement to negotiate with lots of moving parts and the relationship with the transmission system grid of the Department, and he remembered that it was actually part of the discussion. He also agreed with the Manager that if Grove Farm is doing the expansion, getting the water to Lihue has to be part of that, and why would the Department participate in that line.

Mr. Costa mentioned that he heard Mr. Tschupp say that the Ehiku bypass line was part of the agreement and was a potential solution before any discussion of an expansion. Mr. Tschupp replied that it was more of a recognition that an expansion would trigger that and they were pretty comfortable that the 16-inch line on Maalo Road had plenty of capacity for the plant as originally constructed, which had a firm capacity of 3 mgd with peak capacity of 4 mgd.

Mr. Costa questioned the issue of bringing in the 16-inch line into the 12-inch line that was addressed through other means. Mr. Tschupp replied that it was recognized as an issue, but not an immediate pressing issue, meaning that at 3 mgd it was not perceived that it was going to be a huge problem at that point in time. If that plant was delivering 3 mgd all the time, the 12-inch line was probably at its capacity; and how much is going off towards Hanamaulu, there is a question of system operations, the 12-inch line is from Maalo up to Lihu'e, so if lots of water, say 1.5 mgd, is going off to Hanamaulu, then maybe that 12-inch line is not even a problem in the future. Clearly if you are trying to move 6 mgd primarily to the Lihue side that 12-inch line is going to be an issue.

Mr. D. Fujimoto added that Mr. Tschupp mentioned that this new line could be perceived to be an important redundancy for the Department. Mr. Tschupp replied that right now there is one line coming down Maalo Road; and if there is a main break on that line, that source is out of service.

Mr. D. Fujimoto saw some benefits in addressing the issue; and at that time, the whole intent was to provide other water source for the Lihue development projects. The intent of the surface water was to really satisfy the Lihue-Puhi water needs.

Mr. Tschupp replied that actually the areas that Grove Farm agreed to use their water allocation of 1.0 mgd would be allocating for their development projects, which was specifically limited to Lihue-Hanamaulu, former Amfac properties, and Grove Farms' Puhi projects.

Mr. Tresler explained that there was a special reason why this section was put into Section 4, which is titled the Facilities Treatment Plant, and not in Section 12 in expansion. He stated that the agreement states, "that the parties acknowledge in Section 5 portion of the BWS water transmission system, located in the Hanamaulu/Kuhio Highway section, not Ehiku and not in Maalo, which is defined from Kapaia bridge to Wilcox Hospital and running toward Kapaa, that the whole system which is intended to transport portions of that delivered water may require upsizing or replacement due to a physical size constraint." He added that they had an issue there and that is why he thought it was put in here, it was an existing issue. They will be transporting DOW's 2.0 mgd water anyway; and if the Department wants more water, they will be transporting that because it is hard to separate DOW water and Grove Farm's water, which is really DOW water. He continued to say by reading a portion of the agreement, it is clear and it is not in the expansion category, and maybe that is why they were confusing it with the expansion.

Mr. D. Fujimoto mentioned that everyone is getting more dependent on this surface water source as a source for the Lihue system, and it does become more and more important that they address the bottle neck and there is an advantage to the Department to have the redundancy.

Mr. Tschupp also mentioned that one of the other considerations was that the line, that alignment, was one that followed existing cane haul roads and was not involved in the existing development, which involved tearing up the highway and would be cheaper to run a line that is 5,000 ft than tearing down the highway.

Mr. D. Fujimoto amended Mr. Nishimura's motion to read, that the Board would authorize the Manager and County Attorney to work out the agreement with the applicant and report back to the Board within 30 day with recommendations.

Ms. Swartman asked if they were sticking to one issue and what should be included in that report. Mr. D. Fujimoto replied that it was his understanding that the Board recommends approval with conditions; and if the applicant could not live with those conditions, then it was upon the Board to decide whether they were going to side with

the applicant or the staff. That is the appeal process, this Board can make a decision as to proceed as recommended or to proceed as they feel is appropriate. He added that if they have no problems with the issues, then they could vote on it; but it was his understanding that they do have a problem with those five issues.

Mr. Tresler asked that even if you put it as a condition and they say no they are not doing it, what is the Department going to do about it. Mr. D. Fujimoto replied that the approval will be contingent upon you doing it. Therefore, Mr. Tresler felt that would resolve that issue.

Mr. Tresler said he could go point-by-point on the issues and there is no algae or smell issues. The Manager countered that they did receive approximately 100 complaints last summer. Mr. Tresler argued that they did not receive any complaints or notified. He added that the system was built with a carbon system, and they could deal with it if it becomes a problem.

Mr. Nishimura felt that those point-by-point items go back to whether it would be considered an expansion or upgrade and any upgrade is subject to the percentage, 60-30 or whatever percentage. He inquired if that was something that was agreed upon; and if so, that item would be resolved. The Manager replied that it might not be 60-30 any more if they are expanding the plant or if the Department wants to expand it. There may be a new ratio for upgrades if the Department wants to participate.

