WATER RESOURCES COMMITTEE
Council of the County of Maui
MINUTES
February 12, 2009
Council Chamber

APPROVED:

Committee Chair
CONVENE: 1:36 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Joseph Fontanilla, Vice-Chair
(In 1:56 p.m.)

Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho'ohalahala
(In 1:37 p.m.; Out 2:45 p.m.)

Councilmember Danny A. Mateo
Councilmember Michael J. Molina

NON-VOTING MEMBERS:

Councilmember Wayne K. Nishiki (Out 2:22 p.m.)

EXCUSED: Councilmember Bill Kauakea Medeiros

STAFF: Kimberly Willenbrink, Legislative Analyst
Tammy M. Frias, Committee Secretary
Lei Kihm, Executive Assistant to Councilmember
Bill Kauakea Medeiros

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

OTHERS: Ron Montgomery, Vice President, Kula Community Association
Stan E. Riddle
Richard H. Pohle
Sherman D. DePonte

PRESS: Akaku - Maui County Community Television, Inc.
CHAIR VICTORINO: (Gavel.) Good afternoon, Members of the Water Resource Committee and members of the public and the people of Maui County.

We have a quorum present today. I would like to introduce Member Mike Molina, Member Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR VICTORINO: Member -- And these are all Voting Members, by the way. Member, Chair Danny Mateo.

COUNCILMEMBER MATEO: Aloha.

CHAIR VICTORINO: And myself, the Chair, Mike Victorino.

And we have the honor of having Non-Voting Member Mr. Wayne Nishiki. Thank you for being here, Mr. Nishiki.

I would like to also introduce the members from the Department of Water. I would like to introduce the Director, Mr. Jeff Eng.

MR. ENG: Good afternoon.

CHAIR VICTORINO: From Corp. Counsel, Mr. Edward Kushi.

MR. KUSHI: Good afternoon.

CHAIR VICTORINO: And then I have my Committee staff: Legislative Analyst Kim Willenbrink and Committee Secretary Tammy Frias. And I'm very honored to have these
two young ladies back with us. They bring a wealth of
knowledge and information and historical perspective, so I
thank you very much.

I thank the Chair for letting them come back, too.

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

CHAIR VICTORINO: Today, Members, we have one item
on the agenda, and that's WR-1, Water Supply Rules. Let me
give you a quick background. You may recall back in 2002
Section 8. -- 8-11.4 of the County Charter was revised
provided that the role of the Board of Water Supply was as an
advisory capacity only. Currently authority rests with the
Director of Water Supply, as it does with other County
department heads. Because of this, there's a real need to
codify the rules and regulations of the Department of Water
Supply.

Members, on your desk is a draft bill listed on
today's agenda in paragraph No. 2, which was submitted by the
Department of Corporation Counsel on October 11, 2006. This
bill amends Title 14 of the Maui County Code by adding four
new chapters and amending the other sections of the title.
These chapters are currently found in the Rules and
Regulations of the Department of Water Supply.

Last term it became apparent that this bill was
largely to promptly -- to promptly deliver it on and passed
out on a timely manner; therefore, the Department of
Corporation Counsel, in cooperation with this Committee staff, transmitted two draft bills to this Committee for consideration on -- dated February 5th, 2009. These are also on your desk. And I have Kim going around and making sure that we have everybody on the same page.

Note, Members, that this draft bill was submitted on October 11, 2006 in Ramseyer format. In this manner you will be able to see the revisions to the rules and regulations that have been recommended by the Department of Corporation Counsel. You will note that the Department has further revised the two bills submitted for consideration on February 5th. As you well -- As we get into deliberation, we can ask Deputy Corporation Counsel for clarification on these revisions.

First, we will consider a draft bill entitled, A Bill For an Ordinance Amending Chapter 14.01 of the Maui County Code Relating to Water. The purpose of the draft bill is to clarify the Director's authority to promulgate rules and to codify the rules and regulations of the Department of Water Supply relating to definitions.

Then, time permitting, we will consider a draft bill entitled "A Bill For Ordinance Amending Title 14, Maui County Code, Relating to Water Meter Issuance Provisions For the Upcountry Water System." The purpose of this draft bill is
to codify the rules and regulations of the Department of Water
Supply regarding water meter issues -- issuance for the
Upcountry Water System.

I want to stress, again, that the Department is
already operating under the guidance of these rules and
regulations. The rules will not be codified as part of the
Maui County Code -- will now, excuse me -- will now be
codified as part of the Maui County Code. Excuse me.

It is also important to note last term the Council
passed Ordinance No. 3446, which added the Chapter 14.11
entitled "Appeals to the Board of Water Supply" and the
establishment of the Board of Water Supply's authority to hear
and determine appeals from the decisions or orders of the
Director of the Water Supply. The Chapter provides an
oversight on the Director's decision-making authority.

To put it in simple terms, ladies and gentlemen,
since 2002 we have not had codified rules, and this is an
opportunity to get them codified, passed and so that the
Department and the County of Maui will have rules for which
we will have guidance and how to operate.

So I would like now to open the floor to public
testimony. Public testimony will be limited to the items on
the agenda today. Those wishing to testify should sign up
with the Secretary at the Secretary's desk. Testimony will
be limited to three minutes. If you -- And you may return
for an additional three minutes after all testifiers have
been heard. When the testimony -- When you testify, please
state your name for the record and indicate if you are
representing yourself or some organization.

Now I would like to open up for public testimony.

...BEGIN PUBLIC TESTIMONY...

CHAIR VICTORINO: Do we have --

We do. Okay. If I may have them.

Okay. We have right now three testifiers signed
up. First testifier is Ron Montgomery and Mr. Montgomery is
from the Kula Community Association. He is the Vice
President. And he's speaking on behalf of the organization.

Welcome, Mr. Montgomery.

MR. MONTGOMERY: Mahalo for the opportunity to

speak, Chair. My name is Ron Montgomery. I'm the Vice
President of the Kula Community Association. And we are
here -- I am here representing our organization because of
the importance, obviously, not only of sustainability of
water for the Upcountry area for our residents, but also for
agriculture.

So we understand and support the fact that the
County and in particular your, Chair, position is a Herculean
task to provide water supply for many people, which has
created the need and the issuance of the -- of the water
meter list.
We have a number of people who have waited for many years on the water meter list in hopes of obtaining a meter for their own personal use and development. You'll actually hear from one of our Upcountry residents today that will indicate the passion that's involved with this.

I'm not really here to speak on behalf of our organization in support of the definitions and rules -- or rules, but, rather, to stress to you the fact that we are sympathetic to the fact that you are faced with this task and that we, as many other groups within the County, are looking at sustainability.

And if I can put in a plug, the -- we in the Sustainable Living Institute of Maui are hosting a Sustainability Expo on February the 21st. And the Department of Water Supply, thank you, Director Eng, for participating in that.

We feel that until we accomplish two things associated with the overall Charter of this Committee is to not only encourage sustainability, but also within your venue is the need for development of new water sources. And we believe that until we develop new water sources and reservoirs in the Upcountry area, that the issue of the rules and the execution of those rules is a nonworking entity. Because until we have enough water to be able to actually issue water meter rules, you're going to be faced with many
different people wanting to go through the appeal process. And so we're here, really, to encourage the real solution, which is the development of new water supply. And I know that there's bills in the State Legislature addressing this. And we also encourage the efforts to obtain funding from the Economic Recovery Bill that's being passed at the Federal level. If we miss this opportunity to access that money -- I realize I'm over -- then we have lost a huge opportunity to resolve these issues.

Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Montgomery.

And before I open the floor for questions from my Members, I failed to mention, and I do apologize, we have one member, Bill Medeiros, who is out ill. And I wish him well and I hope he gets back real soon. And he's excused today. And Member Pontanilla will be arriving a little bit late and Member Sol Kaho'ohalahala is present. Thank you. I tried my best.

COUNCILMEMBER KAHO'OHALAHALA: Thank you.

CHAIR VICTORINO: Okay. So now I will open up questions for the Committee for Mr. Montgomery. And let me also state the way I do this as far as my -- me being the Chair. All Voting Members, I ask you to ask the questions first. And then if none from the Voting Members, I will open it up to any Non-Voting Member.
So any of the Voting Members have questions for
the testifier? How about any of our Non-Voting
Members, any questions? Seeing none, thank you, Mr.
Montgomery --

MR. MONTGOMERY: Thank you.

CHAIR VICTORINO: -- for being present. And good
luck with the sustainable -- I said I'll try to come up
later, but, you know, I already committed to Kihei and
Lahaina.

MR. MONTGOMERY: That's fine. Thank you.

CHAIR VICTORINO: Thank you.

And the next testifier is Stan E. Riddle from
Kihei. I got that one right?

Mr. RIDDLE: You did.

CHAIR VICTORINO: Hey, hey, I'm getting better at
this.

MR. RIDDLE: Okay. Thanks, Mr. Chairman, for the
opportunity to speak. My name is Stan Riddle.

And my family has owned a piece of property on
Anuhea Place, which is in Lower Kula. We've had it for 35
years. Anuhea Place is a subdivision. It's immediately
above Kamehameha Schools, below the highway, below Kula 200,
just south of Kulamalu. So we've had this property for many,
many years, 35 years. We requested water for that time and
we've been talking to the Water Department about this.

