

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

February 17, 2009

Council Chamber

CONVENE: 9:05 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho'ohalahala
Councilmember Danny A. Mateo
Councilmember Bill Kauakea Medeiros
Councilmember Michael J. Molina (Out 10:10 a.m.)

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki

STAFF: Kimberley Willenbrink, Legislative Analyst
Tammy M. Frias, Committee Secretary

Kathy Kaohu, Executive Assistant to Councilmember Sol P. Kaho'ohalahala
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

ADMIN.: Jeffrey Eng, Director, Department of Water Supply
Edward S. Kushi Jr., Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Richard H. Pohle
Thomas Croly, Maui Vacation Rental Association

PRESS: *Akaku--Maui County Community Television, Inc.*

ITEM NO. 1: WATER SUPPLY RULES (C.C. No. 05-46)

CHAIR VICTORINO: . . .(*gavel*). . . Good morning. The meeting of the Water Resources Committee will be called to order. This meeting is being held on February 17, 2009. Today present we have Vice-Chair Joe Pontanilla, Member Gladys Baisa --

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: --Member Sol Kaho'ohalahala --

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCILMEMBER KAHO‘OHALAHALA: Good morning.

CHAIR VICTORINO: --Member and Chair, Council Chair Danny Mateo --

COUNCILMEMBER MATEO: Good morning.

CHAIR VICTORINO: --Member Bill Medeiros, and welcome back, Bill. Good to see you with us.

COUNCILMEMBER MEDEIROS: Good morning and thank you.

CHAIR VICTORINO: And voting Member, last voting Member Michael J. Molina, Vice-Chair.

COUNCILMEMBER MOLINA: Good morning.

CHAIR VICTORINO: Okay. We have one non-voting Member present today, Mr. Wayne Nishiki; and yourself, myself Chair Mike Victorino. So we do have a quorum, in fact we have all seven Members. Thank you very much for being here. Also this morning from the Department we have the Water Director, Mr. Jeffrey Eng.

MR. ENG: Good morning.

CHAIR VICTORINO: Representing Corporation Counsel, Mr. Ed Kushi.

MR. KUSHI: Good morning.

CHAIR VICTORINO: And our Committee Staff, our Legislative Analyst Kim Willenbrink--thank you, Kim--and of course our Committee Secretary Tammy Frias. Thank you for being here.

Members, today we just have one item on the agenda, RW-1 [*sic*], Water Supply Rules. This item relates to codifying the Rules and Regulations for the Department of Water Supply. As you remember at our last meeting, the Committee voted to pass on first reading two bills listed in Paragraph 3 of today's agenda. Today we are considering a draft bill listed in Paragraph 4 of today's agenda entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO DROUGHT".

Members, in your binder, in your binders you have opened correspondence dated August 12, 2008, which is the transmittal of the draft bill. The proposed draft bill is to codify Sections 4-1 and 4-2 of the Rules and Regulations of the Department of Water Supply related to drought. I want to stress again that the Department is already operating under this guidance of these Rules and Regulations. The drought rule as, will now be codified as part of the Maui County Code.

At this time I would like to open up to public testimony. This morning we will have, we'll open up testimony. If you wish to testify, please see the Committee Secretary and sign up. Each

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

testifier will be limited to three minutes. If you are not completed at that time, if you want to return after all have spoken, you will be given an additional three minutes. When your testimony--please when you come up, state your name for the record and indicate if you are representing any particular organization. Tammy, do we have any testifiers?

MS. FRIAS: We have two, Mr. Chair, that have signed up.

CHAIR VICTORINO: Thank you. At this time I would like to call upon our two testifiers. The first testifier is Mr. Richard Pohle, and Mr. Pohle is testifying on his self and he'll be talking about RW-1 [*sic*] and the meter list. Good morning, Mr. Pohle.

...BEGIN PUBLIC TESTIMONY...

MR. POHLE: Good morning, and thank you for the opportunity. I am Richard Pohle, owner of a 3.47 acre parcel zoned Rural half acre and home of Valley View Protea Farm on Upper Crater Road. I have four comments on the Committee action last Thursday.

First, Section 14.13.040 Part C. reads "Premises on the priority list that are unable to fulfill departmental requirements for water service or who refuse water service shall be removed from the priority list. A new application must be submitted in order to be placed back on the priority list." The last sentence is redundant since all parcels have the right to be placed on the priority list by application. Or does the Council mean that the Director has the authority to place this new, this old, new applicant anywhere on the list?

Number two, regarding Section 14.13.080, is all authority to be vested in the Director? How does one appeal the action of the Director? Is there a Water Board?

Number three, I suggest the creation, I suggest the creation of an Office of Independent Ombudsman into this legislation. One of his functions would be to explain the technical issues behind the Director's actions. For example, he would answer Mr. DePonte's questions as to why the Department refuses to upgrade the stretch of old 2.5-inch galvanized pipe to the Upcountry water tank and refuses to use an existing easement requiring instead a dangerous and expensive excavation around a well traveled switchback.

Finally, I suggest that the idea of an Upcountry meter list is fatally flawed. It depends on the application date alone and does not consider the situation of the applicants. Let me illustrate by a cautionary tale involving The Widow Brown, a Mr. Green, and a Mr. Wood, all of whom are on the list.

Once upon a time, the Director decides that 50 new Upcountry meters can be issued. Because The Widow Brown had applied for a subdivision 12½ years ago, she is first on the list. She had wanted to subdivide so that her sister could build a house next door. Unfortunately, she lives three miles from the point of sufficiency. The Widow Brown cannot afford to satisfy Department

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

requirements, so she is removed from the list. Mr. Green lives one mile from the point of sufficiency. He can afford to contribute to the water infrastructure upgrades. Unfortunately, being 1,000th on the list, even if he hears about the new meters, he never gets the opportunity to get one. Mr. Wood lives two miles from the point of sufficiency and is 100th on the list. He scratches together \$1 million and finally is awarded his meters and subdivisions. Six years later what has happened? The Widow Brown has moved to Las Vegas to be near her sister. Mr. Green has just been granted his meters. Under pressures from groups like KCA and UMLA, the Council repeated the, repealed the priority list. Gratefully, he hooks into the line that was built past his home five years ago. Mr. Wood has just cashed the final \$100,000 check from the County, the last of five equal installments of 50 percent of the \$1 million he put up --

MS. WILLENBRINK: Three minutes.

MR. POHLE: --without interest. Mr. Wood feels cheated by the County of Maui. Please don't enact the water meter priority list regulations into law. This will codify a bad and inefficient system. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Pohle.

MR. POHLE: I do have some, point of order, business from last time that Mr. Nishiki had asked about the water meter list and...

CHAIR VICTORINO: Well, we're not working specifically on the water list. Okay. So I want you to be clear on that. We're just working on the Rules for this, okay?

MR. POHLE: Yes.

CHAIR VICTORINO: Mr., Vice-Chair Molina?

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. And good morning, Mr. Pohle. Thank you for your testimony. Just one question, with the potential scenario that you've mentioned in your testimony with Widow Brown and Mr. Wood and Mr. Green, and you're suggesting that the water meter priority list not be enacted, can you offer us a suggestion in its place?

MR. POHLE: I have previously testified several times, one was that the water meter list be eliminated and instead special meters be given to everyone on the list. These meters would be. . .in times of drought would be limited to, say, 200 gallons per day, because people in Kula do not have to water their lawns. The second thing was the meters would, when you got a meter, you would pay an assessment fee that would go into a fund designed specifically for improvement of the infrastructure. This would allow everyone on the list to contribute to the fund and the Director would then be able to decide where to best apportion the, the monies to satisfy the Water Department regulations and the Fire Department regulations. It's clear from a technical point of view, and I'm a physicist, it's clear that money will provide more water to a certain extent, and certainly it's a lot more efficient to let technology decide how water is developed than to have a

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

rule that is just in order of, of application which this water rule is. So I have testified and it is in the record. Thank you very much.

COUNCILMEMBER MOLINA: Okay. Thank you, sir. Thank you, Mr. Chair.

CHAIR VICTORINO: All right. You're welcome. Member Baisa?