Mr. Nishimura questioned the Manager if he was suggesting that the Department may want to participate in their own expansion, and the Manager agreed.

Mr. Tresler felt that the issue was mute because if they wanted to address the operation, they would probably do the upgrade before they do the expansion, unless the Department wants water now they can expand the plant now as long as they could talk about the economics of doing that.

Mr. D. Fujimoto felt that it was more important that there be a meeting of the minds. He stated that he heard what they were saying; but it was not what the Manager was saying, and if they are going to agree with those conditions, then they will be bound to live with it. He also wondered if they could separate the things that don't have to be attached to the conditions and the things that are absolutely needed and can live with it. He hoped that they could come to an agreement, and it wouldn't even have to go to the Board.

Mr. Nishimura thought that the only outstanding issue was the transmission line; but the Manager said they need the drought of record or float duration curve since they have no knowledge of it right now.

Mr. Tresler explained that for the drought of record, they just went through a drought right now and there was no problem; but If the Department wants a full report, they would do it but asked why would they have to pay for it if it is not necessary and why is it being brought up on the expansion of the plant. He added that Kapaia reservoir is fed by three streams and there is plenty of water.

The Manager explained that there is no harm to the existing capacity; they are not talking about expanding the reservoir to make more water available. The reservoir is critical to surface water use, and it may be that they could divert water to bring it to that source; but to go from can do to must do is a big step, and what is really their ability.

The Manager further explained that a float duration curve is not just finding out what levels the streams are flowing at but what water flows through the reservoir with what is being taken out and what happens with the reservoir level. For example, say the minimum flow was 30 million gallons; and if that is the case, there would be nothing to discuss; but right now if there were ways to divert water away from the reservoir and it can be diverted dry, then they need to know that also; and right now, no one in the staff has a comfort level with that. He thought that they needed to get a comfort level; and if it is subject to the operator's decision on how much water to move, then the agreement needs to be amended.

Mr. Tresler assured the Board that they could do the report, which was done when the plant was first done and built.

Mr. D. Fujimoto asked if they have any kind of documentation that shows that they have full control of over this. He said that is what the Manager is concerned about, water can be diverted out of the reservoir and that the Manager is looking for assurance that there will be the 30 million gallons. Another concern by the Manager is their meeting the additional 3 million gallon increase.

Mr. Tresler said the agreement does not show 30 million gallons, and agreed that it was a legitimate concern to assure that there is water capacity, and he will review that issue.

Mr. Nishimura asked if the Board's concern was primarily with the 3 million gallons, and asked if Mr. Tresler could show the minimum flow. He replied that they don't have the monitoring device, they use a contractor.

Mr. D. Fujimoto explained that the Manager just wanted assurance that water will be provided from this source and that Grove Farm is committed to this. He added that one idea is to do a separate agreement stating that the Water Department will be consulted for any diversion of the water.

Mr. Tresler was opposed to that idea and stated that they control the waterways and they don't want anyone's approval on what they do with the water. He understood that they have a commitment to provide the water, currently 3 million gallons a day and it will increase on their expansion.

The Manager stated that was his point, does the Department want to get involved with something that doesn't have water. Listening to them, it sounds like there is no reason for it to run out but nothing prevents them from moving the water somewhere else. And what they can do or what they are able to do are two separate issues.

Chair Kahawai asked if they don't expand it and they run out of water, what happens; the Manager replied that they would be stuck.

Mr. Nishimura asked the Manager if Grove Farm is able to execute a separate agreement which says they will be responsible to deliver X amount of capacity to meet the present and expanded capacity of the plant, would that be satisfactory. He added that his point is that, they have 30 million gallon potential capacity to that system and should they choose to divert it, whatever portion as long as the Department receives their share, and if they still commit to delivering the amount required from the plant, they would still have the priority.

The Manager agreed that they could reach an agreement on something like that if it is a matter of base flow of the stream, which may be a simpler way to handle the flow duration curve.

Mr. Costa wondered what the approval of the expansion would allow them to do. Mr. Tresler replied that it would move forward their resolution of their Water Master Plan and subdivision requirements.

The Manager added that there is no question that this can be deferred up to the point the Board has to put up the money to participate in the line; but if they design it and they are looking to put money into it and they are thinking the Department is going to participate 2/3 and the Department is thinking no, we are not going to pay, I would think it would behoove them to get this resolved, because it may not even be the same Board.

Mr. D. Fujimoto added that as long as Grove Farm understood that and they were willing to take the chance.

Going back to the agreement, Mr. Tresler stated that if the Department was not going to respect and follow that agreement, then they would have big problems, and the attorneys would get involved. If the Board feels that it is necessary to negotiate and talk about these things, then he was willing to do that too because there were things in the agreement that he didn't agree with either.

Mr. D. Fujimoto agreed with Mr. Tresler and stated that he wanted to uphold the agreement; but he wanted to give the staff a chance to re-evaluate their position. He wanted them to sit down together to try to see if they can come out with a meeting of the minds; and if they can, it doesn't even have to be brought up at the next Board meeting; and if not, it can be discussed on this level.