In fact, in the '90s -- I just want to speak to my
experience with the -- with the wait list. In the '90s
Director Craddick communicated to us that, well, you
shouldn't get on the list. You're not eligible for the list
because we weren't located near a line. So as a result of
this -- Now, whether this was right or wrong is up to debate,
but as a result of this, we didn't get on the list.

Later we realized, oh, well, you could get on the
list. So now we're No. 499. Others who were talking to the
County about the same time are at the top of the list. So,
clearly, we feel like long-time -- some long-time residents
like ourselves haven't -- you know, the list didn't work very
well for us at all, you know. And we're just little guys,
family that want to be able to use this property. And -- and
so if there's a way to improve the rules so that long-time
residents are given more benefit, that would be fantastic.
And I don't know how that could be done, but that would be
great.

The other issue that -- that I'm a little
concerned about is that it seems like right now if you are a
subdivision on the list, you might be able to take 10, 12,
13, 14 water meters even though you just have sort of one entry on the list. Well, that means, you know, maybe 500 on the list is, you know, 2,000, I don't know, or more. So if there was a way to limit the number of water meters that could be requested to, say, three or four per party, that would be -- that would be a good thing for us, I think.

So --

CHAIR VICTORINO: Okay. Thank you, Mr. Riddle.
MR. RIDDLE: Thanks very much.
CHAIR VICTORINO: No. Thank you very much.
Questions for the testifier? Chairman Mateo?
COUNCILMEMBER MATEO: Chairman, thank you.
Mr. Riddle, good afternoon and thank you for your testimony. You -- you indicated you've applied for a meter some 35 years ago; is that --
MR. RIDDLE: We're on the wait list as of 2000 -- sometime early 2002.
COUNCILMEMBER MATEO: Okay.
MR. RIDDLE: When we contacted the Water Department at that time, they said, you're not eligible, you know. Which, again, I think is -- is something that, you know, is a subject of dispute. You know, whether that was the correct thing to do at the time, I don't know. That was the policy. And so I don't want to complain about the past, we just want to kind of rectify the situation as we move
forward. And it's just been a long time, you know, so --

COUNCILMEMBER MATEO: Yeah. Thank you, Mr. Riddle.

Thank you, Chairman.

CHAIR VICTORINO: Thank you.

Any other members with questions? If not, Mr. Nishiki?

COUNCILMEMBER NISHIKI: Mr. Riddle, when were you
given the number 499? What was the date?

MR. RIDDLE: I believe it was January of 2002.

But we -- we had been talking to the Water Department for
years, many years. And even in '97 we have, you know,
documents that show him saying, well, you know, sorry, you
shouldn't get on the list. So at -- we would have acted
earlier if we could have, and so.

COUNCILMEMBER NISHIKI: Yeah. But you were given
the number 499 in January of 2002?

MR. RIDDLE: Yes. Well, yeah.

COUNCILMEMBER NISHIKI: When -- have you checked
recently what your number is?

MR. RIDDLE: I checked today and it is 499 today.

COUNCILMEMBER NISHIKI: Still?

MR. RIDDLE: Yep. Well, I don't know what it was
initially, but -- I don't know how much we've moved, but now
it's 499.
COUNCILMEMBER NISHIKI: Now, you said that you were given the number 499 in 2002 --
MR. RIDDLE: I don't know.
COUNCILMEMBER NISHIKI: -- January, and today you said your number 499 is still there. Do you know --
MR. RIDDLE: I don't know what the number was initially. What I do know is the number now is 499.
COUNCILMEMBER NISHIKI: Okay. Now, if you're still at 499, then, obviously, since 2002, for those of us that are asking the question today, there have been no water meters issued, then, or does your number still remain at 499, however, that never changes as the meter are given out? Do you know what the process is?
MR. RIDDLE: Ummm.
COUNCILMEMBER NISHIKI: Being that you're concerned, you must --
MR. RIDDLE: Absolutely.
COUNCILMEMBER NISHIKI: -- have done some homework.
MR. RIDDLE: I believe that water meters have been granted to some people. The number, I do not know. Perhaps Jeff could help us on this question, but --
COUNCILMEMBER NISHIKI: I will wait for Jeff, but I just wanted to know from you.
MR. RIDDLE: -- my number is 499. And we'd like to move up more quickly.
COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Thank you, Mr. Nishiki.

Other questions from the Members? If not, I have a question. And, again, Mr. Riddle, I guess the question -- and following the same train of thought that Mr. Nishiki -- do you have any idea when you got on the list in 2002 what the number at that time was? You said you were at 499 in 2002, or you're not sure what the number was when you started?

MR. RIDDLE: I don't know -- I don't know what the number was.

CHAIR VICTORINO: Okay.

MR. RIDDLE: I'm assuming it was higher.

CHAIR VICTORINO: Okay.

MR. RIDDLE: Because we're 499 now and I believe that in the past, you know, six, seven years some water meters have been issued. I can't tell you what the number was exactly.

CHAIR VICTORINO: Okay. I guess what I was trying to allude to or trying to get straight is what number -- Because you had said in 2002 you started with 499 and possibly that is not correct and you might have started with another number and moved up now. Now, maybe not fast enough, but just --
MR. RIDDLE: Yeah, yeah.

CHAIR VICTORINO: I just want clarification --

MR. RIDDLE: Sure.

CHAIR VICTORINO: -- so that all of us are clear here in this body.

MR. RIDDLE: Sure, sure.

CHAIR VICTORINO: Okay.

So any other questions? Yes, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah. Mr. Riddle, you know, I think it's important that for us to ask any questions, you don't know what your number was at in January 2002, do you?

MR. RIDDLE: No, I do not.

COUNCILMEMBER NISHIKI: Okay. But today your number is 499?

MR. RIDDLE: That's correct.

COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Okay. Thank you very much.

Thank you, Mr. Riddle.

MR. RIDDLE: Okay.

CHAIR VICTORINO: We appreciate you being here today.

The next testifier -- Okay. Whooo. Richard, I can't --

MS. FRIAS: Pohle.

CHAIR VICTORINO: Pohle. Oh, that's P-O-H-L-E?

MR. POHLE: Thank you, Mr. Chairman. It rhymes with poly -- with roly, roly-poly.

CHAIR VICTORINO: Roly-poly, okay.

MR. POHLE: I am Richard Pohle, owner of a 3.47-acre parcel zoned Rural half acre. And this is home to Valley View Protea Farm. It's on Upper Crater Road. We are and have been No. 675 on the water meter priority list since November 2003.

I have resubmitted my August 2008 testimony about my subdivision experiences and my proposed solutions. With this background, I would like to comment on the Upcountry meter list.

The Water Meter Issuance Rule, Title 16, Chapter 106 states that as of March 16th, 1993, Upcountry has insufficient water supply to take on additional services, quote, "without detriment to those already served in the regulated area." The resulting list, now authorized for an indefinite period, contains 3 -- 1,312 parcels, the earliest dating from August 1996. Without water infrastructure development, any new meter will be construed to cause a detriment to those already served. Who will say that it doesn't?

With no meters issue -- issued, the small parcel owner cannot pool their funds for infrastructure development.
With no meters issued, no planning can be made because the agencies do not know what regulations will be in place when meters are finally issued. Nothing is certain. So we've had 12 and a half years of stagnation and paralysis for any development by the Upcountry small parcel owner. The list is proof of this. Only the rich, well-drilling, large-parcel developer need apply. The small owner just gives up.

Maui County Council cannot find water by itself, but it can bring certainty to the water infrastructure improvement process and help bring in private investment.

Fire protection requirements are another hindrance. In 1986 a "hold harmless" letter would suffice. Now, the Water Department's stated requirement for rural housing is for 120,000 gallons of County-stored water. This is more than the 48,000 gallons currently required even by Fire Department regulations. It may be an acceptable goal, infrastructure goal for the County, but the various departments want the small parcel owner to build it for the County and all this has to be done before any subdivision is permitted. Subdivisions don't need fire protection and water meters, houses do. Why not delay these onerous requirements to the building permit period?

Some suggestions: Let the subdivisions occur before the meter and fire protection requirements are imposed, then building financing can include infrastructure
development fees.

Let sprinkler systems mitigate fire flow requirements during the permit application.

Issue special meters with curtailed usage during drought to all on the list. My family of four can do quite well with 200 gallons a day, not the presumed 600 gallons a day.

Three more points: Set up an infrastructure improvement fund with fees for meters and permits. Let the owners build their tanks -- own tanks to supplement their usage during drought. And actually spend -- No. 6, actually spend some County funds on Upcountry infrastructure improvements.

Thank you very much.

CHAIR VICTORINO: Thank you.

Questions for the testifier? No Voting Members?

Okay. Let me also, before I recognize Mr. Nishiki, I recognize Member Pontanilla for -- Vice-Chair of the Committee, as present. Thank you, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: Mr. Nishiki, go ahead.

COUNCILMEMBER NISHIKI: Yeah, Richard, you were given the number 675 in November of 2003. Today what is your number?
MR. POHLE: 675.

COUNCILMEMBER NISHIKI: Now, I mean.

MR. POHLE: Now, I have the list, the first, middle and the last page of the list. And the first one is 1996. Now, I did know that I applied in November 1990 -- 2003 and was issued somewhere around 675. Now, I'm assuming no meters have been pulled out from the beginning, from the middle of the list, but the first list is 1990-- the first on the list is 1996, so I -- I believe the list has remained static for that time.