COUNCILMEMBER BAISA: Thank you. Thank you very much, Chair. And thank you, Mr. Pohle, for being here and for bringing up an issue that is certainly a sore issue for Upcountry residents. The Upcountry meter list is a cause of many, many debates and troubles and whatever. But I want to tell you and I'd like to, Chair, with your indulgence have this, you know, discussed, or at least responded to by Corp. Counsel. But last year when this, we were discussing this, I said can we then stop this list and let's not use it 'cause it's not working and it gets longer and longer and people are very frustrated with it. And I believe I was told that this could not be done. Is that correct, Mr. Kushi?

CHAIR VICTORINO: You're asking Mr. Kushi for an answer?

COUNCILMEMBER BAISA: Yes. Would you please, Chair.

CHAIR VICTORINO: Okay. Thank you. Mr. Kushi, could you address that question to . . .(inaudible). . .

MR. KUSHI: You want me to answer that now, Mr. Chair, or. . .?

COUNCILMEMBER BAISA: Oh, we can do it later --

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: --after testimony if that works better.

CHAIR VICTORINO: Yeah. Let's hold up on that question until testimony is completed.

COUNCILMEMBER BAISA: No problem.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER BAISA: But I just wanted to bring it up so we don't forget.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: Chairman.

CHAIR VICTORINO: Yes. Member, Vice-Chair Pontanilla?

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

VICE-CHAIR PONTANILLA: Thank you, Mr. Chairman. Mr. Pohle, your example, you know, kind of reminds me of the utility companies, both the telephone company as well as the electrical company here on, in Maui County. And what you noted here, you know, that the example, you know, the three people are exactly what we call aid to construction for the utilities where all of the party on that particular line pay part of the construction cost so that each of them can get their services. And in time whoever comes on the line--I think was five years--they would pay a portion of the cost to those individuals that had front the monies to begin with. So it is a good example and I don't know if the Water Department has anything like that. But again I just want to comment on your example, good example. Thank you.

MR. POHLE: It is in, in the Code or in the Regulations that the developer gets back 50 percent with no interest after five years, in equal installments.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you, Vice-Chair Pontanilla. Any other questions from our Members for the testifier? Seeing none, thank you, Mr. Pohle. The next testifier will be Mr. Thomas Croly, and he's speaking on behalf of the Maui Vacation Rental Association. Mr. Croly, good morning.

MR. CROLY: Good morning, Chair. I am Thomas Croly. Good morning, Members, and a special good morning to, to Bill. I'm glad to see you back chipper and glad to see that things are well. I would like to request that the Committee adopt language in the Water Rules that would spell out the requirements for fire flow with respect to bed and breakfasts and TVR homes. This is an issue that has caused permitting problems for B&Bs and TVRs over the past ten years. And in previous testimony to this Committee, the Fire Department has stated that their fire fighting requirements and strategies are no different for a residential, for a residential home used in short-term rental use or one used in long-term rental use. And both the Planning and Water Department Directors seem to support this, this idea. I've submitted written testimony and given you two different things that could be inserted to address this issue, and I hope that when the time is appropriate you do take up this issue. I recognize today it's not necessarily on your, on your agenda. But specifically in order to encourage compliance with the newly enacted bed and breakfast ordinance, we'd like that people not be held to a commercial fire flow standard for what we define in the Planning Committee as a residential use, so for bed and breakfast homes. And either of these, these two language suggestions would, would accomplish that. So I thank you for the consideration today. I recognize it's probably not going to be on your agenda today, but I hope that it won't be forgotten as we button up these new Water Rules.

CHAIR VICTORINO: Thank you, Mr. Croly. Questions for the testifier? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Mr. Croly, good morning and thank you for that welcome back. I just wanted to know what your thinking is on...there's some existing B&Bs, and we're not sure about TVRs, in areas where the water system is old and has, you know, little pressure and volume. If it isn't a requirement for establishing or complying with water flow

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

requirements for fire protection, who would be responsible in a time when one of these dwellings need fire protection from the County through the Fire Department?

MR. CROLY: Thank you, Bill. There's, there's, you know, always many different scenarios that, that people can fall under, and that's why we've suggested two different languages here. One is that, that residential homes are provided that exemption, and as you point out if that exemption is continued, then we're not sure that the fire flow is adequate. So the, the. .if, if, if that doesn't meet with approval, then I would suggest the second one which basically leaves it up to the kuleana of the, of the Fire Department to dictate what, what the requirements would be. Right now we have two departments commenting on it, and it's just simpler if, if it would only be one department that would comment. And in the case that, that you're making where the fire flow would be inadequate from the County sources, typically they ask someone then to put a holding tank on that would provide enough fire flow. And again as long as it's in the domain of the, of the Fire Department to make that, that recommendation I think it would be sound.

COUNCILMEMBER MEDEIROS: So, Mr. Croly, you're, you're in agreement that if the fire flow is inadequate for the existing County fire, water system, that it is all right to require property owners in those scenarios to install a water tank to supplement volume and pressure?

MR. CROLY: Well, again the, the issue comes, comes into play as to what standard is, is then being held. And when we're calculating fire flow, we have to consider whether we're calculating it for a residential use or whether we're calculating it for a commercial use. My understanding to this point is that commercial standards have been, have been applied here, and I'm asking that those commercial standards not be applied. But I can't comment specifically on, on, under what situation someone should have to put in their own, their own tank. But I would think that the Fire Department would be the one best equipped to comment on that.

COUNCILMEMBER MEDEIROS: Okay. And, and I think, you know, the reason I ask these questions, and I'm sure other Members have the same questions or the public, is for the protection of the visitors that may be using that property for their accommodations. So I appreciate your recommendations on your submittal here.

MR. CROLY: Thank you, Bill.

COUNCILMEMBER MEDEIROS: Mahalo. Mahalo, Mr. Chair.

CHAIR VICTORINO: Vice-Chair Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Thank you, Mr. Croly, for being here this morning. And thank you for your suggestions in regards to, you know, who should do, actually who, who is the governing body, the Fire Department or the Water Department in regards to protection. And I just want to comment that, you know, we had approved a permit sometime back in regards to some veterans requiring a health support from a particular individual. And, you know, we had approved the application several years ago and we still, you know, haven't, well that particular

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

business is not in operation because of who should govern this thing, the Fire Department who requires overhead sprinklers or the Water Department who required this particular owner to put up a fire hydrant. And you're looking at cost difference of about 25 to 30 thousand dollars. And for that individual to provide the kind of service that he provides to the veterans, you know, he, he just can't afford it. So thank you for bringing this thing up. I'm sure it's not going to go away. So thanks again, Mr. Croly.

MR. CROLY: Yes, it does seem that our issue is not unique just to the bed and breakfast and TVR issue and perhaps could be expanded to home businesses in general.

CHAIR VICTORINO: Okay. Thank you. Any other questions for Mr. Croly? Seeing none, thank you very much, Mr. Croly. At this time I will ask anyone else in the gallery who would like to give public testimony to please come forward. Seeing none--oh, yes, Mr. Pohle.

MR. POHLE: I do have some further experience with the fire regulations.

CHAIR VICTORINO: Okay. So you're going to give him another three minutes. Okay. Go ahead, Mr. Pohle.

MR. POHLE: Thank you. In 1986 the subdivision of my 3.47 acre parcel was...fire regulations satisfied by a hold harmless letter. Now this in 19..., in 2004 this had been replaced by a requirement of 120,000 gallons of storage, that's 1,000 gallons for two hours, a minute for two hours. Now I can get around, I can subdivide my property into six parcels if I wanted to and I could have water trucked up to my house, it would cost me about \$600 for 6,000 gallons. And I could, that would be a month at 200 gallons a day. But I can't get around the fire protection requirements and because that, they require me to build, to supplement a 50,000 gallon tank half a mile upstream with a 70,000 gallon tank which is, and amazing, is a quarter of \$1 million and that expense would, I would be expected to pay that. Now the other thing that's important about fire regulations is that the fire regulations take effect at the subdivision and not at the building time. In other words you have to do that before you can subdivide and only after you subdivide it do you get a building permit. Subdivisions do not need fire protections, it's the buildings that go on these parcels that need fire protection. And so I've never understood why the Fire Department doesn't allow the subdivision to proceed and then put the fire regulation requirement onto the individual buildings where then they can get together, they can fund it as part of the cost of building the house into the mortgage. And, and also they can use mitigating effects like a sprinkler system which would be installed into the house, which must reduce the effect of the fire danger. Put the sprinkler system in the house and mitigate the flow regulations. Right now that is not the possibility because the fire flow requirements have to be solved on subdivision. And thank you very much for that, this opportunity.

