CONVENE: 9:06 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Michael P. Victorino, Chair
Councilmember Gladys C. Baisa
Councilmember Sol P. Kaho‘ohalahala (In 9:10 a.m.)
Councilmember Danny A. Mateo
Councilmember Bill Kauakea Medeiros (In 9:08 a.m.)
Councilmember Michael J. Molina

NON-VOTING MEMBERS:
Councilmember Jo Anne Johnson
Councilmember Wayne K. Nishiki

EXCUSED: Councilmember Joseph Pontanilla, Vice-Chair

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

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

OTHERS: Gary Sanches (Item No. 12)
Ruth M. DePonte (Item No. 18)
RoseMarie Medeiros (Item No. 18)
Cynthia Warner, Managing Member, Piiholo South, LLC (Item No. 18)
John Oliver (Item Nos. 12, 16, and 18)
Mahealani Ventura (Item Nos. 16 and 18)
Dick Mayer (Item Nos. 12, 16, and 18)
Pilialoha Teves (Item Nos. 16 and 18)
Eric H. Kanakaole (Item Nos. 12, 16, and 18)
Rosemary Robbins, Environmental Protection Agency’s Upcountry Oversight and Advisory Committee (Item No. 16)
Jay Protacio (Item No. 18)
Kuuiopo Naone (Item Nos. 12, 16, and 18)
Jeremiah Naone (Item Nos. 12, 16, and 18)
Josie Carson, Member, Human Rights Task Force (Item Nos. 12, 16, and 18)
Additional attendees (15)
CHAIR VICTORINO: ... (gavel) ... Good morning. The October 26, 2010 Water Resources Committee meeting will come to order. We have a quorum present this morning. Present this morning Voting Members of the Committee...first of all, our Vice-Chair of the Council, Mr. Michael Molina.

COUNCILMEMBER MOLINA: Good morning, Chairman.

CHAIR VICTORINO: Good morning. And a beautiful young lady from Upcountry, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. And then also we have the Council Chair, Mr. Danny Mateo.

COUNCILMEMBER MATEO: Good morning, Chair.

CHAIR VICTORINO: Good morning. Excused at this time is Bill Medeiros and Sol Kaho'ohalahala, and our Vice-Chair is excused for the day, Mr. Joseph Pontanilla. We also have two Committee Members and one is here...they are Non-Voting Committee Members, and that's Mr. Wayne Nishiki.

COUNCILMEMBER NISHIKI: Morning.

CHAIR VICTORINO: Good morning. From the Administration we have the Director of the Department of Water Supply, Mr. Jeffrey Eng --

MR. ENG: Good morning.

CHAIR VICTORINO: --and also from, Deputy Corporation Counsel, Mr. Edward Kushi. And of course, all of us know our Committees don’t [sic] run the way they do and as efficiently as they do because we have great Staff, and I'd like to recognize our Staff members, our Legislative Analyst Kim Willenbrink and also, Committee Secretary Tammy Frias. Thank you, ladies, for all your help and thank you for being here.

The meeting started at 9:06. I’m sorry about the delay.

This morning we have really three items that we will be discussing. One is WR-12, the Water Availability; also, WR-18, the Piiholo South Well, the status on that; and finally we will also take up for discussion, Development of New Sources of Water. So we have actually three items where we’re going to take up this morning.
Ladies and gentlemen, at this time I’d like to open the floor up to public testimony. Testimony will be limited to the items on the agenda today. If you have not signed up, we have a desk out in the lobby on the 8th floor available for you to sign up, please. You’re welcome to sign up. We are limiting to three minutes with one minute to conclude. I ask that you state your name and any organization or if you are representing yourself, then please state that. With no objections, ladies and gentlemen of the Committee, I would like to commence with public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very much. Okay, our first testifier from Upcountry is Mr. Gary Sanches and he represents Omaopio, followed by Ruthie DePonte. So, Mr. Sanches, will come forward, please.

...BEGIN PUBLIC TESTIMONY...