COUNCILMEMBER NISHIKI: Now, let's get this clear.

Did someone tell you, Mr. Pohle, your number is 675?

MR. POHLE: I have a time-stamp receipt from the County saying when it was applied, what date they received the application. By the way, I knew about this beforehand, but I didn't know it was important to get on the list.

Whether that letter gives me 675, I can't really vouch for. I am pretty sure it is in the middle and that it hasn't moved, but I can't absolutely testify under oath that's the case.

COUNCILMEMBER NISHIKI: That's your -- your letter, 675, that number was given to you in November of 2003, that you know for sure?

MR. POHLE: I know applied and was granted it in 2003. Whether it was 675, I don't know. I'd have to look at
the letter. It's possible they may not have given me a letter. Because, after all, it's the date that counts.

COUNCILMEMBER NISHIKI: Well, for me, it's the number that counts. That was given to you?

MR. POHLE: Yeah. I'll go refer to the letter and get back to you.

COUNCILMEMBER NISHIKI: Okay. Thank you.

CHAIR VICTORINO: Thank you, Mr. Nishiki.

Other questions for the testifier? Thank you, Mr. Pohle. And if you would, I would like to -- if you could get back to the Committee on that, that information if that letter specifically gave you a number, or was it just a letter of receipt and then the number came somewhat later. I would be very interested to know that and I could pass it on to the rest of the Members.

MR. POHLE: Thank you.

CHAIR VICTORINO: Thank you, Mr. Pohle.

MR. POHLE: It's Doctor of Physics.

CHAIR VICTORINO: Doctor of Physics. Thank you.

Okay. We have one more testifier, Sherman DePonte. And Sherman is speaking on his behalf. And I think all of us know Sherman well. He's been here many times. He's getting younger looking every time I see him.
MR. DePONTE: Thank you. I appreciate that. I wish.

Anyway, I'm Sherman DePonte. I'm with Akamai Land Surveying. I'm a land surveyor, so I do a lot of the subdivisions that require the water. And through the years I've worked on a lot of people's properties and did a lot of work for them, for their subdivisions, and went through the heartaches that a lot of these people went through, because I do put a lot of heart and soul into what I've done.

In the past, you know, before purchasing the property, my wife and I went, you know, figured in 1992 we're going to buy some land for our kids so we can subdivide it, and, you know, at least we have something for our kids, our children. In 1992 I met with Herb Chang and I also -- and I took my engineer with me, Stacy Otomo. And that's what you see --

I gave a little handout that gave the order of what we did. The significant part of that is before we purchased the properties, when I visit with Herb Chang and kind of went over and made sure that this is what I would have to do to -- before I purchased the property. Because I couldn't afford anything more. I was putting everything I had into this property, and then move forward from there.

So when we went down, as I said, it -- basically what you see there. And I got a typo in there, I think it
is. But I had to go through this one property that had a 2.5-inch galvanized pipe and I had to replace that with a 6-inch line at the time. Now that 6-inch line has changed to 8 inch, but the County agreed that they would put it -- you know, they would foot the bill for that extra 8-inch line on that. And we went through meetings, board meetings, you see all the -- what kind of happened. I put in the dates as best as I can. A lot of them is right on because I have the letters that there.

Letter requesting the three meters, I found out -- You know, doing this thing over the years, I have just figured, okay, you have to turn in the subdivision and get this thing going. Dave Craddick made me aware, you have to put in a letter, you have to get your -- get on the list, get that meter, get on the meter list. And I didn't get a number or anything on the list, they -- I just sent in a letter, they confirmed they got my letter and there was no -- At the time, they were still floating back and forth on the list, on what it was. And that was 1999 that you're seeing there.

Came right down, we had the meetings. We even had an agreement with the County. What I am asking the County and the Council is to have the Board stand by their agreements. I mean, even if it was verbal, you know. I have nothing written. I have tried to do the written. We have asked at one of our Council meetings -- you see way on the
bottom, June 17th -- actually, was June -- before June 17th meeting that we had here with the Council, I requested specifically from Mr. Jeffrey Eng right here, our Water Director, to respond to this. And you, the Council, asked him to respond back. I came back to over here and basically with no letter, no nothing saying what my requirements would be, what the -- what they will stand behind, what will happen. The letter is nice and clear in the back there.

My concern, my -- on the new rules and -- on the rules I say, if we the public will have to follow the rules, I think -- and a request by the Council should be followed by the Director. If not, I think it's time we start taking some action here. And we need some good action. And your -- you, the Council, was basically voted in for -- to give us some action.

And I wear this shirt as a -- it's significant to me because it's the Kula Holy Ghost Church. Over here, established 1894. One of the things when they -- when they started doing the feast was to pray for water. That's over 100 years praying that we -- that we get somebody to come in and can develop something to give us water. I think Kula has been overlooked for too long. It's time that somebody step up and say, let's do it. Let's get this job done. Let's get this cleaned up. What is it going to cost? Let's get some numbers on the table, so, you know, we can appropriate the
money or whatever it is.

Kula as a community came together to put together that first line that went in. You know, it was before it was a State that they got that line in and got it going. This, this subdivision that I'm in was in the '30s and the '40s when that subdivision went in and it's still 'til today not brought up to standards.

We have letters in here, if you look at, demanding for fire protection from the County that we're supposed to get, and we don't get it. We have -- we have fire hydrants in places that it's a full fire hydrant, and yet it's not.

Ms. Willenbrink: Three minutes.

Mr. DePonte: I'm sorry.

Chair Victorino: Yeah. Thank you.

Questions for the testifier? First, any Voting Member have a question? If not -- Oh, go ahead, Mr. Pontanilla, and then Mr. Nishiki. Go ahead, Mr. Pontanilla.

Vice-Chair Pontanilla: Thank you.

Thank you, Mr. DePonte, for being here. Before you was cut off, the issue that you was talking, am I to assume it was the fire hydrant?

Mr. DePonte: Yes.

Vice-Chair Pontanilla: Okay. Thank you.

Mr. DePonte: Two full fire hydrants that's on our road that is on a 6-inch line coming from a 2.5-inch line and
from another 6-inch line. Inadequate fire flow, but it's still full fire hydrant. And you were at the Board meeting that I called it shibai and I got in trouble for that. But it's full of it. It's not full of water, of course.

VICE-CHAIR PONTANILLA: Okay. Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla.

Mr. Nishiki?

COUNCILMEMBER NISHIKI: Hi, Sherman.

I've got a question. On June the 17th, 2008 you stated to Mr. Eng that you are currently number 76 on the "Upcountry Water Service - Priority List for Building Permit Application, Subdivisions & Water Service Requests." That means that this list is for a water meter?

MR. DePONTE: That's correct.

COUNCILMEMBER NISHIKI: Okay. On the 17th of June when you represented you were No. 76 -- do you remember getting a number when you first applied for a water meter and what was that number and at what date was that?

MR. DePONTE: As far as the number, what I -- they had lists, one list after another when they were putting it together. Dave Craddick was trying to combine -- get the list together. There was one list here, one list there, I think. And what happened is I came up somewhere 300 something, if I'm not mistaken. And -- I think it was there. I'm not sure. I would have to look back at my papers to see where it
was when we just pulled one of the lists, but it was like juggling. They didn't have a -- the list. They were working on the list. And right now that's why you -- it might be a little juggling thing back and forth on it.

COUNCILMEMBER NISHIKI: When you were notified that you were 76 on this list?

MR. DePONTE: I wasn't notified. What happened is I went on the -- I think it was the website or I got a list from one of our friends, and I looked at it and there it is, you know.

COUNCILMEMBER NISHIKI: On June 17th you looked at it and you saw your name was at 76?

MR. DePONTE: Oh, no, no. That was before. We -- You know, June -- it was around June, early part of June before we came to this first Council meeting. The meeting was like June 15, 16, somewhere's in there, that Monday in there. And right before that's when I found out where I was at, really.

COUNCILMEMBER NISHIKI: So prior to finding out you were 76, did you ever find out whether you were another number?

MR. DePONTE: Yeah. I stated that I was like 300 something, 200, 300 something up in there. I don't recall.

COUNCILMEMBER NISHIKI: Okay. So now -- now let me get something clear. When you were 300 something and you asked about this list and then you went back and you found out you were 76 on this list, was it the same list as far as your
understanding? You had mentioned that there were lists that
David Craddick said and you weren't sure what these specific
lists were.

MR. DePONTE: Yeah. My -- the concern on the
list, finding out where I was on the list, really was because
when I come up to the top of that list, I have one year --
one year and they might give me another year to do all of the
infrastructure in the area. And my concern, why I wanted to
find out now specifically and, you know, coming down to the
deck here, is basically because I want to know how long I got
to come up with X amount of dollars and then how -- what do I
have to do to get that X -- you know, where I'm at on that
list. If I'm -- if you guys are going to release -- you know,
I'm watching the paper, they're going to release 500 meters,
50 meters, whatever.

COUNCILMEMBER NISHIKI: So you're worried that if
you hit No. 1 and you don't cover all your bases, they might
knock you off the list?

MR. DePONTE: Yeah. That's correct.

COUNCILMEMBER NISHIKI: Okay.