Mr. Tresler cautioned the Board that the agreement doesn't say that and that the Department put the conditions in there. He asked if the Board was saying that they haven't satisfied the conditions.

Mr. D. Fujimoto recommended to staff to seriously re-evaluate the recommendation because he felt some of those items should not be tied in as the conditions; and he also wanted to know which part Mr. Tresler was agreeing to and which ones he was not.

To clarify, Mr. Nishimura asked Mr. D. Fujimoto if he was talking about the five issues, and Mr. D. Fujimoto replied, “yes.”

Mr. K. Fujimoto suggested that on Page 19, the agreement mentioned arbitration, which seems to be the answer in this situation. To that, Mr. D. Fujimoto replied would be the last resort, and they wanted to avoid going there as much as possible. He added that he could withdraw this motion and recommend approval because he really hasn’t taken a firm stance yet, and his position was still to give the staff a change to work this out. If staff feels that they cannot work it out, then he was willing to make another motion. The Manager was willing to go back and talk with them.

The motion was read again.

Mr. D. Fujimoto moved that the Board authorize the Manager and County Attorney to work on the agreement with the applicant and report back to the Board within 30 days with recommendations, seconded by Mr. Costa; the motion was carried.

Re: Manager’s Report No. 10-34 – Approval of Revised Project List

The Manager requested approval of a revised Bond Project list. The following projects would be added to the list; making a list total of \$101,339 million. The full \$23.5 million is not reimbursable as we **cannot go back more than 60 days** from the time the County Council approves the overall Bond Resolution. The spend down reflects the amount likely to be reimbursable if the Council approves its resolution this month or early next month.

491-3	Stable Tank and Pipelines (reimb)	7374
497	Kapilimao Tank (reimb)	3987
498	Kaumualii 12” Line (reimb)	4500
504	Waimea Main Replacement (reimb)	3028
02-18	Kapaa Pipeline (reimb) Jan Bid	4600

Total of added projects \$23489 (not all reimbursable)

This is requested primarily to add new projects that could be reimbursable and allow the option to spend down bond proceeds faster. Some of the projects are or maybe SRF funded. (The Kapaa project is not yet bid.) The decision whether SRF loan proceeds are used to pay bond debt service or utilized on the remainder of the projects listed is subject to availability of funds to pay both the bond debt service and the SRF loan.

The net effect of this action is to increase the ability to spend down bond proceeds faster than otherwise would be possible and replace the bond funds with funds not subject to arbitrage as we are reimbursed from the SRF program. The added debt from the SRF loans has been included in the proforma statement attached to this report and

the Bond Resolution. These projects are currently part of the Bond Resolution, and any changes to this recommendation will need to be reflected in the Bond Resolution.

There is one project not currently SRF funded, which is Kapaa Job No. 02-18. It will bid in January. All other jobs requested to be added are in progress and have preliminary loan agreements.

Projects that are in progress that DOW has not been reimbursed for are being funded by revenues or FRC funds.

The Manager also submitted a revised spend down schedule.

Mr. Nishimura wondered if the Ehiku Street addition is required, when would it be necessary and what kind of cost would be involved and what is the Department's share. Mr. K. Fujimoto replied that the total cost is \$5 million and the Department's share would be 2/3 of the cost.

Mr. Nishimura also wondered if it would be advisable to include this on the list too, and would it be something buildable within the life of the bond. The Manager replied that he didn't know how fast they were going to move; but it was possible; and right now, the bond proceeds are being encumbered by the end of next year and basically you would be appropriating some of the money that they get back from SRF.

Mr. Nishimura wondered if once the resolution is approved, if they can go back to the Council and add anything else on. The Deputy County Attorney replied that it was limited to those listed projects, and they were advised to add on to those projects rather than to take it off.

Mr. Nishimura wondered if they could make changes if the resolution is approved today. The Manager replied that the meeting is going on right now, and the schedule that they have is to go to first reading next month and probably the second reading will be next month, then go into the ratings meeting on February 4, 2010; then once that happens the schedule is March 24, 2010 for approval.

Mr. Crowell wondered about doing the improvements for five different water systems and raising the water rates for everyone, since some people will not get the benefit of the improvements but their rates will still go up.

The Manager replied that they have other projects that are going in now in Waimea that are currently under SRF funding and everyone is paying a debt service on those. He went on to say that they are going towards the goal for the 2020 Plan, and there are some places that don't need the same improvements like others. Granted these places are getting a disproportionate share of the cost; but so far, they haven't decided to have a water rate by systems; and If they did that, then they could break it out that way.

Mr. D. Fujimoto questioned the Department's CIP projects because it is so aggressive, he wondered if the furlough would become an issue and how it would affect the implementation of those projects. The Manager replied that it would be the same since

the staff is geared for is a normal project mode; and anything beyond that would need a construction management system outside of the Water Department.

Mr. D. Fujimoto mentioned that they can't stop the contractor since they would be liable to the contractor for inefficiency. The Manager agreed, especially for the SRF and ARRA funded contracts.

Mr. D. Fujimoto suggested that they do analysis and consider overtime pay for the employees versus hiring a construction manager just for the Fridays.