MR. SANCHEZ: Good morning, Council Members, Water Department Chairman, Mr. Eng. I’m here to ask your assistance in obtaining a water line down Omaopio. The last known improvements in Omaopio was in 1972 and the water line did not come down all the way down the road to serve the rest of the landowners. My neighbor has waited 60 something years for the water line to come down. He’s 92 or 93 years old. He has the largest hog farm and feedlot on Maui right now with no water line. My neighbor, another neighbor has one of the largest nurseries on Maui that, that he rents out, too--again, no water line. Sixty years, I think people have been more than patient. I’ve waited 20 something years. Unlike most Upcountry water users we have water meters but we don’t have water line. Why, why in 1972 they didn’t come down the road is a long story and it’s very debatable, but it goes back to politics basically. So I’m here to ask, you Council Members and Mr. Eng, can you guys give us a timetable, when could we have a water line installed to the tune of about $250,000 give or take 50,000? If it doesn’t come from the Council Members as, as an item in your budget, it will probably never happen. I, I’ve spoken to the Water Department in the last 10 years I don’t know how many times, from engineers to water directors with no results because they’re constantly telling us we are not a priority, because of the population on Omaopio Road we are not a priority. There are more important projects to be done. So with that, I ask, you Council Members, can you guys give us a timetable? I know Mr. Mateo tried to get a timetable from Mr. Tengan many years ago, no results. You know, I don’t want to wait another 60 years. I’ll be 127. My neighbor is 93, like I said. When do we get services? When do we get infrastructure improvements? I think $250,000 today is a drop in a bucket. We can help all kinds of communities. You know, Pulehu, Omaopio is a breadbasket of Maui. You don’t have water lines, you know, it makes it very difficult to farm whether it’s animals or, or regular farming, et cetera. So can you, Council Members, give me a timeline? Tell me next year, five years from now, ten years from now. Then I’ll never come back and testify as long as you guys give it to me in writing. That’s it. I, that’s, that’s all I got to say.
CHAIR VICTORINO: Thank you, Mr. Sanches. I think something of this nature we will look at in next year’s budget and see what we can do. You know, 60 years is a long time to wait. You know, and we hear about the Upcountry water meter list where people are waiting 15, 20 years and you’re talking 16 year, 60 years. That’s an awful long time to wait. So at this time, I couldn’t give you an answer and no matter how hard we try, and nobody can in this room give an answer. So, but if you want to ask questions specific to the testimony, go ahead, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Chairman. Good morning, Mr. Sanches. Just related to your testimony, over the years in Omaopio, can you give us a ballpark figure how, how much it’s grown since I guess the last improvement in 1972? And the 250,000, you got that number from whom, was that from the Department estimated?

MR. SANCHES: Well, two and a half years ago, two different developers brought the water line down about 1,500 feet, and they, they installed an eight-inch water line to an old County six-inch water line with fire hydrants and the whole bit. One of my neighbors and I, we spent $26,000 connecting to the end of their water lines 70 feet, so we could get our water meters on his property so we didn’t have to deal with easements from all these different property owners. However, my neighbor whose water line is on the opposite side of the road, the one with the farm waiting for 60 something years, he cannot tap into that...the end of that water line with a lateral to his place. It’s not allowable according to the Water Department and so basically I marked it off, it’s about roughly 900 feet, and I’ve calculated, you know, roughly $275 a foot which is quite high, you know. So you’re looking at roughly $250,000 and you would eliminate a lot of problems, a lot of problems. But, you know, for me to come up with $250,000 with your new plan of getting 75 percent back, at my age I’m not going in debt, I mean I’m sorry. I mean, you know, I just...and my neighbor 93 years old, he ain’t gonna go in debt either, you know, so that’s it.

COUNCILMEMBER MOLINA: Well, we hope it doesn’t take that long though, yeah. And population wise, Omaopio has grown significantly from . . .(inaudible). . .

MR. SANCHES: It’s, it’s large. If you come down to my property, my neighbor, you look at the nursery that they’re running on Mr. Jim Judge’s property, it’s huge. I mean Tristar Nursery, I think they even way bigger than Howard’s Nursery which is also big up the road from, from us and it’s real huge. And, you know, the Sakugawa feedlot with cattle and, and hogs that they raise. And, you know, it’s just a matter of time, you know, with the, the people that own the goat farm and the development, the, the population has really grown, really grown. The traffic is a nightmare. It’s not a, it’s not a country road anymore, you know.