MR. DePONTE: And I was -- I was -- the concern I
have on that -- being up on No. 1 is that -- and why I say
it's a double standard here and why we should have rules is
because I am going to have one year or maybe two years to
produce -- redo this waterline that is inadequate.
And what will happen is the County had from when we -- way back, you know, 20, 30, 40 years back to do this or at least put it on the CIP and get it -- get it going. And it's not doing it. And we're -- the County is pounding -- pumping water up through this line that is inadequate from a --

Imagine this: 6-inch line going to a 2.5-inch galvanized, going back to a 6-inch line and going up to the water tank. And this all happens in about 2,500 feet, a half a mile. And -- and the County is pouring money, dollars, big dollars, into pumping this water up into that. So now they want me as a -- as a single landowner to pay for this infrastructure to fix that line so that we have fire flow and put another tank because the tank up there is now a, what, 50,000-gallon tank.

I had that on one of our meetings, was a 50,000-gallon tank. Now they want 120, so I got to do like 70, 70,000-gallon tank, which to the County standards will be 280,000, I think the guy quoted me. Not to mention the pipelines, which is going to cost me over one -- the end result was 1.2 million from something that used to be $60,000 to go through this guy's land and put in a line.

COUNCILMEMBER NISHIKI: So -- So you're saying that for you to qualify for three water meters, you are going to have to put in how much improvements.
MR. DePONTE: Right now --

COUNCILMEMBER NISHIKI: Dollar amount.

MR. DePONTE: Yeah. That's why the Council wanted to make sure this is what the Water Department is going to want. And that's why Michelle had us, you know, put together a letter -- put me to -- a letter asking Mr. Eng what is it that you're going to require for Mr. DePonte, which also is going to help Mr. Pohle -- Dr. Pohle do his -- you know, do his subdivision or even provide adequate fire flow.

And that's why we put together this letter to find out exactly what. Because they had two -- two ideas. One was cutting through this property, which is through the property you see on here would be parcel 31, what's supposed to -- There's a waterline -- the 2.5-inch waterline is passing through this private -- private land, which -- which the County has a blanket easement over. And what happened is I tried to get that 15-foot easement. There's a long story on that. In any case, that was what we were supposed to fix.

Now, they want me to go around -- right around the switchback, which the engineer called like a suicide thing because there's -- when are you going to dig it? You can't dig it at night. You dig it during the day, you going to stop traffic like crazy because this is going around a switchback in blue stone, you know, blue rock.

So it's kind of like where -- what are you going
to require me? We want to know -- After I had the already engineer study it. I already had the engineers do the work. I also did the topographic work of the property to cut through the land. I put my own money into this thing so that I know --

You know, they told me, here, this is where you're going. All through the years, here, this is where you're going. All of a sudden, you know, when we're coming up for -- for the meter, now they're going, Oh. Wait a minute. We want you to go -- we don't want to go in the backyards. We want you to go around the corner, go around this switchback, add on a lot of more.

And I'm going, that's not going to work. That's going to be tough. So I had to hire an engineer to tell them that that's not going to -- that's -- you can go it, but it's going to be really tough and it's going to be a lot of money. You cut through here, you get fire protection for all these people, then add a line below. And they didn't -- and they --

COUNCILMEMBER NISHIKI: Let me ask you this -- Let me ask you this: In dealing with the County, were you dealing with a different person as you were going and listening to what the County had asked you to do?

MR. DePONTE: That's correct. I started with Herb Chang.
COUNCILMEMBER NISHIKI: Okay.

MR. DePONTE: And then David -- with David Craddick, also --

COUNCILMEMBER NISHIKI: Okay.

MR. DePONTE: -- after that. And then it came right up -- came up to Mr. Tengan, George Tengan.

COUNCILMEMBER NISHIKI: Okay.

MR. DePONTE: And with Mr. Tengan, we already had to come in with the -- with my lawyer, because they were already trying to change things on it -- and then -- and the engineer to prove that this is the way to go.

COUNCILMEMBER NISHIKI: Okay.

MR. DePONTE: And then Mr. Eng right now, which I haven't -- I haven't talked to him yet.

COUNCILMEMBER NISHIKI: Right.

MR. DePONTE: I've, you know --

COUNCILMEMBER NISHIKI: I see the letter.

MR. DePONTE: Yeah. But we talked with Herb Chang, which is the same guy, again, that I met way before. I met with him shortly before these meetings somewhere's in, what you call that, May -- maybe May -- April, May of this past year, June -- I mean, 2008.

COUNCILMEMBER NISHIKI: Okay. Thank you.

MR. DePONTE: Yeah.

CHAIR VICTORINO: Okay. Thank you, Mr. Nishiki.
Further questions for the testifier? Seeing none, thank you, Mr. DePonte.

MR. DePONTE: And I'll try to stay young.

CHAIR VICTORINO: Yes, sir.

That was the final testifier that has signed up.

I will ask one more time: Anyone in the galley would like to give public testimony on this item? Seeing none, all -- I would ask the Committee if it's -- with no objections, I can close public testimony?

COUNCILMEMBER BAISA: No objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you, Committee.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Okay. At this time I would like -- First of all, we'll take it by sections, so we're going to take section -- or Chapter 1, which is the ordinance for the rules, if I'm correct, Kim. And I would like to ask the Director first to give his overview, and then Corp. Counsel, and then I would open it up for questions from the Committee Members.

So, Mr. Eng, would you like to start us off?
MR. ENG: Yeah. Thank you, Mr. Chair.

The plan for this meeting is fairly simple and direct, and that is to look at the existing definitions, and this has been culled from the various sections of the existing rules and regulations, and primarily this was -- the work was done by Kim Willenbrink and reviewed by Corporation Counsel.

So, apparently, they want as many of the definitions that currently exist throughout our rules and regs in one place. There are those later chapters of the -- of the Title 14 that will have certain specific definitions pertinent only to those particular chapters. So that's basically what it is.

I've met with my staff, my engineers and Deputy Director, and we spent considerable amount of time looking at these definitions, making a few changes, mostly housekeeping, or eliminating things that we just don't utilize at all. And so we're prepared to comment on this. Thank you.

CHAIR VICTORINO: Thank you, Director Eng.

And at this time I was informed that I would like to take a two-minute recess subject to the call of the Chair to lower the screen because Mr. Kushi actually has a visual. Right?

MS. WILLENBREINK: No. We're going to put the --
CHAIR VICTORINO: Oh, okay. Excuse me. We have
the projector. So we're going to take a two-minute break so
we can get the projector ready. This meeting is in recess
subject to the call of the Chair. (Gavel.)

RECESS: 2:19 p.m.

RECONVENE: 2:22 p.m.

CHAIR VICTORINO: (Gavel.) I'd like to reconvene
the Water Resources Committee of February 12th, 2009.

At this time I would like to call upon Corporation
Counsel Ed Kushi to give us -- and you will find it here on
the wall, on the projector -- the changes that we're going to
be discussing. So, ladies and gentlemen, here we go.

Mr. Kushi?

MR. KUSHI: Yes, Mr. Chairman. Had I known, I
would bring my reading -- my distance glasses, so I can't see
anything that's up there.

CHAIR VICTORINO: Okay.

MR. KUSHI: But, but I can copy it because I'll
just look at what I have here.

But this is the attachment to the February 5th,
'09 transmittal from my office to your office. And what
we're dealing first with is amendments to Chapter 14.01.
Now, you already have a Chapter 14.01 in the Code, and it's
made up of, basically -- one, two, three, four, five, six --
seven sections.
And just let me kind of summarize it. One is entitled, the title of the -- the -- it's just called "Title." The second one is the "Purpose." The third one is the "Administration." The fourth section is "Definitions."

Okay. The next section is the "Hamakuapoko Wells." The next section is entitled "Rules." And the last section is "Native Hawaiian Water Rights." So you already have codified in your County Code this chapter.

What this bill does was -- or tries to do is to, one, amend the Administration section by -- as noted to allow the Director to promulgate rules and, two, basically, amend and include new definitions. Like in any code type of a codification or code ordinances, the first chapter usually -- The first chapter you want to have all the pertinent definitions that encompasses the entire scope of what you're trying to describe.

So this bill before you amends -- has some language that's amending existing definitions and some brand-new definitions that would be found in your current -- the current water rules, which would be subsequently codified, as well as your -- for example, this body passed the Show Me the Water Bill about -- several years ago. The definition of "long-term, reliable source of water" is in this definition in this chapter. So that was the intent of this bill.
Lastly, I believe the last section of your proposed bill deletes the section on rules because now the new amended definition of administration incorporates that. So, in essence, it's a housecleaning matter, but, yet, we want to try to include all the pertinent definitions that are in the current rules as well as the current ordinances.

If you would like to, you know, discuss any pertinent or any particular definition, I'm sure we can respond to it.

CHAIR VICTORINO: Thank you, Corporation Counsel Kushi.

First of all, I'll ask the Members if you have any specific questions on any of the definitions as laid out by the Corporation Counsel. Again, as he stated, this is housekeeping. We're trying to get everything in line so that we have rules that are applicable. So if you have any specific question on a definition or something that is part of 14.01, please, at this time.

Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I'm looking at the definitions and on page 3 --

CHAIR VICTORINO: Page 3.