Mr. McCormick added that they stagger their staff because they are required to keep their projects going five days a week.

Addressing the Manager, Mr. Nishimura asked if the \$60 million could accomplish this, and the Manager said "yes." His next question to the Manager was if he was going to be with them. The Manger felt that he would because he wanted to get all the projects out.

Mr. Nishimura moved for the approval to include the addition of the five projects to the proposed Bond Project list, seconded by Mr. D. Fujimoto; the motion was carried.

Re: Manager's Report 10-36 - Job No. 02-18, WK-32, Phase I (Waterline D-1) Waterline along Kaehulua Road and Job No. 04-02, WK-14, Phase I, (Waterline B) Waterline along Apopo Road, Change Order No. 6 with Earthworks Pacific, Inc.; Kapaa Homesteads, Kauai, Hawaii

RECOMMENDATION: It is recommended that the Board approve Change Order No. 6 with Earthworks Pacific, Inc. for additional demobilization, project maintenance and remobilization. We further request that the Board allocate \$7,660.00 from Account No. 101b. CRP, Wailua/Kapaa, Kapaa Homesteads 6-Inch Mainline Replacement to fund the Contract Amendment.

FUNDING:

Available funding from Account No. 101b:
 Account No. 101b. CRP, Wailua/Kapaa, Kapaa Homesteads
 6-inch Mainline Replacement\$4,600,000.00

Original Contract Amount.....	\$1,483,690.00
Contingency, approximately 5%.....	<u>\$ 74,310.00</u>
Original Certified Amount	\$1,558,000.00

Change Order No.1.....	\$ 10,000.00
Change Order No.2.....	\$ 19,050.00
Change Order No.3.....	\$ 7,250.00
Change Order No.4.....	\$ 19,153.00
Change Order No.5.....	<u>\$ 0.00</u>
Current Change Order Total.....	\$ 55,453.00

Current Contract Amount \$1,539,143.00

Proposed Change Order No.6..... \$ 26,517.00
Proposed New Contract Amount..... \$1,565,660.00

Additional Funds Requested:<\$ 7,660.00>

Balance Remaining
101b. CRP, Wailua/Kapaa, Kapaa Homesteads
6-inch Mainline Replacement..... \$4,592,340.00

BACKGROUND:

The major components of this project are:

- 4,520 feet of 8-inch ductile iron pipe.
- 240 feet of 6-inch ductile iron pipe.
- 5,000 sq. yd. AC pavement.

The project pipeline was designed and scheduled to be connected to the Department of Water’s system once the new 1.0 MG Stable Tank and connecting pipeline were completed. The tank contractor (Kauai Builders, Ltd.) is behind schedule with their work, which will require the pipeline contractor, Earthworks Pacific, Inc. to delay the connection of the new waterline. The delay will also require the pipeline contractor to demobilize, provide for additional project (road) maintenance and remobilization during this time period until the new pipeline can be connected.

Earthworks Pacific submitted their proposal of \$26,517.00 for this work, which we feel is reasonable.

For the purpose of this agenda item, Mr. Nishimura recused himself, as he has a subcontract with Kauai Builders, which is tied to the two same projects.

Mr. Crowell moved to approve Change Order No. 6 with Earthworks Pacific, Inc. for additional demobilization, project maintenance and remobilization and to allocate \$7,660.00 from Account No. 101b. CRP, Wailua/Kapaa, Kapaa Homesteads 6-Inch Mainline Replacement to fund the Contract, seconded by Mr. D. Fujimoto; the motion was carried.

Re: Manager’s Report 10-43 - Request Board Approval of Resolution 10 (09/10) for Bond

The Manager requested approval of the Bond Resolution.

The maximum borrowing amount is \$60 million as initially approved by the Board. The projects will be as approved in Managers Report 10-34. Principal repayment is delayed for two years and the pro rata cost of issuance will not be available for projects.

The Resolution has been prepared by the Bond Counsel in cooperation with County Attorney’s Office.

The County Council must still approve the overall Bond Ordinance.

The Kauai Board of Water Supply Bond Resolution is to give the County Council and bond buyer's assurance that the Water Department will pay its portion of the debt service in a timely manner and will honor the **Bond Covenants** related to arbitrage, payment of debt service and other issues in the Bond Ordinance. Included is the requirement to raise rates if needed to provide the necessary coverage.

The attached proforma statement is what is currently projected and will be needed in the future to repay the bond.

RESOLUTION NO.	10
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(2009-10)

REQUESTING THE ISSUANCE AND SALE OF REIMBURSABLE GENERAL OBLIGATION BONDS OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE PURPOSE OF CONSTRUCTING AND ACQUIRING IMPROVEMENTS AND BETTERMENTS FOR THE WATERWORKS SYSTEM OF THE COUNTY.