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

CHAIR VICTORINO: Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair, and thank you, Mr. Sanches, for being here. It’s very frustrating as the Upcountry representative that, you know, in the area you are,
and I constantly, you know, talk to people that are very, very concerned about the inability of the County to provide them with water. And, you know, I don’t know what to tell you except that I’ll try and, you know, work with Chair, we’ll look into this. But I want to understand, you said you have meters.

MR. SANCHES: We have meters.

COUNCILMEMBER BAISA: But you don’t have water to those meters?

MR. SANCHES: We gotta run separate water lines because we don’t have a public...we’re not a subdivision now. We’re just lot owners along Omaopio Road and there’s no water line.

COUNCILMEMBER BAISA: So I’m trying to figure out how do you get water, water if you don’t have a water line? I’m sorry --

MR. SANCHES: We, we --

COUNCILMEMBER BAISA: --educate me. I’m not a technical person.

MR. SANCHES: Okay, all the landowners, we gotta run our own individual water lines.

COUNCILMEMBER BAISA: And you run them from where?

MR. SANCHES: Along the highway. And, you know, technically speaking you need all these easements and you know today with lawyers --

COUNCILMEMBER BAISA: Oh yes.

MR. SANCHES: --to draft up paperwork, you know, to get an easement you’re looking at 4, 5, $6,000 just for easements, and you gotta deal with all these different lot owners. So, you know, after a while it becomes a real headache plus the fact that you gotta maintain your own private water line. You know, the County doesn’t...you know, if you got a leak and your bill goes up to 4, $500 --

COUNCILMEMBER BAISA: You pay.

MR. SANCHES: --you pay.

COUNCILMEMBER BAISA: So even the pig farm and the nurseries and all of those people, they don’t, they’re not connected?

MR. SANCHES: They’re not connected. My one neighbor, Jim Judge, while he has four separate tax max, tax map keys, only one is connected, the other three is not connected. Sakugawa, their 50
acres is not connected, and there’s another Canadian that bought a home below us, he’s not
connected either.

COUNCILMEMBER BAISA: Okay. Well, you know, I want to thank you for coming. I will follow up
with Chair on this and see what we can possibly do. It might be something that if we can find
some money maybe we can put in the budget, but I’ll keep an eye on it. Thank you.

MR. SANCHES: Okay, I appreciate. Thank you.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: And I’d like to recognize the presence of Councilman Kaho‘ohalahala and
Councilmember Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo.

CHAIR VICTORINO: You have a question, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yes, I do.

CHAIR VICTORINO: You may.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Sanches, aloha and good morning. I
just, I think you explained some of this, but from the end of where the pipeline ends to your
property is about 900 feet?

MR. SANCHES: About 900 feet.

COUNCILMEMBER MEDEIROS: Okay. And are there properties beyond you?

MR. SANCHES: One more.

COUNCILMEMBER MEDEIROS: One more on Omaopio?

MR. SANCHES: Yeah. But he would be satisfied running his water line, you know, across the road
and, and the short distance to his place.

COUNCILMEMBER MEDEIROS: Okay.

MR. SANCHES: He’s a Canadian and when he bought the property, he had no clue. You know, I guess
the real estate agent did not disclose the situation to him, so when he found out about it, he was,
what? So, you know, and I said, well, you know, maybe you cannot do too much because you’re
not a citizen, you know, but maybe I can, you know. So, but, you know, basically I’m trying to
protect the interest of the, the older generation. You know, me, I’m young, you know, compared
to them, 23 something years, you know, them 60 something years. You know, they don’t even drive anymore. So, you know, I kinda, you know, carry the ball hopefully.

COUNCILMEMBER MEDEIROS: Okay. And, and you did say the improvement in the water line to where it ends now is, is a eight-inch water line.

MR. SANCHES: Eight-inch.