COUNCILMEMBER BAISA: -- there is a definition of "potable water."
CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: It says, "means water that has been certified by the Department of Health as suitable for cooking or drinking purposes." The reason I ask this question is we talk about potable water and it's been certified by the Department of Health, but then we are questioned later on and there's great big hoopla about whether water is potable or not. So is the Department of Health the final authority, or is there somebody else?

CHAIR VICTORINO: Corporation Counsel Kushi, can you answer that?

MR. KUSHI: Yes. Member Baisa, I would defer to Director Eng.

CHAIR VICTORINO: Oh, Director Eng.

MR. ENG: Thank you, Mr. Chair.

In the minds of the Department of Water Supply, the final authority in regards to drinking water quality or potable water quality is, indeed, the State of Hawaii Department of Health. Their water quality standards are the most stringent standards that we comply with. As some of you might know, they are even more stringent than the EPA itself. And so those are the standards that we comply with and we believe in.

Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng.
And I also wanted to make a note that that
definition was added during Show Me the Water Bill. We made
sure that the definition of potable water was added, so --
COUNCILMEMBER BAISA: That --
CHAIR VICTORINO: Go ahead.
COUNCILMEMBER BAISA: Could I take it one step further?
CHAIR VICTORINO: Go ahead.
COUNCILMEMBER BAISA: The reason I'm asking is I'm
assuming that until the Council took action to close or not
allow us to use the Hpoko wells, that that water was deemed
to be potable. So who decided it wasn't potable? I mean,
how did that happen?
CHAIR VICTORINO: Well, Ms. Baisa, I guess I'm not
going to go out there right now, because I think that would
be a different subject matter at this time. And I do
apologize. I don't want to cut anybody off, but I'm just
trying to stick to the definitions.
COUNCILMEMBER BAISA: And this -- I feel this is
relevant because if the Department of Health is the final
authority, then as long as it meets the Water, Department of
Health standard, then we should be able to use it. And I --
you know, I don't need to belabor it, but that's what the red
flag is for me.
CHAIR VICTORINO: Okay. Thank you. And maybe at
some point we can really delve into that matter. I think you
bring a very valid point to the table.

VICE-CHAIR PONTANILLA: Chairman.

CHAIR VICTORINO: Yes. Before -- before I recognize you, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Sure.

CHAIR VICTORINO: Mr. Eng, I know you were not here at the time when that issue was taken up, you were not the Director, but do you have any comments to address that to Ms. Baisa?

MR. ENG: Certainly. Thank you, Mr. Chairman.

Even though I wasn't with the County at the time the ordinance was passed, I was following the ordinance as it was being developed quite closely because the early iteration of the ordinance would have affected a lot of wells, if not all the wells throughout the County of Maui, including Lanai, Molokai, and also the private water systems, one in which I was operating out in Kaanapali that had experienced the same type of contaminants, that were treating the contaminants, removing the contaminants from the water with the same type of treatment process as at the Hpoko Wells.

And the water did meet all water quality requirements, both the EPA and Department of Health. So your question regarding: Is the water potable now? Based on the water quality tests that I have reviewed for the Hpoko Wells and those -- that is the water after being treated by the
granular activated carbon treatment, it would be defined by Department of Health as potable.

Thank you.

CHAIR VICTORINO: Thank you.

At least -- does that clear your mind now?

COUNCILMEMBER BAISA: Yeah. Thank you, Chair. Now you understand why I raised the issue, because if that's the definition, then that's the definition.

CHAIR VICTORINO: Well, thank you.

I recognize Member Pontanilla because I think he was a part of that --

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: -- discussion.

VICE-CHAIR PONTANILLA: Yeah. And, you know, like Member Baisa had said, we spent many hours, you know, discussing this thing in regards to, you know, certification, what is potable or not. And based on this, the Department of Health is the one that certify potable water.

And I agree with our Director here in that's what we're following right now, that the Department of Health certify all potable water. And, you know, we've spent many hours, you know, discussing this thing in the last couple of years, so I'm glad it's clarified.

Thank you.

CHAIR VICTORINO: Thank you, Mr. Pontanilla.
And, again, it is my hope in the future to bring the Hamakuapoko issue to the table. I think we've discussed it and it has been brought to my attention by many people in the public, and I think it's time to -- for the sake of transparency, like we've been told, and open government, that we bring it back and let the people and us discuss the matter.

 Okay. Thank you.

 Further questions on other definitions?

 COUNCILMEMBER MATEO: Chairman.

 CHAIR VICTORINO: Council Chair Mateo?

 COUNCILMEMBER MATEO: Thank you, Chairman.

 Mr. Kushi, on one of the items that is a deletion, which is the last page under "Rules," the deleted part of it recognizes the Director -- it says that the Director may adopt and amend, et cetera. The new language that we're looking at cites the similar and recognizes that the Director may now -- he may delegate personnel within the Department. Personnel is being referenced as whom? So if it's not going to be the Director to actually be able to enforce and repeal, et cetera, the administrate -- and administrate the rules as such, then who else listed as personnel will have that same right?

 MR. KUSHI: Mr. Chair, Member Mateo.

 CHAIR VICTORINO: Yes. Go ahead, Mr. Kushi.
MR. KUSHI: It seems like this question came up before a couple days ago. Again, under the Administration revisions, we added in a new sentence which just plainly refers to the Director may promulgate rules. Your reference is to the sentence above, that all powers granted to or duties imposed upon the Director may be delegated by the Director to -- to personnel within the Department. This assumes deputy directors, division chiefs in reviewing applications. It's not really expected that the Director review everything, so --

COUNCILMEMBER MATEO: Yeah.

MR. KUSHI: You know, again -- again, when push comes to shove, it is the Director's decision. It is the Director's call of his subordinates.

COUNCILMEMBER MATEO: Okay. So it wouldn't be necessary at this point, then, to actually recognize if it's not the Director, it is the Deputy Director or Division Chief so the open-ended term personnel is a lot more clarified?

MR. KUSHI: It's -- gives the Administration easier flexibility, personnel within the Department.

COUNCILMEMBER MATEO: Okay. Okay. Thank you.

Thank you, Chair.

CHAIR VICTORINO: Thank you, Council Chair Mateo.

Other questions for the Department or Mr. Kushi?

Mr. Eng, you had something you wanted to add?
MR. ENG: Yes, Mr. Chairman.

We went over -- my staff, my engineers, my Deputy Director, we went over some of the definitions, as I mentioned earlier, to, one, either do some housekeeping or recommend some deletions of maybe some phrases, some portions of the definitions that we just do not even utilize. And in order for my staff to administer these rules in their day-to-day activities, I would like to recommend some revisions to, I'd say, about four or five of the various words, if I may.

CHAIR VICTORINO: Okay. Why don't we just go ahead? Because, you know, I could wait to make a motion and then amend it at that time. What would be the pleasure of the body? Make a motion, then amend it at that time; or go ahead and do the housekeeping now and then it will be clearly defined when we do it? I leave it to the body's decision.

COUNCILMEMBER BAISA: Let's go.

CHAIR VICTORINO: Just go ahead?

COUNCILMEMBER MOLINA: No, go ahead.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Just go all together.

CHAIR VICTORINO: If that's okay with you guys, okay.

Go ahead, Mr. Eng, if you would, make your suggestions for changes. And that way we will -- if you
would, Kim -- put it on the board.

MR. ENG: Okay. There are not too many of them, so I'll proceed.

On page 2, the term "Dedicated water system improvements," we would like the definition to remain the same, except for the last portion that begins with the word "for," "for which credits may be applied to all or a portion of the water system development fee."

CHAIR VICTORINO: Okay.

MR. ENG: Again, this is just to clarify to the applicants that come in to the Department and work with the engineers.

CHAIR VICTORINO: Could you repeat that again, please, Mr. Eng?

Okay. Are you ready, Kim?

VICE-CHAIR PONTANILLA: Read the whole thing.

MS. WILLENBRINK: Yeah.

MR. ENG: Okay. It is -- Hang on.

MR. ENG: -- begins with the word "for," "which credits may be applied to all or a portion of the water system development fee." Okay?

CHAIR VICTORINO: You want that scratched?

MR. ENG: Yes, please.

CHAIR VICTORINO: Okay. So, then, if I read that correctly, "'Dedicated water system improvements' means water
system improvements that are privately designed, constructed, and dedicated to the department for operations."

MR. ENG: "For operation," that's correct.

CHAIR VICTORINO: And the rest is deleted?

MR. ENG: Right. If there are any credits applicable to a dedication, that will be done by an agreement. It's just that if we leave it in the definition, applicants might assume that they're going to get a credit automatically.

CHAIR VICTORINO: Are we clear with that, Members?

COUNCILMEMBER BAISA: Yes.

VICE-CHAIR PONTANILLA: Yeah.

CHAIR VICTORINO: Okay. All right. Proceed.

MR. ENG: The second word, and that's on the very bottom of page 2, the word "plan." I know in this chapter it reads, "means the water use and development plan." I don't really know if this needs to be modified, but there are other references to "plan" in our various rules, such as construction plans. But I think for the time being, let's just leave it as it is.

CHAIR VICTORINO: Okay.

MR. ENG: It must be used somewhere in the rules specifically to refer to Water Use and Development Plan, so we'll keep that as it is.