WHEREAS, the Department of Water (the "Department"), consisting of a Board of Water Supply (the "Board"), Manager and Chief Engineer and the necessary staff, is a department of the County of Kauai (the "County") established under the Charter of the County to manage and operate the waterworks system of the County (the "Waterworks System"); and

WHEREAS, the Board finds and determines it to be beneficial to the management and operation of the Waterworks System to request the issuance by the County of reimbursable general obligation bonds for the purpose of constructing and acquiring certain improvements and betterments to and extensions of the Waterworks System;

NOW, THEREFORE, BE IT RESOLVED by the BOARD OF WATER SUPPLY of the County of Kauai, State of Hawaii:

SECTION 1. Pursuant to Chapter 47 and Section 47-4, Hawaii Revised Statutes, as amended, the Council of the County (the "Council") is hereby requested to authorize the issuance of reimbursable general obligation bonds (the "Waterworks Bonds") in an aggregate principal amount not to exceed \$60,000,000.00, the proceeds derived from the sale of which are to be used to construct and acquire improvements and betterments for the Waterworks System, including, without limitation, the waterworks projects identified in Exhibit "A" hereto.

SECTION 2. The Council is hereby requested to authorize the Director of Finance to issue and sell the Waterworks Bonds in one or more series at such time or times as the Director of Finance shall determine. The Waterworks Bonds of a series may be issued separately or as part of a larger issue of general obligation bonds of the County, as determined by the Director of Finance. The Waterworks Bonds shall be in the form prescribed by the ordinance of the Council authorizing such Waterworks Bonds.

SECTION 3. The Waterworks Bonds shall be deemed issued for a public undertaking, from which revenues are derived, to wit: for the Waterworks System of the County. The General Fund of the County shall be reimbursed for the payment of the principal of and the interest and premium (if any) on the Waterworks Bonds, at least annually as determined by the Director of Finance, from the revenues of the Waterworks System remaining after the costs of operation, maintenance, and repair of said Waterworks System have been paid and the required payments of the principal of and the interest and premium (if any) on all revenue bonds, if any, of the Department have been made.

SECTION 4. The Board hereby covenants and agrees to establish, maintain, collect, and enforce a schedule of rates, fees, tolls and charges for connection to and use of the Waterworks System, which schedule shall be sufficient to assure that the revenue thereby produced, together with any other funds which may be lawfully available, shall pay all reasonable costs and expenses of operation, maintenance and repair of the Waterworks System, shall pay the principal of and the interest and premium (if any) on any revenue bonds of the Department, and shall pay or reimburse the General Fund of the County for payments of the principal of and the interest and premium (if any) on the Waterworks Bonds, promptly as the same become due and payable, respectively. The Board hereby specifically consents to the application of such revenues of the Waterworks System to pay or reimburse the General Fund of the County for payments of the principal of and the interest and premium (if any) on the Waterworks Bonds.

SECTION 5. All resolutions or parts of resolutions heretofore adopted by this Board which are in conflict or inconsistent with the provisions of this resolution be and the same are hereby repealed to the extent of such conflict or inconsistency. This resolution shall take effect upon the adoption thereof, and a certified copy hereof shall be delivered to the Mayor and to the Council.

EXHIBIT "A"

H-01	Maka Ridge Pipe	WK-12	Waipouli Pipe
H-02	Maka Ridge Well CL	507	Waimea Canyon
H-03	Rehab Maka Ridge Tank	WK-28	Wailua House Lots Pipe
H-10	Rehab Maka Ridge Tank	WK-30	Waipouli/Hauiki Pipe
HE-08	Rehab Eleele Tank	WK-36	'Ohana, Anolani, Kuamoo Pipe
HE-11	Salt Pond Pipe	TF Buyout	
KW-28	Amfac Well	Hi L Water	
PLH-02	Kokolau Tunnel	491-3	Stable Tank and Pipe lines
PLH-25	Eiwa, Umi, Akahi, Elua Pipe	497	Kapilimao Tank
PLH-30	Nāwiliwili, Niumalu, Kupolo pipe	498	Kaumuali'i 12' Line
WK-02	Akulikuli Tunnel	504	Waimea Main Replacement
WK-08	Kapahi Tank	02-18	Kapa'a Pipeline

Mr. D. Fujimoto moved to approved Resolution 10 for Bond, seconded by Mr. Costa.

On query by Mr. Nishimura to the Deputy County Attorney is she had a chance to look at the language of the Resolution, she replied that the Resolution was drafted by their bond counsel.

Mr. Nishimura suggested to the Manager that he talk to the County Council about the additional projects so that they are not hit with any surprises.

It was moved by Mr. D. Fujimoto to call for a roll-call vote, seconded by Mr. Costa.

Upon roll call, there was a unanimous decision by Chair Kahawai, Mr. D. Fujimoto, Mr. Costa, Mr. McCormick, Mr. Nishimura and Mr. Crowell in favor of the Resolution.

The motion was carried.

Re: Manager's Report 10-44 - Final Annual Audit Report

RECOMMENDATION:

The Manager recommended that the Board approve the final annual audit for July 1, 2008 to June 30, 2009.

FUNDING: n/a

BACKGROUND:

The Board of Water Supply, at its November 19, 2009 Finance Committee Meeting, accepted the draft report on the Department of Water's annual audit. Our auditor, KMH, LLP, has finalized the annual audit, which is enclosed separately in your binder.