CHAIR VICTORINO: Thank you, Mr. Pohle. Any, any more questions for Mr. Pohle? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Mr. Pohle, thank you for your testimony this morning. I just wanted to add to your, about having different requirements after the structure is

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

built. The Fire Department follows a uniform code of fire standards nationwide, and so some of that is applied as part of their observance of the Fire Code. And sometimes it may not appear to be something that's either needed or recommended, but they do, they do follow a Fire Code. And I just wanted to add that to your comments. Thank you.

MR. POHLE: That is correct. In the first issue of WR-1, it was 400 gallons per minute for two hours, now that's 48,000 gallons. Someone amended it to be 1,000 gallons per minute, that's 120,000 gallons. The County can not provide that amount of water storage. Furthermore, suppose I was out in the rural area where there is no County water, would I be required to build a 120,000 gallon tank out in the boonies? I would like consideration that when the County cannot supply water, that we be allowed to go on a catchment system or something like that. While I can buy my own water, it is absolutely ridiculous to have me in the midst of a whole bunch of water pipes trucking my own water in and held responsible for fire protection when if I was ten miles back out in the boonies I wouldn't have to be held to those standards.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Pohle, for your perspectives on this.

CHAIR VICTORINO: Thank you, Mr. Pohle. Mr. Pohle, hang on one moment, please.

COUNCILMEMBER MOLINA: Oh no, Chair, no questions for the testifier.

CHAIR VICTORINO: Oh. Okay. No, not a question for, okay. You raised your hand at the moment so I thought you wanted to speak to Mr. Pohle.

COUNCILMEMBER MOLINA: Just, just a clarification on Committee rules. So because it was stated at the start that testifiers would have three minutes and...

CHAIR VICTORINO: Give an additional three minutes if they wanted to conclude their testimony.

COUNCILMEMBER MOLINA: Was, was that also stated?

CHAIR VICTORINO: Yes, that was stated in the--

COUNCILMEMBER MOLINA: That was? Okay. I must have missed it.

CHAIR VICTORINO: Yes, it was. Thank you, Mr. Pohle.

COUNCILMEMBER MOLINA: Okay. Thank you.

CHAIR VICTORINO: Yes, I did state that upfront, Vice-Chair. Okay. So, all right. Again seeing no other testifiers coming forward at this time, with no objections I would like to close public testimony.

COUNCIL MEMBERS: No objections.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

CHAIR VICTORINO: Thank you very much.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: At this time I would like to call upon the Director, Mr. Eng to give his comments that. . .in regards to this bill. Director Eng, please.

MR. ENG: Thank you, Mr. Chairman. Good morning, Committee Members. Basically this bill that is before you today merely codifies pretty much what we have existing in our Rules. And to the Department and to myself, it is satisfactory as it currently reads. So I have no comments at this time. Thank you.

CHAIR VICTORINO: Thank you. Mr. Kushi, would you like to add anything else?

MR. KUSHI: Yes, Mr. Chair. For clarification we are looking at a proposed bill that was attached to a transmittal dated August 12, 2008, from the former Chair Michelle Anderson?

CHAIR VICTORINO: That is correct.

MR. KUSHI: Okay. Yes. If that's the case, it is what the Director says. The only, the basic revisions are eliminating the final approval for the declaration of drought, eliminating that authority from the Board of Water Supply. So as it reads right now, the first section says the Director after consultation with the Board, and approval by the Mayor, may issue a proclamation declaring a drought.

CHAIR VICTORINO: Thank you. Thank you, Mr. Kushi. And, Members, if you recall at our last meeting, Councilmember Baisa suggested that we, it might be a good idea to, for the Staff to provide a Ramseyer version of the draft bill in order to do a side-by-side comparison. On your desk you'll find a form dated October 11, 2006, draft bill submitted by the Department of Corp. Counsel, this chapter relating to drought. Please note that Council Services Staff made further nonsubstantive revisions when preparing the August 12, 2008 version for Councilmember Anderson. Now at this time, with no objections, I'll open up the floor to our questioning and discussion. Okay. Wait. Oh, you're on it, oh, okay. We're going to take a quick recess subject to the call of the Chair to bring, to get our projector in order. This Water Resource Committee stands in recess. . . .(gavel). . .

RECESS: 9:33 a.m.

RECONVENE: 9:38 a.m.

CHAIR VICTORINO: . . .(gavel). . . This meeting of the Water Resources Committee for February 17, 2009 will be reconvened. At this time we have the projector up so that it'll make it

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

a lot easier to work with. And as I stated earlier, I will open up the floor for questions or discussion on this matter. Yes, Vice-Chair Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chairman. Question for I guess, well I don't see Corporation Counsel here. I don't know if maybe Mr. Eng could answer this question if you had some background history on it. The \$500 fine for each violation and the \$50 reinstallation fee, how was that, that, those numbers determined, if you could share that information with us, Mr. Director?

MR. ENG: Vice-Council Chair Molina, I'm sorry, but I don't have the background to how those were established. I'm sorry.

COUNCILMEMBER MOLINA: Okay. No problem. I was just curious, or I guess to some it would seem steep, others it might seem maybe too steep or not steep enough I should say. So I guess I'll wait for Corporation Counsel. Thank you, Mr. Director. Thank you, Chair.

COUNCILMEMBER BAISA: Chair.

CHAIR VICTORINO: And if I'm in correct in, in relating to this, this penalty was set many, many years ago, because when I came on the Water Board back in 2002 this already was existing. And I think it was one of those that we were trying to crack down on people that were tapping in to other meters or tapping in through other lines. And so that was some of the, the predication on that, also those who were illegally using meters. So...

COUNCILMEMBER MOLINA: Maybe, Mr. Chair, then we should even consider adjusting those figures because time, you know, cost of materials, labor, and maybe as a way to deter people from committing these violations. Anyway just food for thought, Mr. Chair.

CHAIR VICTORINO: Yeah. And, and I appreciate that, Vice-Chair Molina. And again as I stated earlier, this is just a matter of getting the Rules codified, passed, and approved. And at a later date I'd like to go back and like you and many others here revisit certain sections because they need to be looked at. But at this time without Rules accepted, we're trying to amend things that are not even truly accepted or, or in order right now. So that was the predication on getting this completed. Member Baisa, you had a question?

COUNCILMEMBER BAISA: Yes. Thank you, Chair. I have several, but I'll keep the water meter discussion later. But for now on the, following up on Member Molina's question I'm just curious, is this used a lot? Do we see a lot of fines being levied?

CHAIR VICTORINO: Before I go on, Corp. Counsel Kushi, the question was brought up while you were returning that when was the violations, you know, the penalty for the \$500 penalty and the \$50 for reinstallation of a, of a meter that was removed, do you have any idea when that was first instituted?

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

MR. KUSHI: Mr. Chair, I can check but I'm assuming that it was, it's, it was there before I came. So, and, and the rules and regulations that have existed prior to the Charter change I believe is dated 1977. But this may have come on subsequently. But it was definitely before 2002. And that Rule is Section 4.4-1 and 4-2.

CHAIR VICTORINO: Okay. So it's been around for a while?

MR. KUSHI: Yeah. It has been around for a while.

CHAIR VICTORINO: Okay. So I think that answered that question. The second question as Ms. Baisa has just asked, how often is this applied? Maybe you or maybe Mr. Eng can, can address that question as far as the penalty, the removal and then the reinstallation.

MR. ENG: Mr. Chairman, I'll, I'll tackle that one. To my knowledge we haven't had to enforce this Rule to date.

COUNCILMEMBER BAISA: That's what I figured.

MR. ENG: And we, hopefully we will never have to.

MR. KUSHI: Mr. Chair, during Director Tengan's regime I don't . . . *(Change Tape, Start 1B)* . . . I'm not sure about Director Craddick.

COUNCILMEMBER BAISA: Thank, thank you very much. That certainly answers my question about the, you know, the disregard for losing your water meter. I don't think anybody wants to lose their water meter. But I do have one follow-up question for Corp. Counsel, Chair, if you don't mind.

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER BAISA: In the community there is an understanding or a misunderstanding or an idea that a water meter cannot be removed because of some kind of health regulation. Could you address that, Corp. Counsel?

CHAIR VICTORINO: Corp. Counsel, do you have an answer to that?

MR. KUSHI: Yes, Member Baisa, I'm not sure about the Department of Health regulations, but in the, in the Water Supply regulations there are provisions for removal of meters, this being one of them. The main one is the non-payment of charges.