CHAIR VICTORINO: Okay.
MR. ENG: On page 3 --
VICE-CHAIR PONTANILLA: Jeff, question.
CHAIR VICTORINO: Okay. Question, Mr. Pontanilla.
VICE-CHAIR PONTANILLA: "Plan" or "plans"?
MR. ENG: I believe in our existing rules there's
a term "construction plans," because usually that's how
it's -- the phrase is used.
CHAIR VICTORINO: Okay.
MR. ENG: Not "construction plan," but "use of
construction plans."
VICE-CHAIR PONTANILLA: "Plan" means the Water Use
and Development Plan?
MR. ENG: Yeah. I guess that is -- We'll leave it
as is for the time being.
VICE-CHAIR PONTANILLA: Not specifying
this districts?
MR. ENG: I beg your pardon?
VICE-CHAIR PONTANILLA: Not specifying (inaudible).
CHAIR VICTORINO: Mr. Pontanilla, could you speak
into the mike, please?
VICE-CHAIR PONTANILLA: I'm sorry. Not specifying
like Upcountry, Central Maui, West Maui?
MR. ENG: No. Again, I hadn't gone through the
whole rules recently to see how this term "plan" is used --
VICE-CHAIR PONTANILLA: Okay.
MR. ENG: -- but I would assume there was a reference specifically to Water Use and Development Plan --

VICE-CHAIR PONTANILLA: Yeah.

MR. ENG: -- that they refer to. So we can leave as it is --

VICE-CHAIR PONTANILLA: Thank you.

MR. ENG: -- for the time being.

Then on page 3, the term "Service lateral," and this is just a little bit of housekeeping and clarification, "means the connection to a pipeline." We would like to change that word from "pipeline" to "water main."

CHAIR VICTORINO: "Pipeline."

MS. WILLENBRINK: "A water main"?

MR. ENG: Just to -- Yes, to "a water main."

CHAIR VICTORINO: "Water main."

MR. ENG: And it continues to read, "pipes, fittings, valves, and other appurtenances." And then the next four words I would like to keep in rather than delete. So from "and other appurtenances from the water main," I would like to keep that in the definition just for clarification.

VICE-CHAIR PONTANILLA: Just those four words?

CHAIR VICTORINO: Just those four words, right, "from the water main"?

MR. ENG: "From the water main."
CHAIR VICTORINO: Yeah.

MR. ENG: The rest is deleted as indicated.

CHAIR VICTORINO: Uh-huh.

MR. ENG: And then it'll further read, "up to and including the consumer shutoff valve and water meter box, but not including the water meter."

CHAIR VICTORINO: Okay. Are we clear with that?

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay.

Okay. Mr. Eng, if you'll proceed.

MR. ENG: Thank you. Yes.

The next is "Storage tank," and we would just like to simplify that. So we will delete -- well, we'll keep "means a reservoir to store water."

CHAIR VICTORINO: Okay.

MR. ENG: We will delete "for peak hour flow, and any easements required for the improvements."

COUNCILMEMBER MOLINA: Chair.

CHAIR VICTORINO: And what is -- and if I may ask, what is the rationale for the deletion?

MR. ENG: Well, many times when we refer to storage tank, there are other criteria --

CHAIR VICTORINO: Okay.

MR. ENG: -- particularly in our water system standards. It's based on things like maximum -- maximum...
daily demand, various operational situations. And, you know, peak flow is one of the situations, but, you know, in essence, when -- I just want to -- we want to keep a real simple definition for the applicants to understand.

CHAIR VICTORINO: Okay.

MR. ENG: And the whole essence is storage tank means a reservoir to store water.

CHAIR VICTORINO: Okay. Any questions or -- everyone clear with that last change? Okay. Proceed.

MR. ENG: Okay. The next one is "Subdivision." And we kind of toiled with this, but I think we can mostly live with this type of definition. There is something I may need to confer with Corporation Counsel, and that is the sentence, "Easements for roadway or access purposes shall be construed as subdivided land." And that is taken from the Title 18 definition of "Subdivision." Our -- our staff actually doesn't utilize that, that phrase, but I think just for consistency we can keep that phrase in.

CHAIR VICTORINO: Are we clear with that, ladies and gentlemen? Okay.

MR. ENG: But the one area we would like to make
a -- a change is in the sentence that begins with "Planned unit developments," so that's a couple of sentences beyond.

CHAIR VICTORINO: Try, try -- could you repeat that again, the word?

MR. ENG: Yes. In fact, it is one, two, three, four, five, six -- that's near the end of the eighth line, "Planned unit developments and condominium projects."

CHAIR VICTORINO: Oh, okay. Okay. Does everyone have that?

VICE-CHAIR PONTANILLA: Yeah.

CHAIR VICTORINO: Okay.

MR. ENG: We would like to insert the word -- before the word "Planned," the word "all." So "All planned unit developments and condominium projects shall." Then we'd like to delete the word "also."

CHAIR VICTORINO: Okay.

MR. ENG: We'll keep the word "be."

CHAIR VICTORINO: Okay.

MS. WILLENBRINK: Delete "also"?

CHAIR VICTORINO: Delete also, yeah.

MR. ENG: Yes.

CHAIR VICTORINO: Okay.

MR. ENG: Keep the word "be." Then delete the next four words "included in this definition."

CHAIR VICTORINO: Okay.
MR. ENG: And replace those four words with "considered subdivisions."

CHAIR VICTORINO: "Considered subdivisions."

MR. ENG: Therefore, the sentence would read, "All planned unit developments and condominium projects shall be considered subdivisions."

CHAIR VICTORINO: Okay. And your rationale for that, if I may?

MR. ENG: Yes. You know, currently, you know, the whole condominium process does bypass a lot of reviews, such as adequate water availability to a project. And that has always been a concern for the Department over the many years. And so this just basically requires the PUD's and condominium projects to be reviewed for adequate water service. So even though they have some methods to bypass some of the subdivision requirements, we always have believed that when it came to adequate water service, you know, they should be in compliance with the subdivisions, so -- and then right now it's not a loophole in our Department, so that's why we request that change.

CHAIR VICTORINO: Any questions, or are we clear with that?

COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: Okay. Proceed.

MR. ENG: Okay. Then on page 4 there is the word iWADO COURT REPORTERS (808) 244-9300
"Unit," "means one lot, if the actual lot size is less than twice the minimum lot size." Our Department doesn't even utilize that term, so, therefore, we just felt it might as well be deleted from our -- from our chapter definitions.

CHAIR VICTORINO: Are we clear with that, everyone? Let me ask you this question, Mr. Kushi. And, again, we are trying to be consistent with all of our various ordinances. By deleting that, would that put us in some kind of quandary in some other area of "unit" and its meaning in other areas, such as -- I don't know.

MR. KUSHI: Mr. Chair, as far as I know of, I don't think by eliminating this definition from the Water Department would -- would get -- would be inconsistent with the -- like the Planning Department.

CHAIR VICTORINO: Right.

MR. KUSHI: If you read the definition of what -- what "unit" means, it kind of senses -- describes a zoning or -- a zoning minimum lot size requirement, and that's more properly determined by the Planning Department.

CHAIR VICTORINO: Okay.

MR. KUSHI: For Water Department purposes, they just look at the -- how many meters a lot would serve.

CHAIR VICTORINO: Okay. Any questions for that or
are we clear?

COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: Seeing none, okay, proceed.

MR. ENG: And, Mr. Chairman, that's all I have in revisions.

CHAIR VICTORINO: Okay. What I would like to do at this time, if I could -- Kim, would it be possible, these changes, could we get a printed copy to all our Members? And I'll take a recess, give you ten minutes. Would that be enough? So -- because we're at the point where we could take a ten-minute recess. And that way everybody has everything in front of them and there would be no confusion. Is that all right with the Members?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections. Okay. This Committee stands in recess. We will be at -- well, I'll go 15, I going be back at 3 o'clock. Thank you. (Gavel.)

RECESS: 2:45 p.m.

RECONVENE: 3:05 p.m.

CHAIR VICTORINO: (Gavel.) The Water Resources Committee meeting of February 12, 2009 is reconvened.

At this time I would like to turn it over to our Legislative Analyst Kim Willenbrink. And if you would show us the completed form. And I think all Members have a clean copy of all the changes that we have just gone over.
Kim, anything else you want to add to that?

MS. WILLENBRINK: No. This -- we made sure all
the --

CHAIR VICTORINO: Kim, can you -- can you speak
into the mike?

MS. WILLENBRINK: We made sure all the periods and
everything were in the correct order, so this should be ready
to vote on if --

CHAIR VICTORINO: Okay.

MS. WILLENBRINK: -- everyone is in agreement.

CHAIR VICTORINO: Thank you.

Any other questions or comments from -- first, the
Department, you guys have anything else you want to comment
on, Mr. Eng?

MR. ENG: No, I don't, but I just took a quick
scan of this and it looks like all the revisions have been
changed.

CHAIR VICTORINO: Thank you.

Members, any questions?

COUNCILMEMBER BAISA: Recommendation, Chair.

CHAIR VICTORINO: Okay. Thank you. Thank you,
Ms. Baisa.

Okay. My -- hang on a second. I wasn't
totally -- totally ready for that. I apologize. Where did I
put -- I've moved my papers around so many -- oh, here.
Excuse me. Okay.