Mr. Crowell moved to approve the final annual audit for July 1, 2008 to June 30, 2009, seconded by Mr. Nishimura; the motion was carried.

Re: Manager's Report 10-45 - Rules of Practice

The Manager requested approval to take the Board's Rules of Practice through the rulemaking process outlined in HRS Chapter 91-3 to give the Board's Rules of Practice authority of law.

The current Rules of Practice, although adopted in 1965, have never been adopted pursuant to HRS Chapter 91-2 and are not enforceable if needed.

The following are relevant excerpts from HRS that show the statutes we should be following:

§91-2 Public Information.

(a) In addition to other rulemaking requirements imposed by law, each agency shall:

- (1) Adopt as a rule a description of the methods whereby the public may obtain information or make submittals or requests.**
- (2) Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, and including a description of all forms and instructions used by the agency.**
- (3) Make available for public inspection all rules and written statements of policy or interpretation formulated, adopted, or used by the agency in the discharge of its functions.**
- (4) Make available for public inspection all final opinions and orders.**

(b) No agency rule, order, or opinion shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been published or made available for public inspection as herein required, except where a person has actual knowledge thereof.

(c) Nothing in this section shall affect the confidentiality of records as provided by statute. [L 1961, c 103, §2; Supp, §6C-2; HRS §91-2]

Case Notes

"Actual knowledge" referred to in section cannot give effect to rules not adopted in conformity with §91-3 and §91-4. 55 H. 478, 522 P.2d 1255.

Planning and permitting department's policy of refusing to publicly disclose developer's engineering reports prior to their approval constituted a 'rule'; as this policy was not 'published or made available for public inspection' nor did plaintiff have actual knowledge of the policy prior to its initial request for the reports, department did not comply with this chapter and was proscribed from invoking this policy; thus, department violated this chapter by refusing to publicly disclose any unaccepted engineering reports and written comments, and all of its files, including developer's file, were public records that could be examined upon request." 119 H. 90, 194 P.3d 531.

Cited: 904 F. Supp. 1098

§91-3 Procedure for adoption, amendment, or repeal of rules.

- (a) Except as provided in subsection (f), prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:
 - (1) Give at least thirty days' notice for a public hearing. The notice shall include:
 - (A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and
 - (B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;

- (C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and
- (D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the Internet as provided in section 91-2.6; and

- (2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.
- (b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals, or to livestock and poultry health, requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the Internet as provided in section 91-2.6, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.
- (c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. This subsection shall not apply to the adoption, amendment, and repeal of the rules of the county boards of water supply.
- (d) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by:
 - (1) Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor; and
 - (2) Posting the full text of the proposed rulemaking action on the Internet as provided in section 91-2.6.
- (e) No adoption, amendment, or repeal of any rule shall be invalidated solely because of:
 - (1) The inadvertent failure to mail an advance notice of rulemaking proceedings;

- (2) The inadvertent failure to mail or the non-receipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed; or
- (3) The inadvertent failure on the part of a state agency to post on the website of the office of the lieutenant governor all proposed rulemaking actions of the agency and the full text of the agency's proposed rules as provided in section 91-2.6.

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.

- (f) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:
 - (1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:
 - (A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and
 - (B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person;
 - (2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the Internet as provided in section 91-2.6; and
 - (3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to section 91-6.

This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words, phrases, or other material within a section that does not constitute the entire section to be repealed. [L 1961, c 103, §3; am L 1965, c 96, §139a; Supp, §6C-3; HRS §91-3; am L 1973, c 13, §1; am L 1979, c 64, §1; am L 1985, c 68, §2; am L 1989, c 64, §2; am L 1998, c 2, §§27, 28; am L 1999, c 301, §2(2); am L 2000, c 283, §6]

Cross References

Additional requirements for publication of notice of public hearings, see §92-41.

Attorney General Opinions

The "General Requirements and Covenants" of public works contracts are rules as defined by Section 91-1 and any amendments require notice and a public hearing. Att. Gen. Op. 66-10.

Section is limited to rules having the force and effect of law; AG Opinion 66-10 superseded. Att. Gen. Op. 72-5.

State agency required by subsection (a)(1) to publish notice of hearing must in addition comply with publication requirements of section 92-41. Att. Gen. Op. 73-12.

Board cannot adopt "policy" which would have the effect of amending a rule, without following HAPA requirements. Att. Gen. Op. 81-11.

Notices are not required to be in the legal section of a newspaper. Att. Gen. Op. 89-4. Substantial changes in proposed rules made after public hearing require additional hearing where material is included on subject not covered in original notice or change was not advocated or discussed at original hearing. Att. Gen. Op. 91-05.

For the repeal of rules, this section and §92-41 did not require individual notice to all property owners potentially affected by the change in the rules but only notice by publication, and a mailing to those persons who requested advance notice of department's rulemaking proceedings. Att. Gen. Op. 97-4.