COUNCILMEMBER MEDEIROS: And they, they upgraded that from a six-inch to a eight-inch?

MR. SANCHES: No.

COUNCILMEMBER MEDEIROS: No.

MR. SANCHES: It was a new pipe line connected to an old County six-inch water line.

COUNCILMEMBER MEDEIROS: So it’s going from six-inch to eight-inch.

MR. SANCHES: Right, yeah.

COUNCILMEMBER MEDEIROS: I see. Okay...and, okay, well thank you for being here and your testimony this morning and for the information you have provided.

MR. SANCHES: Thank you.

COUNCILMEMBER MEDEIROS: Okay. Mahalo, Mr. Chairman.

CHAIR VICTORINO: You’re welcome. Any other questions for the testifier? Seeing none, thank you, Mr. Sanches.

MR. SANCHES: Okay, thank you.

CHAIR VICTORINO: Next testifier is Ruth DePonte and she’s testifying on her behalf, and then the following testifier following is RoseMarie Medeiros.

MS. DePONTE: Good morning, Mike and everyone. Ruth DePonte, I’m here again about a water meter and I am so glad that South Pookela [sic] Well has come up, because now we’re talking about water --

CHAIR VICTORINO: Aunty Ruthie --

MS. DePONTE: --and that’s what I want.

CHAIR VICTORINO: --Aunty Ruthie.
Ms. DePonte: Yes, dear.

Chair Victorino: It’s Piiholo not --

Ms. DePonte: Piiholo, I’m sorry.

Chair Victorino: Just so that you don’t get everybody confused.

Ms. DePonte: I didn’t take my tranquilizer this morning.

Chair Victorino: No problem, Aunty Ruthie, take your time, we, we, we wait. Thank you.

Ms. DePonte: Anyway I just want a water meter and I have been on the water list from 1979. I’ve worked on my subdivision from 1979, actually 19, I mean, 1998 and it is now 2010, and on August 6, 2006, our subdivision was completed. I put money in the escrow for our water meters. Now I get a letter from escrow telling me what are we going to do with all this money that we have for our water meters, and I can’t give them an answer. I still don’t have a water meter. I’ve got laterals, I’ve got everything on paper, and we do need our water meter. And I just hope that something comes up that either the County can provide wells or water. Just help us. Thank you.

Chair Victorino: Thank you, Aunty Ruthie. Questions for the testifier? Yes, Ms. Baisa?

Councilmember Baisa: Yes, Chair. Aunty Ruthie, thanks for being here again.

Ms. DePonte: Yes.

Councilmember Baisa: Remind me again, what number are you on that list?

Ms. DePonte: I’m number 60...

Councilmember Baisa: Sixty?

Ms. DePonte: …as well as three, four, four of us siblings.

Councilmember Baisa: So you’re number 60 and four more of you are other numbers?

Ms. DePonte: We’re all 60.

Councilmember Baisa: And how many meters are you looking for?

Ms. DePonte: Four. The four --

Councilmember Baisa: So you’re looking for four.
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MS. DePONTE: --water meters that we had...it was a subdivision, it was 40 acres, there were five siblings. So one took the water meter and that left four of us without water. So here we have all this land, all these years paying taxes, paying insurance, and we can’t use the land. Then you have property tax come in and they tell you please prove to us that you’re doing an agriculture. You don’t have water, but you gotta now prove that you’re doing agriculture.

COUNCILMEMBER BAISA: Yeah, well thank you very much and you know I understand, this is not something foreign. I’m hoping, hoping that we’ll make some progress with finding some water soon.

MS. DePONTE: Thank you.

COUNCILMEMBER BAISA: Thank you.

CHAIR VICTORINO: Thank you. RoseMarie Medeiros followed by Cynthia Warner, and Ms. Medeiros is speaking on her behalf.

MS. MEDEIROS: Good morning. My name is RoseMarie Medeiros. I’m Ruthie’s niece. I have...I’m the third generation to own that property that has been in our family for 93 years. I’m proud to say my grandparents waited a year to get married so they could homestead for that property so that they could provide a better living and a future for their own descendants. My father is the oldest in the family, Joseph, and I’m an only child, and I’m the mother, single mother of four.