COUNCILMEMBER BAISA: I see. And there are no consequences from Health for health reasons, 'cause you took my meter I have no water?

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

MR. KUSHI: Well, the Rules provide for an immediate hearing or a review by the Director's office. And, and if we're, if the question comes to our office, we would say advise the consumer or customer, look you did this, this, this, we're going to remove your meter, but please you have X number of days to either pay up or give us some reason or have a hearing. Because just going out and removing it is one thing, there may be some fire protection issues, some health issues, like you say, that may occur by just removing the meter. So we would urge the Department, advise the Department to give them an opportunity to explain. There are also some, in the Rules, payment procedures if they cannot pay.

COUNCILMEMBER BAISA: Thank you very much. But I think that's really important because, you know, the people that are watching this meeting may have those questions or those misunderstandings, and so I think it's really important that when we talk about penalties and removing a meter that people understand that that can happen. But obviously it doesn't happen very often because of, you know, everybody needs water, you know. You can do without a lot of stuff, but you can't do without water. Thank you.

CHAIR VICTORINO: And I think one of the things I'll add is in the past when I was on the Board and there were discrepancies on bills that was brought forth to the Board, extreme differentiations because of leaks or other items, the Department was always very sensitive to working these issues out. So I don't think they've had this "my way or the highway" attitude if you don't pay your bill, you lose your water. They've been very, very courteous about trying to work out the problem. I'm not saying it was always perfect, but they're very courteous about working out the situation. So that's my experience when I was on the Water Board, these issues did come up about extreme differentiations in bills, and a lot of times leaks were occurred sometimes on the property, sometimes off the property. But we were able to at least address it and, and in many cases remedy it in favor of the homeowner or the user of the water. So I, I say they have done a very, very good job in that respect, Member Baisa.

COUNCILMEMBER BAISA: Thank you very much.

CHAIR VICTORINO: Yes, Member Kaho'ohalahala. Excuse me. I almost misplaced it.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair. I think Member Baisa brings up a good point and in listening to the responses of the Corporation Counsel and the Department, perhaps it might be prudent for us to understand what would be some of the consequences should this violation actually be implemented by the Department that may have relations with, that may be related to health and other issues that we haven't considered at the moment? Let's, let's play this out. Let's say that you did remove someone's meter and then that there would be some consequences that may be related to, to health. What would be our responsibility in that regard? Do we have anything that allows us now to interact with the Department of Health? Do we have something that we should be perhaps taking a look at at this time as, as I think a prudent step? If we're going to put rules that say that we have the authority to do this in, then what would be the consequences of that? And will we be liable for, for any of those kinds of potential. . . whatever outcomes that might be? So maybe as an item, Chair, to just follow up what are the then the, the

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

outcomes should we actually implement these actions? And then see where that will lead us in terms of the Department of Health or any other kinds of issues for fire as was, was mentioned should that, should that occur. Maybe as, as an item for the Committee to take, take, some time to, to take a look at.

CHAIR VICTORINO: Are you addressing that as a question for the, for the Chair to follow up with the Department of Health and the Fire Department? Is that what you're asking me?

COUNCILMEMBER KAHO'OHALAHALA: I think as, as a follow-up because I'm listening to the responses from the Department and they're saying that, you know, we haven't done that, but we have the authority to do that. And if we were to implement that, then what would be some of the consequences that were raised about the Department of Health for health issues or Corporation Counsel mentioned perhaps fire issues? What do we do then. . .you know, are we liable for any . . .*(inaudible)*. . . I don't know maybe, Corporation, you want to comment on that?

CHAIR VICTORINO: Well, Corporation Counsel, do you have any comments in, in what the Council Member is asking at this time?

MR. KUSHI: Yeah. Let me try, Member Sol. Again, I am not too familiar with the Department of Health's jurisdiction over individual parcels. I know they, they control private subdivisions, they control water quality, et cetera. So I can't respond to that. For a later date maybe we should get them involved. Again there may be--just thinking out loud--may be a consequence that if we should, the Water Department for whatever reason after hearing removes the meter from a, from a premises, that may then shift jurisdiction to the Department of Public Works, specifically DSA, Development Services Administration, and the Building Department, because then without water those premises then become not habitable. There are Code provisions in the Public Works saying that if a premise is not habitable, they can then issue a, I guess, a "get out of town", some sort of violation or notice to the homeowner saying that, you know, this premise is not habitable and if you stay there, then you're subject to daily fines. But again that is just from my, my, my short memory that, that may be a consequence.

MR. ENG: Mr. Chairman, if I could just add something?

CHAIR VICTORINO: Yes. Mr. Director, you'd like to add something to that, please?

MR. ENG: Yes, please. You know, looking at even how the Public Utilities Commission handles this for a regulated water utility or even electric utility, there are very similar types of penalties for failure to, say, to pay your bill. You know, with proper warning your service can be shut off. So what we have here is typical in any of the public utility industry. It's not unique. Now I'm glad that we are considering further any consequences, but of course we would give a whole lot of advance notification before we ever shut off service. But, you know, from time-to-time we have to utilize this particularly if, if a customer declines paying their bill. You know, that's all we really have to go by. Usually it does get resolved when we go out there and, and either threaten

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

or begin to terminate service. That really awakens people quickly. But again this is normal and typical in any of the utility industry.

CHAIR VICTORINO: Thank you. Yes, Mr. Kushi.

MR. KUSHI: Yes. Well, one more comment to Member, I guess, Molina about, or Baisa about fire protection. I may had misspoke because from, we take the water meter off or remove the water meter, it should not affect fire protection because the fire protection systems that the Department requires are separate from the water meter, and the only time we get to install or make them, require them to be installed is at subdivision. This is a response to that gentleman's discussion about, you know, leave it to building permit. Leaving it to building permit, you know, we'll never get it done. So again if we remove the meter and the premises were previously subdivided, the fire protection system should be in regardless.

CHAIR VICTORINO: Thank you for that clarification 'cause I was going to bring that up next, because, you know, your fire hydrants and your fire, your standpipes are outside of the water meter. It is not part of the property. So if a water meter was removed, it would have no effect on the fire protection, but it may have effect on health issues. I'm not going to disagree with that. Mr. Medeiros first, then Mr. Pontanilla.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to follow up on Member Baisa and Member Kaho'ohalahala's questions regarding health. And because of my intensive work on trying to establish dialysis services in Hana, water systems become a really important part of that process and operations. So what I'm asking is, is it in the current process when somebody applies for a water meter, that the Water Department on their application form ask do you require special accommodations for continuous supply of water, such as, yes I have home dialysis, water is a life and death issue for our family or, you know, any other things? But, and there may be other things. But my focus right now is on dialysis. Is there a provision in your application so that when you pull a person's record and you look at it and you're contemplating removal of a meter, that you see on their application or their record that they have home dialysis that may require the water to be continuously provided? Is that part of the application process right now?

CHAIR VICTORINO: Go ahead, Mr. Chair, I mean, Mr. Director.

MR. ENG: Thank you, Mr. Chair --

CHAIR VICTORINO: I'm sorry, excuse me.

MR. ENG: --and Member Medeiros. To my knowledge that kind of information is not requested on our current application. But of course if we were to terminate service, we would clearly try to communicate directly with the customer to see if there is any situation like that. You know, we don't want to have--are there any health issues nor any significant real hardships? It would be a

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

hardship if we turned off service, and most people realize that. But if it was something that is, something that we can mitigate, we certainly will try.

COUNCILMEMBER MEDEIROS: And I thank you for your response. And my recommendation, Chair, would be if the Department does consider modifying their application to accommodate that question on the application, if the applicant wishes to provide or provide information about it, it's not required, but if they do want to make that stipulation to the Department so that if the Department contemplates removal of a meter, they have that on their record saying okay there's home dialysis here, we need to talk to the property owner before removal. And I think I like Mr. Kushi's suggestion--I don't know if that's part of the process now--that when water meter removal is contemplated, whether it's non-payment of fees or whatever it is, that there is a grace period for the property owner to resolve their issues with the Water Department and that an appeal or at least a hearing is provided for the property owner so that things like dialysis can be brought forward to the Department's knowledge. Thank you, Mr. Chair.

CHAIR VICTORINO: Mr. Kushi, am I correct or was it Mr. Eng that said that there is a process for which if a meter was going to be removed, that there was also a hearing that was involved in that? Mr. Eng or Mr. Kushi, I know one of you mentioned that.