Case Notes

Where defendant did not give notice and hold public hearing pursuant to subsection (a) before issuing approval of use of wood preservative, defendant's approval, together with defendant's conditions of approval, would appear to be rulemaking. 939 F. Supp. 746.

Department provided adequate notice under this chapter of its intent to hold public hearings on proposed amendments to its administrative rules; nothing in chapter or case law requires that notice of public hearings on proposed amendments be published only after the effective date of the statute authorizing such amendments. 88 H. 307, 966 P.2d 619.

Where city appraiser's unwritten methodology for determining imparted value fell within definition of a rule for purposes of §91-1(4), city needed to follow rulemaking procedures set forth in this section prior to applying imparted value deductions toward golf course assessments. 89 H. 381, 974 P.2d 21.

Changes may be made in a rule between the original proposed and presented at a public hearing and as finally adopted. Substantial change in a rule after a public hearing may require another public hearing. 50 H. 156, 434 P.2d 516.

Notice should fairly apprise interested parties of what is being proposed so they can formulate and present rational responses to the proposal. 64 H. 389, 642 P.2d 530.

"Substance" of proposed rules defined. 64 H. 389, 642 P.2d 530.

Rule enabling insurance commissioner to prescribe endorsements did not give carte blanche authority to sidestep the independent requirements of chapter 91. 67 H. 148, 682 P.2d 73.

Adoption by reference of future amendments unlawful. 67 H. 451, 691 P.2d 365.

No waiver of notice and hearing requirements allowed where agency had discretion to interpret federal provisions as to required rules. 68 H. 80, 705 P.2d 17.

Inadequate notice, discussed. 70 H. 135, 764 P.2d 1233.

Notice of public hearing met all requirements of this section; no merit to points on appeal that court erroneously dismissed claims that proposed hearing room was too small and that separate hearings should be held on neighbor islands. 10 H. App. 210, 863 P.2d 344.

Sections 183D-22 and 183D-10.5 provided the authority for the department of land and natural resources to require payment of a fee for a hunting-related article such as a stamp; however, since game bird hunting was an activity permitted under chapter 183D, the department was

required under §183D-3 to adopt a rule pursuant to this section when setting the stamp fees for hunting. 117 H. 16 (App.), 175 P.3d 126.

Since the addition of two extra hunting days to each week of the hunting season concerned "conditions for entry into game management areas, and public hunting areas designated by the department of land and natural resources" and "open seasons" for hunting, the express language of §183D-3 mandated that in order to add the two weekdays for bird hunting, the department had to amend Hawaii administrative rule 13-122-4 pursuant to chapter 91. 117 H. 16 (App.), 175 P.3d 126.

Hawaii Legal Reporter Citations

Public hearing necessary before rules can be adopted. 77-2 HLR 77-793.

Substance of proposed rules. 78-2 HLR 781.

§201M-2 Determination of small business impact; small business impact statement.

- (a) Prior to submitting proposed rules for adoption, amendment, or repeal under section 91-3, the agency shall determine whether the proposed rules affect small business, and if so, the availability and practicability of less restrictive alternatives that could be implemented. This section shall not apply to emergency rulemaking.
- (b) If the proposed rules affect small business, the agency shall consider creative, innovative, or flexible methods of compliance for small businesses and prepare a small business impact statement to be submitted with the proposed rules to the departmental advisory committee on small business and the board when the rules are essentially complete and before the rules are submitted to the governor for approval for public hearing. The statement shall provide a reasonable determination of the following:
 - (1) The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules;
 - (2) Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected;
 - (3) In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance;
 - (4) The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used;
 - (5) The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques;
 - (6) How the agency involved small business in the development of the proposed rules; and
 - (7) Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

- (c) When a proposed rule includes provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, the agency shall, in addition to the information required by subsection (b), include in the small business impact statement information comparing the costs and benefits of the standard set by the proposed rule to the costs and benefits of the standard under the comparable or related federal, state, or county law. The agency shall also include an explanation of its decision to impose the higher standard. The agency's comparison and justification shall include:
- (1) A description of the public purposes to be served by imposing the standard under the proposed rule;
 - (2) The text of the related federal, state, or county law, including information about the purposes and applicability of the law;
 - (3) A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes and of the standards and their application and administration;
 - (4) A comparison of the monetary costs and benefits to the implementing agency and other agencies directly affected, of imposing the proposed standard, with the costs and benefits of imposing or deferring to the related federal, state, or county standard, as well as a description of the manner in which any additional fees derived from imposition of the proposed standard are to be used; and
 - (5) A comparison of the adverse effects on small businesses of the standard imposed by the proposed rule, with the adverse effects on small business of the related federal, state, or county standard.
- (d) This chapter shall not apply to proposed rules adopted by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as federally-mandated regulations that afford the agency no discretion to consider less restrictive alternatives. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §3; am L 2008, c 230, §3]

The Manager stated that he has under good authority that the Board's Rules of Practice were never adopted pursuant to HRS Chapter 91-2 and is not enforceable when needed. Basically he was asking the Board to go through the rule-making format; and If they wanted to make any other changes to the Rules, now would be a good time to do it.