Okay. The Chair will entertain a motion on the first reading of the draft bill entitled "An Ordinance to -- Amending Chapter 14.04, Maui County Code, Relating to the Matter of Water" --

VICE-CHAIR PONTANILLA: So moved.
CHAIR VICTORINO: -- as revised, as revised.
COUNCILMEMBER MOLINA: Second.
Okay. Let me -- let me do that all over again because our -- I want to get it right.
The Chair will entertain a motion to pass on first reading a draft bill entitled An Ordinance For -- "A Bill for an Ordinance Amending Chapter 14.01, Maui County Code, Relating to Water", as revised.
VICE-CHAIR PONTANILLA: So moved.
COUNCILMEMBER MOLINA: Second.
CHAIR VICTORINO: It's been moved by Vice-Chair Pontanilla, seconded by Member Molina.
Any discussion? Seeing none, all those in favor say aye.
COUNCIL MEMBERS: Aye.
CHAIR VICTORINO: All those opposed? Seeing none, let the record show five ayes and two excused, Members Kaho'ohalahala and Medeiros.

VOTE: AYES: Councilmembers Baisa, Mateo, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: Councilmembers Kaho'ohalahala and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED.

ACTION: Recommending FIRST READING of proposed bill.

CHAIR VICTORINO: Okay. Moving on, ladies and gentlemen, let us now go to the -- let us go to Chapter 14.13, and that is the "Water Meter Issuance Provisions For the Upcountry Water System." Okay. I think we have covered that. Is there any comments from the Department on that particular issue, Mr. Eng?

MR. ENG: Mr. Chair, no, the Department has no comments nor revisions. Thank you.

CHAIR VICTORINO: Mr. Kushi, anything that you would like to add or comment on?

MR. KUSHI: Mr. Chair, no. It's just a codification of the existing rule, the Upcountry Water Meter
Rule. And we did take out -- if you want me to show some
sections, we did take out some provisions that are really
moot at this point because the rule itself stated that such
provisions expired within X number of days of 2002.

CHAIR VICTORINO: Okay. Members, questions? Yes,
Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair.
On the "Water service requests," which is the
second -- the back of that first page under item C., there's a
statement that says, "Upon the expiration" -- I don't know if
we've found it yet up there. It's 14.13.040(C) down on the
bottom.

MS. WILLENBINK: .040(C).

COUNCILMEMBER BAISA: Am I in the right place? I
think I'm one ahead.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Wait, wait, wait.
CHAIR VICTORINO: Surely.
COUNCILMEMBER BAISA: Help.

Let me see if I can find it.

Go ahead, Chair, I'll look for it.

CHAIR VICTORINO: Okay. As we -- any other
Members have any questions in regards to the Upcountry --
COUNCILMEMBER MOLINA: Yeah. Chair.

CHAIR VICTORINO: -- or I should say the "Water
Meter Issuance Provisions For The Upcountry Water System."

Mr. Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Chair.

Just under 14.13.050(C) -- or, excuse me, B.


COUNCILMEMBER MOLINA: Just if Mr. Kushi could just elaborate, I think -- I know you mentioned some of the changes were due to it being moot, but just for the record, just for my own information, B. where it says, "The applicant shall be given thirty days from the date the certified mail was received to complete and deliver to the department their application or to reserve an allocation of water service pursuant to," and then we see a -- I guess something that's been, I guess, bracketed out, and then, "section to be provided later of this article." If I could just get some rationale for that.

CHAIR VICTORINO: Some clarification?

COUNCILMEMBER MOLINA: Clarification, yes, from Mr. Kushi.

CHAIR VICTORINO: Okay. Mr. Kushi, are you prepared to clarify that matter?

MR. KUSHI: Yes. Yes, Mr. Chairman.

Member Molina, you must be reading from the draft. Are you reading from the draft?
COUNCILMEMBER MOLINA: This is, I guess, attached to the February 5th -- there's a February 5th, 2009 letter and after the definitions --

Okay. I might have been --

COUNCILMEMBER BAISA: We have the same problem.

COUNCILMEMBER MOLINA: Okay. I guess I must have been --

CHAIR VICTORINO: Okay.

COUNCILMEMBER MOLINA: -- contagious, then.

CHAIR VICTORINO: Okay. There is a Draft Ordinance, Bill No. ____ 2009 that was separate and it was in the -- way in the back.

COUNCILMEMBER BAISA: Chair, I can explain the confusion, there --

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: There was a bill sent to Corp. Counsel and there is a bill that came back from Corp. Counsel that is significantly different.

CHAIR VICTORINO: I see.

COUNCILMEMBER BAISA: We're looking at what was sent.

CHAIR VICTORINO: Oh, okay. Okay.

COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: And you're not looking -- Okay.

And I apologize because I pulled mine out -- and I apologize, I should have clarified that before we moved on.

COUNCILMEMBER MOLINA: Yeah. I think what's hard is
you have two documents --

COUNCILMEMBER BAISA: Yes.
COUNCILMEMBER MOLINA: -- both dated with the same dates.
CHAIR VICTORINO: I apologize.
COUNCILMEMBER MOLINA: Yeah. No problem.
CHAIR VICTORINO: Okay.
COUNCILMEMBER MOLINA: Now I know where we're at, so --
CHAIR VICTORINO: Any other questions from the other Members before --
MR. KUSHI: Yeah. I can respond to that.
CHAIR VICTORINO: Yeah. Go ahead, Mr. Kushi.
MR. KUSHI: The bracketed portion in the bill that was sent up to our office, which has been revised, had a section about -- a bracketed section to be provided later. And it did reference Subsection 16-108-9(B). Now, that's in another chapter yet to be adopted, so we can't really quote that section in your new ordinance now.
COUNCILMEMBER MOLINA: Okay.
MR. KUSHI: So I used the generic term "to reserve an allocation of water service in accordance with the department's established rules, regulations and procedures."
COUNCILMEMBER MOLINA: Okay. Thank you, Mr. Kushi.
Thank you, Chair.
CHAIR VICTORINO: Okay. Sorry about the confusion, ladies and gentlemen.
Any other questions?

MR. KUSHI: Yes. One quite important --

CHAIR VICTORINO: Go ahead, Mr. Kushi.

MR. KUSHI: -- detail, Mr. Chair. The last section of this new bill, 14.13.100, "Applicability," I felt it necessary to put in that language which basically states that, you know, this rule was adopted by the Board, and adopted by this Council, by the way, back in 2002. Since that time the Department has implemented this Upcountry water list and kept the priority list and operated accordingly. Since that time, applicants as well as the Department's, department has entered -- have entered into various agreements or understandings with regard to where they are on the list, what they have to do to get the meter. So I wanted to be sure that by codifying the rules into an ordinance, these rights, privileges, requirements and remedies are not affected. So with that understanding, I think we can -- we are safely codifying these rules into an ordinance without affecting the rights, remedies of applicants as well as the duties of the Department.

CHAIR VICTORINO: Are we clear with that? Okay.

Thank you, Mr. Kushi, for that clarification.

Any other discussion? Yes, Ms. Baisa.
COUNCILMEMBER BAISA: Thank you very much, Mr. Victorino. And by the way, I want to congratulate and thank you for working on these rules. This is long overdue and I'm just delighted that we're finally doing it.

I did want to -- want to ask if it was possible --

CHAIR VICTORINO: Yes.

COUNCILMEMBER BAISA: -- you know, what is making it very hard for us is if we had a Ramseyered version, it would be much easier. It would show what we're taking out and what we're putting in. But because we have two versions, we're kind of flipping back and forth trying to -- well, two documents.

CHAIR VICTORINO: Right.

COUNCILMEMBER BAISA: And so we don't really know the differences easily. So it's hard.

CHAIR VICTORINO: Okay. Kim, you have an answer to that? Ms. Willenbrink?

MS. WILLENBRINK: Thank you, Mr. Chair.

The October 11th, 2006 draft bill, the original one submitted by the Department of Corporation Counsel, the final chapter of that is this in Ramseyer version, so you'll be able to see the changes that were initially made. We don't have a Ramseyer version of the ones that were made February 5th -- that all happened within the matter of an hour or so. But if you would like me to show that to you, I can
do that very quickly.

COUNCILMEMBER BAISA: Yeah. What I was trying to say is, you know, we had these two documents that caused the confusion.

MS. WILLENBRINK: That's correct.

COUNCILMEMBER BAISA: If they were together and we could see what we had looked at --

CHAIR VICTORINO: Right.

COUNCILMEMBER BAISA: -- and what we're looking at now, it would be much easier without all this confusion.

MS. WILLENBRINK: That's correct.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Well, thank you. And we'll take that into consideration as we move on to the other sections.

COUNCILMEMBER BAISA: Because we're just -- just starting.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: So maybe it's a good thing to do now.

CHAIR VICTORINO: Yeah, yeah. So when we move into the other chapters, we will make that a part of the process, that way less confusion. And I do apologize.

COUNCILMEMBER BAISA: Thank you, Chair. Appreciate it.

CHAIR VICTORINO: Yeah.

Any other questions from the body? Mr. Mateo?
COUNCILMEMBER MATEO: Chairman, thank you.

For the Department, I guess under 14.13.050 under "Procedures for processing applications for water service from the priority list," because what we're looking at is virtually the existing rules, has the Department run into any issues regarding the 30 days?