MR. KUSHI: Yes. Mr. Chair, again this rule is under Section 3 of the Water Rules which will come up to bat sometime after Budget --

CHAIR VICTORINO: Right.

MR. KUSHI: --for your review. But anyway, it's under Section 3-10 of the existing Rule. It basically states, Discontinuation of Service, water service may be discontinued after due notice and opportunity for hearing as provided for by Chapter 91, HRS. And that is a procedure in itself, it's a contested case hearing. So. . .

CHAIR VICTORINO: Is that satisfactory, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chair. Mr. Kushi, is that process done before the removal or after the removal?

MR. KUSHI: It says may be discontinued after due notice and opportunity for hearing. So that I, I read that as you have to have the hearing first.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Kushi. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. And I think the idea of adding a section for which people can put down medical needs for water wouldn't be a bad idea if and when we redo our application process. I don't think that's, that's a bad thing. You know, the problem comes up many times. . .the original owner isn't the one that may need it later on, and sometimes these things get lost in the shuffle. But I will look upon that as when we do revisions on applications.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

COUNCILMEMBER MEDEIROS: Okay. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I, I just want to thank Jeff for or Mr. Eng for providing us that information regarding the other utilities. And I think the Water Department is following that particular process so that we just don't cut services out. In regards to the violation penalty, I don't know if we're going to take it up this morning, but the sum of \$50 I think is too little. It doesn't cover the County's cost to remove and reinstall at a later time. But my question to the Department is in regards to control of water usage. Mr. Eng, how do we identify if anyone is abusing the use of water? And how do we approach that individual property owner in regards to, you know, during drought conditions that we do have, you know, control for water usage?

MR. ENG: Member Pontanilla, our experience back in the spring, summer of 2007 when we declared the mandatory cutback Upcountry, we did look at all of our customers' water consumption going back, gee, a number of months, it might have been up to a year, to look at their average consumption. If they had consumption greater than 400 gallons per day, then they were sent out a notice to cut back 10 percent. And we can monitor that through our normal billing and meter readings cycles. And then if they were--and we didn't have any violators, fortunately, people took that seriously. But if they were to violate that and not cut back, then we do, per these penalties, have a procedure to . . .to go the extent and remove their meter. But again we would really hesitate to do something like that. That's really a last ditch effort. So that's it, during the drought that that's how we would deal with any abuses of water. And not in drought situations, it's, it's, we have no limitations on a meter. So we basically, if we have a proper rate design, those who want to abuse water will pay for the water.

VICE-CHAIR PONTANILLA: Thank you for that response. And, and I know that the Upcountry people are very cognizant about the water usage, you know, when any, any time that we put restrictions, and they're pretty good at it. But if a restriction was put on to Central Maui which is much larger, how would the Department handle that? Similar, similar way?

MR. ENG: Yes, Member Pontanilla. It's a similar procedure. We'll look at those using more than 400 gallons per day and they would get any letter or notification to cut back if it's a mandatory cutback. Generally 400 gallons per day is, again for, for health reasons too, for a normal family household.

VICE-CHAIR PONTANILLA: Four hundred gallons per day?

MR. ENG: Yes.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chairman.

CHAIR VICTORINO: Thank you, Mr. Pontanilla. Mr. Molina?

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Question for Mr. Kushi with regards, staying on the subject of control of water usage, 14.06.020, looking at letters B. and C., B. stating the schedules may restrict the use of water during certain hours or days of the week and within certain amounts, and C. states the Director may prohibit the use of water for irrigation, lawns, construction, subdivision or other types of activity, and the installation of any new meter or new water service. The language, the word “may” versus say “shall” is, was the determination made to use “may” to basically give a little bit more flexibility for the Director in terms of, I guess, discretion? If I could just get a clarification for that, Mr. Kushi.

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes, Mr. Chair. One moment, let me see what the old Rules...

CHAIR VICTORINO: That’s the front page.

COUNCILMEMBER MOLINA: And I ask this, Mr. Chair, I guess, you know, the word “shall” versus “may” can be interpreted, you know, very differently as “shall” seems a little bit more direct and where versus “may” can, you know, possibly give more flexibility. So just for my knowledge and the public’s knowledge . . . (*inaudible*) . . .

MR. KUSHI: I believe you are correct, Mr. Molina.

COUNCILMEMBER MOLINA: Okay.

MR. KUSHI: More, more discretion on, with the office of the Director. The previous Rule really stated that the Board had the final say.

COUNCILMEMBER MOLINA: So now with this proposal it gives the Director has the final say but more leeway, flexibility?

MR. KUSHI: Right. Correct. Correct.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Chair.

CHAIR VICTORINO: Thank you very much. Other questions? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. On the revised bill it does say that the Director...same section that Member Molina was interested in C., Control of water usage. The Director may prohibit the use of water for irrigation, lawns, et cetera. Can I be reassured that of course agriculture will be given special consideration because of, you know, the concern we have Upcountry about ill effects on ag?

CHAIR VICTORINO: Mr. Eng?

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

MR. ENG: You have my assurance. As you might recall when we did declare even the mandatory cutback in the summer of 2007, Upcountry, I believe ag was exempt from that requirement. So we will do all we can to support agriculture.

COUNCILMEMBER BAISA: Just wanted to bring it up because, you know, our farmers constantly tell us that their issue is they need water in order to farm. And with our new emphasis on sustainability we have to make sure that we don't do any harm to ag as much as possible. Thank you.

CHAIR VICTORINO: Thank you, Ms. Baisa. Other questions from the Members? Yes, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. And I think we had an example where someone that was living on a rural half-acre lot was doing farming, and we provided him assurance that he could go on farming on that half-acre lot and not, you know, restricting only to, or providing provisions only to, you know, people on ag lots. So I don't know if the Department is going to do, you know, things like case by case on smaller half-acre lot where farming is being done.

CHAIR VICTORINO: Mr., Mr. Eng, would you like to respond --

MR. ENG: Thank you, Mr. Chair.

CHAIR VICTORINO: --to that question?

MR. ENG: Yes, please. Member Pontanilla, you know, as we go on and codify these Rules, we do have ag rates coming up at some point that we want to take another look at and particularly the definition for "ag". That is something that my Department has to deal with often. What is a legitimate farmer? And we're getting more and more of the illegitimate farmers trying to get the ag rates. So hopefully with your support we can clarify that down the road.

VICE-CHAIR PONTANILLA: Thank you.

MR. ENG: Thank you.

VICE-CHAIR PONTANILLA: Thank you, Chairman.

CHAIR VICTORINO: And that's something we'll be working on at a later date, because I've asked the Department along with Corp. Counsel to formulate both definition, ag rates and, and the usage so that we can--'cause that's been a sore, sore thumb for a lot of people in a lot of areas, and the gentlemen ag estates and all these other things have been a real sore spot not only Upcountry, it's starting to affect other areas also. So I think it's time we address it and really make, make the changes we need to. But again we're just trying to get these Rules so that we have something to start amending those Rules, yeah. Mr. Medeiros, you had a question?

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I just wanted to ask and because I wasn't a Member of the Water Resources last term I didn't have a continuous or consistent attendance of knowing what was going on there. But I wanted to know, Director Eng, if there are any special provisions when you're considering removal of meters for hospitals or medical clinics?

CHAIR VICTORINO: Mr. Eng, would you like to address that?

MR. ENG: Member Medeiros, gee, we haven't had the experience of a hospital or a medical clinic not paying their bill. If it's ever to happen, that would be quite a catastrophe, so I'm sure I'll be getting a lot of consultation from Corp. Counsel before I do anything rash.

COUNCILMEMBER MEDEIROS: Yeah. And, and I think the reason and, and you make good rationale about your response. But the reason I bring it up in these economic times, there are a lot of organizations closing down or having difficulty paying their bills. So I just want to know if there are provisions for hospitals, medical clinics and so forth that require water if we're contemplating maybe they're not paying their bill and stopping service? So I just want to bring up that point and have it on the record.

MR. ENG: Well, Member Medeiros, if I may respond. You know, if a customer does have a really difficulty financially in paying their bills, you know, we can kind of work with them on some kind of payment plan.

COUNCILMEMBER MEDEIROS: Thank you, Director. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. And I hope and pray we never get to that point 'cause I don't want to be in the forefront of that one. Any other questions or discussion? Mr., Chair Mateo and then followed by Councilmember Nishiki.