As Aunty Ruthie has stated several times, we have absolutely no water, and I, too, got a property tax billing with a requirement to prove that I’m using the property for agricultural purposes which is kind of an oxymoron as you all know. However, on top of that, there’s a problem of, of fire safety because the area does have no...you know, can’t put animals in it without getting water in there. So I now have a tenant that has two horses on the property only because he lives across the street and he has to the hose water from his property across the street into the trough so that he can water his horses because I can’t, you know, provide him with water. I’d love to be able to use that water to help my children and my grandchildren by raising cattle for beef, maybe even vegetables for our family, but I can’t do that without water. We desperately need a water meter. I’ve struggled as a single mom for 28 years trying to support my family and I know what my children are going through. One of my children has had to move to the mainland because he knows there’s no future for him here, because he’ll never be able to afford to buy property, and we have no water so he can’t look at any kind of, of income to come in or anything to do so that he could possibly use the property. So on that note, I’m also pleaing [sic] for something to be done so that the water meters can be given out to those people that have been on the list as long as we have, you know, since 1978. That’s a good long wait.

COUNCILMEMBER MEDEIROS: Mr. Chair.

MS. MEDEIROS: Thank you.

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Ms. Medeiros, thank you for your presence and your testimony this morning. What number are you on the water list?

MS. MEDEIROS: Sixty. I'm a part of that four parcels.

COUNCILMEMBER MEDEIROS: Oh, same, same with...

MS. MEDEIROS: Yes, sir.

COUNCILMEMBER MEDEIROS: Okay.

MS. MEDEIROS: Yes, sir.

COUNCILMEMBER MEDEIROS: All right, thank you.

MS. MEDEIROS: Thank you very much.

CHAIR VICTORINO: Thank you, Ms. Medeiros. Okay, next is Cynthia Warner followed by John Oliver.

MS. WARNER: Good morning, Water Resources Committee, Chairperson Victorino, and Chairpersons. I am Cindy Warner, I'm one of the managing members of the Piilolo South Well, and I'm just here to bring you up to date with recent items regarding the Piilolo South Well.

We've met several times in the past couple of months with the Mayor's Office, and the Mayor's Office has been working with the Department of Water Supply. The Director of the DWS has requested that we provide a 10-day constant run pump test at maximum draw. We are open to the well being retested; however, we've already completed our pump test as required by the Department of Health and it came out fine.

In terms of quality, the well met all the clean water requirements as regulated by the Department of Health. In regard to quantity, test conclusions also confirmed ideal results. There was very little draw down and there was an exceptionally fast recharge.

Our certified pump test was conducted for five days, three days of which were at a constant run. This was completed in the fall of 2008. We met all the requirements of the Department of Health. We had our hydrologist on site and Pural Water Specialty Company did all the certified laboratory analysis and required testing. Pural certifies their water quality results for three years and the Department of Health certifies for five years. Our hydrologist overseeing the pump test
was Glenn Bauer of Mink & Yuen. They’re reputable professionals already being utilized in other capacities by the Department of Water Supply, and Pural’s the same administrator of tests that the DWS would use if they were to have overseen the pump test.

I did want to let you know too that we did notify the Department of Water Supply via e-mail and phone conversations with their Engineering Department in the fall of 2008, to let them know that we were conducting our pump test in case they wanted to monitor the final testing or come by. Because of our notification they arranged to have the Pookela Well pumped at full capacity for the entire time of our pump test to see if there might be any adverse impact of both wells being run at the same time. There was not any problem. And conducting a duplicate pump test for the duration specified by the Department of Water Supply as they’ve requested would cost approximately $300,000. Before we thought that figure was closer to 200,000 but it’s looking like it would be more along the lines of 300,000 and it would result in 17.28 million gallons of water just being pumped out and discharged.