COUNCILMEMBER BAISA: Thirty days.

MR. ENG: Council Chair Mateo, I'm not aware of any issues regarding that 30-day response period. That, to my -- since the two years I have been here, has not come up as an issue.

COUNCILMEMBER MATEO: Okay. But in the last two years, then, you have notified people via -- via certified mail and they have responded within this 30-day time period.

MR. ENG: Actually, this is a procedure that was done in 2002 to notify all of those who felt they had certain rights to a meter. So since then we haven't had to do any further notifications. The only things we might do, if, indeed, and in the future as -- as meters become available, we will be notifying them of a meter and giving them that proper time to respond.

COUNCILMEMBER MATEO: Okay. So -- so then, for example, like people who come up and testify and say that they had applied and they had not received any notices and they contact you, you'd -- you would then just via their personal
telephone calls or how do you track that, in fact, they had
or had not applied or is listed on the priority list?
MR. ENG: We can just ask them, like their tax map
key, and see where they are on the list. At least that will
verify whether they are, indeed, on that list. If they're not,
then there could have been another issue, and that's something
else we have to deal with.

COUNCILMEMBER MATEO: Okay.

MR. ENG: But generally this is the procedure that
we have followed. It's pretty much standardized and we are
consistent in its application.

COUNCILMEMBER MATEO: Thank you.

Thank you, Chair.

CHAIR VICTORINO: Thank you.

Yes, Member Pontanilla.

VICE-CHAIR PONTANILLA: Thank you.

Mr. Director, so in the mail that you send to
applicants, is there a note to make them aware that if they
don't respond within 30 days after receipt of that notice
from you, they should know that, you know, looking at the --
the other -- C., that it would be -- a no response would be
refusal of water service?

MR. ENG: You know, I'm not familiar with the
letters that we send out, but I'm pretty certain that that
type of language would be included so it's clear to them that
if we don't receive a response in a given period of time,
then they are deemed to be removed from the list and they
would have to reapply. Yeah. We would do all we can to make
it clear to any of those on the list.

VICE-CHAIR PONTANILLA: Okay. Fine.
CHAIR VICTORINO: Mr. Kushi, do you have something
you would like to add to that for Mr. Pontanilla?
MR. KUSHI: Yes. Just kind of backing up Director
Eng -- I've been here longer than he has, fortunately or
unfortunately. But I was here when this rule was created and
there hasn't been any, really, notifications recently because
there's been no water meters issued. The last instance that
I can recall, and it was a messy situation, was when
Pookela was opened or was planned to be opened and the
Director and the then-Mayor said, come on down and apply for
meters. And that -- that caused the whole turmoil within the
Department. But aside from that, I've -- I have reviewed
with staff, specifically Herb Chang, about the notification
letters in the event a meter becomes available, in the event
your number comes up, and it has all these warnings.

VICE-CHAIR PONTANILLA: Okay.
MR. KUSHI: It has a deadline to respond and a
warning that if you don't respond, you'll be off the list.

VICE-CHAIR PONTANILLA: Good. Thank you.

Thank you, Chairman.
CHAIR VICTORINO: Okay. Thank you, Mr. Pontanilla.

Any further, discussion? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Just want to be very clear because, you know, Upcountry water meters are a favorite subject or a sore subject, whoever it happens to be. Looking at the Water service requests, 14.13.040, Water service request, the C. again, "Premises on the priority list that are unable to fulfill departmental requests [sic] 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." Assuming, I guess, at the end of it or, you know, number 1,562 or whatever.

This is what I think we heard Mr. DePonte worrying about, because he was afraid that if he was not ready when the time came for him to put in the improvements, that he couldn't fulfill the requirements and that, you know, it would be devastating for him.

How long are they given after they're notified that they can get a meter to comply? That's not stated here, so I don't know.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chair.

If a party on the list, their number comes up and we can issue them a meter, we will notify them per that --
per that requirement. If they inform us that they are still interested, but they're not ready to accept the meter, like they don't have a lateral from our water main to their property or there may be some other improvements required so they have sufficient fire flow protection, then we will offer them a two-year meter reservation. That typically -- typically gives them two years to put in those improvements. And even if they cannot put in the improvements within two years, we grant up to two six-months extensions. And we've been very liberal in this procedure. You know, if they're making a sincere attempt to put in improvements and they have exhausted the three years that we've given them, we will most likely even extend that even further as long as there is some sincere efforts to do the work.

COUNCILMEMBER BAISA: Thank you very much. And, you know, I'm sure that's much appreciated. But what I'm worried about is what if we don't have a guy that's as nice as you come in, maybe we should have some rules.

MR. ENG: You know, whether it's me in that seat or someone else, I believe my staff has that -- shares that same philosophy, you know, to do all they can to assist the applicant. And, you know, that's been in place even before I came on board and I expect it to continue after I leave. So, you know, as we get to -- later on as we get into the rules, there is a chapter that does cover meter
reservations, and we can look at that time period to see if
that satisfies your needs.

COUNCILMEMBER BAISA: Thank you. That's
satisfactory if we're going to come to it. Thank you.

MR. ENG: You're welcome.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER BAISA: Thank you, Chair.

CHAIR VICTORINO: Thank you, Member Baisa.

Any other -- any other discussion on the matter?

Yes, Ms. Baisa.

COUNCILMEMBER BAISA: I'm sorry. One more and then
I'm done. Under 14.13.070, "Exceptions," it says, "The
provisions of this chapter shall not apply to applicants using
source credits developed in the upcountry water system through
a previous agreement with the board or the department, which
agreement was executed before the date of this chapter --
effective date of this chapter."

So am I to assume that the effective date is the
date that this becomes law?

CHAIR VICTORINO: Mr. Kushi, could you answer
that?

MR. KUSHI: Yes. And if I may explain, the
exceptions -- it was intended to exempt private water source
agreements that have been entered into with the private
developers that have been accepted by the Board or the
Department. As you know, this body passed the -- in 2006 that all of these private water system agreements need to be approved by this body, by the Council. But there are some agreements out there before that time. And based on those agreements, some developers had water source credits, specifically Dowling. Okay? So this rule basically exempts those agreements that have been entered into previously.

COUNCILMEMBER BAISA: Okay. Thanks.
CHAIR VICTORINO: Okay. Any other questions from the Members? Seeing none, the Chair would like to give their -- his recommendation.

COUNCILMEMBER BAISA: Recommendation.
CHAIR VICTORINO: Thank you.

The recommendation of the Chair is to entertain a motion to pass on first reading a draft bill entitled "A Bill For an Ordinance Amending Title 14, Maui County Code, Relating to the Water Meter Issuance Provisions For the Upcountry Water System."

VICE-CHAIR PONTANILLA: So moved.
COUNCILMEMBER BAISA: Second.
CHAIR VICTORINO: It has been moved by Vice-Chair Pontanilla, seconded by Member Baisa.

Any further discussion?
VICE-CHAIR PONTANILLA: Chairman, just a clarification.

CHAIR VICTORINO: Yes. Go ahead, Vice-Chair --

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: -- Pontanilla.

VICE-CHAIR PONTANILLA: Did you say draft bill or --

CHAIR VICTORINO: Did I say draft bill?

VICE-CHAIR PONTANILLA: Yes.

CHAIR VICTORINO: "A Bill For an Ordinance Amending Title 14, Maui County Code, Relating to the Water Meter Issuance Provision For the Upcountry Water System."

MS. WILLENBRINK: A proposed bill.

VICE-CHAIR PONTANILLA: The proposed bill for an ordinance --

CHAIR VICTORINO: Proposed, okay.

COUNCILMEMBER BAISA: A proposed bill.

CHAIR VICTORINO: Okay. So if it's okay, can I make that correction? A proposed bill entitled A Bill For an Ordinance Amending Title 14, Maui County Code, Relating to the Water Meter Issuance Provisions For the County, Upcountry Water System.

COUNCILMEMBER BAISA: No objection.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: Got it now? Okay. Sorry about that. You guys moving so quickly I'm getting excited.

All those in favor, say aye.
COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? Let the record show five ayes, two excused. And thank you very much.

VOTE: AYES: Councilmembers Baisa, Mateo, Molina, Vice-Chair Pontanilla, and Chair Victorino.

NOES: None.

EXC.: Councilmembers Kaho'ohalahala and Medeiros.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED.

ACTION: Recommending FIRST READING of proposed bill.

CHAIR VICTORINO: Okay. Any other announcements or -- If not, ladies and gentlemen, thank you very much. We've made two giant steps in the right direction and, hopefully, in our next meeting we'll make a few more. And it is my hope and desire that we can get these rules finally codified and amended and adopted and be the law of the water land.

Thank you, Mr. Eng and Mr. Kushi, for your expertise.

Thank you, Ms. Willenbrink and Ms. Frias, for
being here.

To all my Members, thank you very much and have a nice evening.

This meeting of the Water Resources Committee of February 12, 2009 is adjourned. (Gavel.)

ADJOURNED: 3:28 p.m.
CERTIFICATE

STATE OF HAWAII

CITY AND COUNTY OF MAUI

I, Sandra J. Gran, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 6th day of March, 2009, in Maui, Hawaii.

Sandra J. Gran
Hawaii CSR 424
Notary Public for Hawaii
Commission No. 200-198
My Commission Expires: 5/14/12