COUNCILMEMBER MATEO: Chairman, thank you very much. Just, just a quick question for Corp. Counsel, and maybe you can just tell me why we, the appeals process is not put after subsequent sections versus an overall of the whole chapter before you reach a process for appeal?

CHAIR VICTORINO: Okay. You go ahead and answer 'cause I know the answer to that, but go ahead, you answer Council Chair Mateo's question.

MR. KUSHI: Okay. Member Mateo, the bill before you does not have any reference to appeals. Again it was just copied from the Rules as existing. I imagine you could, under Section .030, Violation, direct the Director after due notice, et cetera, opportunity for hearing pursuant to Chapter 91 may remove, you know, we could stick that in. Again it is in the existing Rules.

COUNCILMEMBER MATEO: Would it be recommended for us because this particular reference, there is a reference to a violation and a penalty, and the subsequent action is rather rigid if one

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

removes, would it be advisable for us to do add in an appeals process or just reference the ability to, to appeal?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: I, I would put it in here because the existing Rules will be revised later on. So I would just put it in here. Again, there is an appeals provision already in Chapter --

COUNCILMEMBER MATEO: Three point, no.

MR. KUSHI: --4. . .14.11.

CHAIR VICTORINO: Yeah.

MR. KUSHI: But again that's appealing any decision by the Director. So maybe we could reference that chapter.

COUNCILMEMBER MATEO: Okay. Yeah, yeah, Mr. Chairman, the only reason I ask because. . .whether it's generic or not I think, I think any action there should be a subsequent action, and that subsequent action should be the right to appeal. And perhaps this body should consider just the reference to that particular process available to them because of the subsequent action of either removal or the fine. Thank you.

CHAIR VICTORINO: Well, thank you for that recommendation. Again we had left it open because it was, the appeal process was for any, I repeat, any decision the Director made no matter what it was, and that's what that appeal. And then remember we gave the Board the adjudication power to, to look that over and well, to over, overrule the, the decision of the, or concur with the decision of the Director. But, Kim, going back to that, is there a place we could insert that, maybe right after that chapter? Or, or, Junior, I mean excuse me, Edward, Ed, excuse me.

MR. KUSHI: I'm sorry?

CHAIR VICTORINO: Excuse me. I apologize, Mr. Kushi.

MR. KUSHI: If you could give us a minute or two, we --

CHAIR VICTORINO: Okay.

MR. KUSHI: --could figure it out.

CHAIR VICTORINO: You know what, it'd be a good time to take our mid-morning recess. This Committee is adjourned till 10:25.

MS. FRIAS: Recess.

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCIL MEMBERS: Recess.

CHAIR VICTORINO: Recess, excuse me. Recessed till 10:25. . . .(gavel). . .

RECESS: 10:10 a.m.

RECONVENE: 10:28 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resources Committee, February 17, 2009 will reconvene. At this time I'd like to call upon Mr. Kushi for that change and where we inserted that change.

MR. KUSHI: Yes, Chair Victorino, Member Mateo. What we've done here is revised Section 14.06.030.

CHAIR VICTORINO: Can you go a little louder so they can, okay.

MR. KUSHI: We are proposing to revise Section 14.06.030 of the bill before you. It will now read "Subject to the opportunity to appeal to the Board"--"the Board" is previously defined as the Board of Water Supply--"pursuant to Chapter 14.11 of this Code,"--which is the Appeals to the Board Chapter--"the Director may remove the water meter of users", et cetera, leave that out.

CHAIR VICTORINO: Is everybody clear with that, that change? Chair Mateo, are you comfortable with that change?

COUNCILMEMBER MATEO: Thank you very much, Mr. Kushi. And, Chairman, thank you very much.

MR. KUSHI: Thank you.

CHAIR VICTORINO: Any other questions? Any other discussion? Yes, Mr., Ms. Baisa.

COUNCILMEMBER BAISA: It's okay. Let's see, on the first page of the ordinance, where it says Declaration of drought, go down four lines, and it says the Mayor, and approval by the Mayor, the Director may issue a proclamation declaring a drought to exist in such area. Then when you come further down into the Control of water usage, the second line, it also says after a drought has been declared pursuant to this chapter, the Director may restrict the use of water in the area. My . . .(Change Tape, Start 2A). . . how do we define the area, and does this mean then that, say, the drought is affecting Upcountry, then the Board would be limited or the Director would be limited to only issuing restrictions in Upcountry?

CHAIR VICTORINO: Mr. Director, would you like to respond to that question?

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

MR. ENG: Yes. I'll try, Mr. Chair. Member Baisa, in regard to your question on 14.06.020, in restricting water use to any particular area, because our water systems are not connected they are distinct systems. And so at times what applies to one system may not apply to another. So we could just make certain restrictions to one of our water systems and let the other one just continue to, to consume as they're going. And you have a problem with that?

COUNCILMEMBER BAISA: No. I hear what you're saying, but I understand that in recent times we have asked others to cut back also. And would that be allowable if we leave this Rule this way?

MR. ENG: You know in severe drought times, you know, particularly Upcountry when we may have to request a mandatory cutback, we believe it's appropriate to ask everyone to cut back or conserve. We could definitely request voluntary cutbacks in other areas also. So, and that's what has happened, you know, in the recent couple of years too. So...

COUNCILMEMBER BAISA: That's, this is why I'm asking the question. Because this is specific to in the area, and do we want any language that says and you may also ask others to, to cut back also?

MR. ENG: You know, I don't know if we need any specific language in this ordinance. Based on our recent experiences our customers have responded very well, even to our request for a voluntary cutback. So I could live with this as it is right now. I think down the road if maybe we don't get the response that we need, then we may come to this body and request, you know, a little bit more teeth in this ordinance. But for right now I believe we can live with it.

COUNCILMEMBER BAISA: Okay. You can live with it. But I still would prefer that we, you know, had codified the ability to ask others also. But, you know, that, I'm just one person.

CHAIR VICTORINO: Thank you. And I think again as I stated earlier, Ms. Baisa, this is not the end all, you know. These are things that we can definitely look at upon revisiting a number of these issues, because I agree with you. I come from Central Maui and I've always said that when Upcountry is in drought, you know, Central Maui can help out a little, you know, we can always conserve and cut back so that we don't get into a drought condition. So I'd have no qualms in bringing something like that forward later and, and have more specific by area or, or others participating in drought conditions, you know.

COUNCILMEMBER BAISA: I, I think--thank you, Chair--what is bothering me is that, you know, when we look at water supply and the recent reports that we have received from the Water Department, if I understand correctly, we have inadequate water supply everywhere on this island. We were told that, you know, we're negative. So if we are, then where is that line between not having water and a, and a drought declaration?

CHAIR VICTORINO: Interesting dilemma I would say at best, and I'll leave it at that. Okay? 'Cause I don't want to get delving into an area that right now--I agree with you--we need to identify, and I think that's something that we need to continue to work at. Yeah? Any other questions?

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCILMEMBER MEDEIROS: Chair.

CHAIR VICTORINO: Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah. You know, Member Baisa brings up a good point and because she lives Upcountry and is the Member from that area she has, you know, very specific concerns. In following that up, Mr. Director, when an announcement is made that there are water restrictions Upcountry, what is identified as Upcountry? I mean do all our consumers know where Upcountry is? Because Makawao blends into Haiku, is Haiku part of Upcountry?

MR. ENG: Member Medeiros, that is correct. The Upcountry system includes going furthest east Haiku, Makawao, Kokomo, Pukalani, and Kula, and it goes all the way out to Ulupalakua and Kanaio.

COUNCILMEMBER MEDEIROS: It does. Okay. Okay. So and, and when that declaration is made to make that announcement, that area is identified in the announcement?

MR. ENG: Yes. We will actually identify those areas by name.

COUNCILMEMBER MEDEIROS: Okay. I think that would be helpful for the consumers. Thank you, Director. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Any other questions? Other discussion for the Department? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I don't know when you're going to make a recommendation or ask us to vote on this ordinance, but I didn't want my question that I asked earlier to be lost. And that was my question about the ability to stop using the Upcountry water meter list that was brought up by Mr. Pohle.

CHAIR VICTORINO: Okay. I will, yeah, I guess at this point I'll ask Mr. Kushi if he'd like to address that question even though it's not part of this, but go ahead, Mr. Kushi. I would appreciate that, a response.