Mr. Nishimura moved to receive the report and refer it to the Rules Committee for formal adoption, seconded Mr. D. Fujimoto; the motion was carried.

REPORTS

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

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

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

Public Relations Specialist Faith Shiramizu gave the following report:

Employee Events: The County Employee Council will be hosting its Annual Holly Jolly event that will once again include a Wreath Contest and Song Contest on Friday, December 11, 2009.

The DOW Christmas Bowling Party will be held on Friday, December 11th; thanks to Jenny for organizing this event. Thanks also to her assistants as follows: Food- Eddie, Keith K., Vicki and Roz; Decorations – Mona and Vicki and RSVP – Vicki. Thanks to David for supporting this party.

Jenny should also be commended for spearheading participation with the Child and Family Services' Angel Tree Program. DOW employees and Board Members have provided gifts for families in need. At this writing, 40 requests have been filled.

Clarita along with Karen, Marites, Fay and Carolyn, have also stepped up to lead us in providing dinner for the people at the KEO Homeless Shelter and the KEO Transitional Housing, on December 14th. DOW employees have contributed funds, food items and their time for this project.

USDA Rural Development Grant: David and I met with Taani Taumalolo regarding funds that may be available through the USDA Rural Development Program. If eligible for these grants, they could fund up to 75 percent of the project costs as a grant and the balance in a loan or self-funded. A follow up meeting has been scheduled for December 14th to meet with the USDA Area Supervisor to further explore this funding possibility.

Press Releases: The recent storms required many press releases regarding water outages, boil-water notices and cancellation of boil-water notices, as mentioned at the November meeting. Operations and Microlab crews, assisted by Special Project Engineers and Inspectors, did a great job of getting the systems back to sufficient working order as quickly as possible and delivering notices house-to-house on Waipouli and Hauiki Roads, while office staff fielded many calls. Kudos to Bill for leading the Department in that critical event.

A release was also sent out for water conservation in Waimea while the connections were being made for Job# 05-04, Kaumualii Highway 12-Inch Main Replacement, Elepaio-Huakai project.

A release will be sent before the end of 2009 regarding the planned rate increase effective January 1, 2010.

Re: Deputy Manager's Summary Report on Monthly Operational Maintenance

Mr. D. Fujimoto moved to receive the Deputy Manager's Summary Report and placed it on file, seconded by Mr. Costa; by a unanimous vote, the motion was carried.

Re: Manager's Update for November, 2009 To December, 2009

Delegation From Board To Manager:

CONTRACTS AWARDED BY THE MANAGER:

1. Bid Solicitation GS-2009-4, Furnishing and Delivery of One (1) 26,000 Lb. GVWR Standard Cab and Chassis Outfitted with a Five (5) Cubic Yard Dump Body – Cummins West, Inc. for \$96,983.12.
2. Bid Solicitation GS-2009-5, Laboratory Testing Services (Phase II, V) – MWH Laboratories for \$1,825.00.
3. Facility Reserve Charge Study – R.W. Beck, Inc.
4. Second Amendment for Job No. 02-15, Wailua Houselots Main Replacement – R.M. Towill Corporation.
5. Second Amendment for Job No. 02-24, Renovate Akulikuli Tunnel, Phase 2 – SSFM International, Inc.
6. First Amendment for Job No. 05-01, Waimea Main Replacement – Hawai'i Pacific Engineers, Inc.

PUMP INSTALLATION PERMITS SIGNED BY MANAGER: None.

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

PERSONNEL MATTERS UPDATE:

1. Completed Pipefitter Helper selection. Now proceeding with reference checks on the individual.
2. Water Service Supervisor (WSS) III position descriptions have been reviewed by the Department of Personnel Services. To follow-up with their review, we have inquired with them on increasing the salary range and are awaiting a response.

Affordable Housing Update:

Next meeting will be held on Monday, December 14, 2009 at the Pi'ikoi Conference Room A at 10:00AM-11AM.

Monthly Updates:

Job 04-04, Water Plan 2020 Project PLH-09, Pipeline Replacement for Lihue Town
Cushnie Construction Co., Inc. has started the Lihue Town pipeline replacement project, which is part of Water Plan 2020 that will be replacing old pipeline in Lihue Town on the south side of Rice St. from Umi to Kalena Streets. The work started from September 1, 2009 and will end April 19, 2010.

Note that affected residents and businesses were sent hand delivered notices of this meeting from Cushnie Construction Co. Inc. A press release was also done.

Contractor made the first connection of the new waterline to the existing Lihue system near Umi and Ewalu Streets on November 4, 2009. This section of the project was delayed due to inclement weather.

Contractor has begun installation of a new waterline along Kalena Street. The completion of the lower portion of the project is estimated to be in early 2010.

ADJOURNMENT:

There being no further business, Mr. Costa moved to adjourn the meeting at about 3:05 p.m., seconded by Mr. D. Fujimoto; by a unanimous vote, motion was carried.

Respectfully submitted,

Emi Tanihiro, Secretary

APPROVED:

David R. Craddick, P.E.
Manager and Chief Engineer