MR. KUSHI: Yes, Mr. Chair. Yes, Member Baisa. Glad to try and respond. I believe this question came up several, maybe the last term, several meetings before.

COUNCILMEMBER BAISA: Yes, it did. Thank you.

MR. KUSHI: Right. Right. And if, if me or my office said that you can't do it, I misspoke. We don't advise you what you can or cannot do. We advise you the consequences of what you, if you do something. Okay. But again if, if that was your impression, it was wrong or I was wrong. What we did--

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCILMEMBER BAISA: I was probably wrong.

MR. KUSHI: Right. What we did say is, is this, that if this body, who has the authority to do it, let's say cuts out this priority list which has been established since 1994, '93, whenever, and, and just says okay come on down and everybody else apply based on whether you're building affordable housing, hospitals, clinics or whatever, you can do that. However, there may be some issues about vested rights with people on those lists, on, on the list. You might have three-quarters of the people living Upcountry coming down to your offices and my office and screaming, saying, you know, we have been waiting all this time, why am I not on this list? Why am I not on another list, or why is--you know, again those are the consequences of your actions. But again you're authorized to do what you feel is in the best interest of the public. Now again as you all understand, it's a matter of supply and demand over there, up there. There just isn't enough supply to meet the demand, and that was the reason why the Upcountry list was created. And the Upcountry list was created by somebody suing the County, and that's how it started. So again the answer is not all encompassing, but again that's where we stand right now.

CHAIR VICTORINO: Ms. Baisa?

COUNCILMEMBER BAISA: Yes. Thank you very much, Mr. Kushi. Mr. Chair, am I assuming that at some point as we continue to look at these Rules that we will be talking about this again?

CHAIR VICTORINO: Yep. And I would like to address the Upcountry water meter list at a later date, and I think, I think many of us have discussed this in the past. Many of us feel that sometimes this list and that this is the problem. If we say it's null and void and we start all over, it opens Pandora's Box. However on the other side, will we ever get to that list? Will it ever be taken care of? You know and those people's frustration is boiling over after 15-plus years for many of these people, if not longer. So I will look at that, I will bring that up as an agenda item. I have no problem with that, and whatever the body feels is the best course of action and along with what Corp. Counsel advises us, I'd be more than happy to support.

COUNCILMEMBER BAISA: Mr. Chair, thank you very much, and thank you, Mr. Kushi. I just thought it was important that we talk about this a little bit because of the earlier testimony, but I think we can defer any further discussion until we get to it. Thank you.

CHAIR VICTORINO: Thank you. Thank you, Ms. Baisa, for bringing up the issue. Member Pontanilla, then followed by Mr. Nishiki.

VICE-CHAIR PONTANILLA: Thank you, Chairman. I'd just like to ask the Director if he could provide this Committee with a schematic of all of the water systems that we do have on Maui. You know, he had provided my office with the Central Maui water system, which I think can help, you know, all of us here if we understand our water system throughout Maui County.

CHAIR VICTORINO: Mr., Mr. Director, if I can request that from you and get a copy to all the Members of the Upcountry as well as Central Maui systems.

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

MR. ENG: Okay. I can certainly do that.

CHAIR VICTORINO: Thank you, Mr. Eng. We appreciate that. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah. Thank you. Chair, has the Board of Water Supply reviewed 14.06--

CHAIR VICTORINO: 14.06.

MR. KUSHI: Mr. Chair.

COUNCILMEMBER NISHIKI: --.010, .020, .030?

CHAIR VICTORINO: Okay. So you're referring to which specific part, Mr. Nishiki?

COUNCILMEMBER NISHIKI: All sections.

CHAIR VICTORINO: All sections. Mr. Kushi?

MR. KUSHI: As I recall, Member Nishiki, this is the drought bill that's before you, right?

COUNCILMEMBER NISHIKI: Yeah.

MR. KUSHI: I believe the Board did have a chance to review it.

COUNCILMEMBER NISHIKI: And they approved it?

MR. KUSHI: And they sent a letter to Michelle Anderson and it should be in your binders, and, and as I recall the Board did recommend approval.

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: Yes, Mr. Chair, that is correct. This was when they reviewed the entire October 11, 2006 bill. The drought chapter was just a portion of that. We would have to look at their recommendations. I don't remember any particular recommendations about this chapter, though.

COUNCILMEMBER NISHIKI: And, and, Jeffrey, Mr. Eng, do you agree with the chapter that we are discussing today?

MR. ENG: Yes. I have no problems or issues with the chapter as it currently reads.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

COUNCILMEMBER NISHIKI: Okay. The, the concern brought up by Mr. Pontanilla about the sum of \$50 for reinstate, reinstallation of a removed meter, does that amount cover what he had concerns with?

CHAIR VICTORINO: Mr. Nishiki, I have already asked the Department to take a look at all of those questions that you just brought up and to come back to us at a later date, 'cause I would like a specific amount so that we would make as one of my amendment changes that you're referring to, we'd make the change at that point in time. 'Cause I'd like an accurate amount, not something speculative. But I agree with you, the \$50 is a little bit too low. But I want an accurate amount so that we could insert a fair amount for reinstallation.

COUNCILMEMBER NISHIKI: Yeah. I don't know whether it is too low or not. I--

CHAIR VICTORINO: Yeah. Well, that's why I want them to come back to us, yeah.

COUNCILMEMBER NISHIKI: Yeah. Mr. Chairman, I'll ask you a question.

CHAIR VICTORINO: Sure. Go ahead.

COUNCILMEMBER NISHIKI: Do you intend on passing this out today?

CHAIR VICTORINO: I would hope so, but I don't know. I'll be honest with you.

COUNCILMEMBER NISHIKI: Well, that's my concern. If you don't have the dollar amount right, then how can we pass it out if that's your concern?

CHAIR VICTORINO: Because again, as I stated earlier, I intend to amend these as we get down the road to change whatever necessary changes like the Upcountry water list. I mean there's a whole--meter list, I should say--a whole mess of things that need to be. But we keep trying to amend something we don't even have that is codified and approved. We have, this has not been approved. They have been operating under these Rules without any codification or approval. So that was my whole intent, to get Rules set and then go back and make those changes that need to be changed if that's what is so needed. So, Mr. Nishiki, I agree with you, we need to do some work, this is not the end all, but this was the first step in finally getting codified, accepted Rules, so then we can start making the changes as we see necessary and see fit.

COUNCILMEMBER NISHIKI: Anyway, I guess that dollar amount in the violation penalty is, is important to get right. And so, you know, I mean you're on this Committee but, you know, my, my concern is the, the, without that information the ordinance would be really pretty empty. And finally, Jeffrey, for clarification when Gladys brought up 14.06.020 and the question was answered, was, was asked about the use of water in the area and the notification process. Being that you said that how different areas are run by, are run by the water systems and then you expanded to say that Haiku and beyond was part of a specific area, and I guess the question

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

would be the Upcountry area. Now in the notification of this declaration will the residents get notices or--

MR. ENG: Member Nishiki, you're correct. They will get a letter from the Department. Those that are required to cut back on a mandatory basis, they will get a letter. If you're a small consumer to begin with, you will not receive a letter. But those who are required to comply with the cutback actually receive a letter by US mail.

COUNCILMEMBER NISHIKI: If you are a small user, you will not be getting a letter; however, if you're a big user...how is that determination made?

MR. ENG: Okay. The, the cutoff that we use is 400 gallons per day, per account. Now there are circumstances when you cannot help but use more than 400 gallons per day. You may contact the Department and we will review your case. And that's sometimes a very large family. I recall the summer that we did have the mandatory cutback, I had letters from customers who were saying they were having family and guests over for the summer, so they probably couldn't stay below 400 and that was fine. We approved their consumption. But generally at that 400 gallons per day cutoff, like in my particular case, I live Upcountry and I'm well below that, I did not receive a letter from the Department to cut back.

COUNCILMEMBER NISHIKI: Four hundred gallons is equal to how many members in a family? How do you calculate that 400?

MR. ENG: You know, I think it's been used from various references that the Department has looked up as a typical family to have, you know, their water needs for safety and health and normal activities. And that seems to be a pretty fair and reasonable amount based on our actual historical consumption data.

COUNCILMEMBER NISHIKI: So it's not based on how many people live in a household?

MR. ENG: No. Therefore, if there is a large, large family, then they may have to contact the Department and explain their situation, and we generally will accommodate them.

COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Thank you, Mr. Nishiki. Other questions or discussion? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. So it is my understanding that we're going to be reviewing this particular chapter as well as the sections once we move forward?

CHAIR VICTORINO: That is my intent once we get the Rules codified and accepted and approved, then we go back and as we set fit, the Department will be bringing forth some recommendations that they would like to see done. Also, we want to work on in June when we return from our break from Budget, is work on our Water Use and Development Plan which will also tie into this.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

So I'm trying to tie everything together so that when we start reviewing these various items, there is a logical progression to get them corrected and amended. So that's, that's been my take on this and I think I've spoken to most of you, that was my intent, and that's why I just focused on only this and absolutely nothing else.

VICE-CHAIR PONTANILLA: Thank you. And I can see the frustration as far as, you know, some of the Members as well as myself trying to, you know, push along on your recommendations. And if we're going to come back again to make those amendments, then fine. But, you know, sometimes we forget, right?

CHAIR VICTORINO: Well, that's not my intention to forget, let me be very frank with all of you. And I think there are a number of people out there, including Committee Members, that won't let us forget. So I think we're on the right course, you know, we get this completed and then we can then make the systemic changes that will be called for. And the Department has and they are working right now on some of these issues. So as we get closer, the Water Use and Development Plan is going to be very pivotal to make sure that that's there so we have guidelines, we have a plan of action, something that we--I think, what, almost 20 years, 1990 since the last time we got it done. So that's the intent of the Chair with your help, ladies and gentlemen. I mean that's not my wish. It's the wish of the people, I believe, to get this done so we can move forward.

VICE-CHAIR PONTANILLA: Thank you. And one, one more. I just want to --

CHAIR VICTORINO: Sure.

VICE-CHAIR PONTANILLA: --mention to Mr. Eng in regards to those schematics for the different system, because, you know, you know, it's not only Central Maui and Upcountry, but Hana and West Maui because we do have some private water --

CHAIR VICTORINO: Systems.

VICE-CHAIR PONTANILLA: --systems out there, that we have the West Maui along with Molokai and, and I don't know about Lanai, but, you know, if he does have it, then fine. That would give us a better understanding as we move forward in, you know, what you want to accomplish, Chairman. Thank you.

CHAIR VICTORINO: Yeah. And I think you bring a valid point. I mean it's, it's, and again I sometimes, I apologize. I've seen these schematics for the, I've worked with them for many years and I assume others know. But again that's something that I should not be assuming and I apologize to all in the room and the public at large. So I'll make sure that all of these gets to every Member whether you're a Committee voting or non-voting Member so that you'll have it available for your perusal at your, at your own time, and then you can bring up questions specifically to the areas if you want to. Yeah. Other questions for the Department? Yes, Mr. Medeiros.

**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. So it's my understanding on that request that you're going to make that it be for all the different water districts?

CHAIR VICTORINO: All the water systems.

COUNCILMEMBER MEDEIROS: Oh, the water systems?

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: Okay. Mahalo.

CHAIR VICTORINO: Yeah. Any other questions? Seeing none, I would like to make my recommendation.

COUNCILMEMBER BAISA: Recommendation.

CHAIR VICTORINO: Thank you. And I'd like to say thank you very much to all of the Members and the Department as well as Kim for all the work you have done. You bring up very good questions, and I tell you, I really truly appreciate and the people of Maui County appreciates your questions. You know, I think these are times that we are working hard to make sure we get it done right. Okay. So seeing no further discussion, the Chair would entertain a motion to pass on first reading the proposed bill, as revised, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO DROUGHT".

VICE-CHAIR PONTANILLA: Move.

COUNCILMEMBER KAHO'OHALAHALA: Second.

CHAIR VICTORINO: Its been moved by Vice-Chair Pontanilla and second by Member Kaho'ohalahala. Any other discussion? Yes, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. For clarification.

CHAIR VICTORINO: Sure.

COUNCILMEMBER NISHIKI: This revision entails what was suggested by Mr. Kushi under .030?

CHAIR VICTORINO: That is correct.

COUNCILMEMBER NISHIKI: That language?

CHAIR VICTORINO: That's correct. That was incorporated.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

COUNCILMEMBER NISHIKI: Okay. Finally, like I said, it is your Committee. When that information that is forthcoming from the Water Department in regards to the question raised by Mr. Pontanilla about whether \$50 covers the processing of this law, I would hope that somehow once we get that answer we will immediately deal with the violation area.

CHAIR VICTORINO: And you're referring to the \$50 reinstallation fee, yeah?

COUNCILMEMBER NISHIKI: Yeah.

CHAIR VICTORINO: Yes.

COUNCILMEMBER NISHIKI: That, that, that for me is, is a concern from the fact that it's an amount in this area that to me needs to be addressed immediately when we're passing out this kind of legislation, Mr. Chairman. That's all.

CHAIR VICTORINO: Well, thank you, Mr. Nishiki, for your concerns. And I, and I duly note that, and as soon as we get that I'll make sure it's transmitted to all Members, including non-voting Members, and that way at our next opportunity we would look upon making that as an amendment change. Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And following along Mr. Nishiki's question, would the Committee Staff be able to read back the new verbiage of what's proposed? Oh, I'm sorry, it's up there.

CHAIR VICTORINO: Yeah. It's up there on the board, but go ahead. Ms. Willenbrink, will you kindly read to the Members the change we had made earlier?

MS. WILLENBRINK: Yes, Mr. Chair. This would be under 14.06.030, Violation-penalty. A. Subject to the opportunity to appeal to the Board pursuant to Chapter 14.11 of this code, the Director may remove the water meter of users who violate any of the schedules or measures established pursuant to this chapter, and shall assess the user the sum of \$50 for reinstallation of a removed meter.

COUNCILMEMBER MEDEIROS: And, Mr. Chair --

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: --the Board meaning the Board of Water Supply?

CHAIR VICTORINO: That is correct.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Chair. Thank you, Committee Staff.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

CHAIR VICTORINO: Thank you. Thank you, Mr. Medeiros. Any other questions or discussion? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Yes. Thank you, Chair. First of all, I want to tell you that this is kind of a bit confusing and frustrating because, you know, we all want to fix everything as we go. But I want to compliment you on your strategy and that you're keeping us on track here, because, you know, it's going to take discipline for us to stick to passing the basic Water Rules and then coming back to, to try and fix. 'Cause, you know, the, we'll never pass Water Rules, like you say, if we get bogged down in too much in the specifics at this point. So with your assurance that we are coming back, I will be supporting the motion. And thank you very much for getting these Water Rules going.

CHAIR VICTORINO: Thank you. And you have my assurances, the public has heard it, all of you have heard it, and I think Mr. Eng has heard it a number of times. So I think we are on the right track, I hope we're on the right track. And that's all I'm trying to do is guide us so that we can get this completed. And I thank you, Ms. Baisa, and I thank all of you Members. You know, you bring legitimate concerns and questions, and I will at, and with the Department's help and Corp. Counsel and Ms. Willenbrink, we will continue to address and corrects these. And so that one day in the very near future, the people of Maui County know what the Water Rules are and what the procedures are. Any other discussion or questions? Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chair. Just one more clarification. So that phrase "subject to the opportunity to appeal to the Board" and so on and so, that's prior before, prior to removal consideration or removal action?

CHAIR VICTORINO: That is correct, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Seeing no other discussion, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those oppose? Let the record show six affirmative, no oppose, and one excused, Vice-Chair Molina.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

February 17, 2009

VOTE: **AYES:** **Councilmembers Baisa, Kaho‘ohalahala, Mateo, Medeiros, Vice-Chair Pontanilla, and Chair Victorino.**

NOES: **None.**

EXC.: **Councilmember Molina.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FIRST READING of proposed bill.**

CHAIR VICTORINO: Thank you very much for all of you being here. Thank you, Mr. Nishiki. I do appreciate a non-voting Member being participatory. I thank you very much for being here and all of you Members. And please, if you have other concerns, please address it in writing to, to Kim or myself and we will follow up on that.

This meeting of the Water Resources Committee is now adjourned. . . .(gavel). . .

ADJOURN: 10:56 a.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:090217

Transcribed by: Daniel Schoenbeck

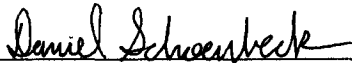
**WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui**

February 17, 2009

CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 25th day of February, 2009, in Pukalani, Hawaii



Daniel Schoenbeck