One of the several large expenses is shipping over and fueling a 1,000 horsepower generator from Oahu. One thing I did want to note is I understand that the Department of Water Supply has generators of this capacity, and I just wanted to mention that maybe they could consider doing the testing with one of their generators, and perhaps another way to not waste so much water and still accomplish the same results would be reducing the number of days. But I wanted to stress that we’re open to any kind of testing on the well, no matter what the length is, but we are not willing to incur that expense. Zach Franks, my other partner, wrote the Mayor’s Office and I’ve attached a letter here, and we have said that we are open to that, we’d help coordinate it but the County would need to pay for it. We also offered to sit down and come to terms of a negotiation for the sale of the well, and my feeling is that this became of the point where communications came to a pause about a month ago.

I also wanted to just shed some light on another variable which has been discussed in regard to our well. It’s been noted that our casing diameter is less than the standard size the Water Department requires for our large capacity pump. I just wanted to let you know that the reason is the casing’s smaller is because technology’s advanced in the last 20 to 40 years just like computers and other electronic equipment. The pump now, pumps now, there’s many of them that are being designed much smaller. Our pump is shaped like a cylinder instead of a big line with a blob at the bottom, so it doesn’t take as big of a diameter of casing to get down into. Additionally, our pump is highly efficient. It was not a pump designed for oil wells, although the company Centrilift was one of the largest pump builders in the world and originally started with oil wells, but they’ve diversified and have a pump, water pump division. So that’s who we purchased the pump from. And my time’s up, I have more to say but I have written it down because I knew I was going to run short. So feel free to reference the paper I gave you, also had some information on the Water Division of Centrilift who made the pump, and I’m open to any questions if anybody has any. Thank you.

CHAIR VICTORINO: Thank you and since this information was just brought forth today and, and I’ll ask Mr. Eng when he...this letter was sent on September 24th, their response to Mr. --
MS. WARNER: Silva.

CHAIR VICTORINO: --Silva, right?

MS. WARNER: Right.

CHAIR VICTORINO: Okay, right. Any questions for the testifier?

MS. WARNER: Mr. Nishiki.

CHAIR VICTORINO: Oh, wait a minute. I am the one running the meeting, please.

MS. WARNER: Oops, I'm sorry. . .(chuckle). . .

CHAIR VICTORINO: . . .(chuckle). . . Thank you. I know I'm not well, but don't be putting...Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, thank you. Cindy, you know, there's one thing about dealing with the County and, and, and, and how you approach everything that kind of disturbs me. You, you stick out your right hand and say, we want to do all of these things, but then, but the other hand, you, you, you, when the Department is wanting to, to deal with you, you already lay out your conditions as, as to how it's to be done. And I think that in, in all sincerity you need to get together with Mr. Eng and show a little sincerity in it. But, you know, to, to write a letter and say I've got certain conditions that I will follow and, and if you don't do it my way then it's no way. I think if you really want to work with this County, you need to be able to sit down and, and on the table and start negotiating. This paper is one thing, but until you sit down with Mr. Eng, it doesn't show me any sincerity. So I would say today because, Mr. Chairman, I don't want to get in, in this whole situation, and we'll, we'll allow Jeff to give his explanation also, who I have the greatest concern and respect for, that...it's something that, that tells me that perhaps are you willing to sit down and, and not say I don't want to do this, I don't want to do that--

MS. WARNER: Absolutely.

COUNCILMEMBER NISHIKI: --and have some negotiation? It's a give and take. It's not all your conditions. So my question...

MS. WARNER: Can I respond now?

CHAIR VICTORINO: Yeah, Mr. Nishiki. Go ahead.

MS. WARNER: Thank you. I understand your concern. I wasn't putting this out there as a condition. I was just responding to their condition that we do a pump test that we've already done before we even negotiate with the County. We're willing to cooperate and we've had meetings for years...
with the Water Department and we’re happy to continue on. I just wanted to let people know where things are at at this point. This was a condition that the Water Department made and they wanted this to be done before any negotiation was done, and it’s a test we’ve already done that would cost over $300,000. So we’re, we’re just throwing out ideas of how maybe that could be accomplished to keep costs down for everybody. Because any costs will eventually come back to the County and just everybody needs to be aware of what’s being put out there and added on as expenses in what they’re projecting.

COUNCILMEMBER NISHIKI: Okay. I’m just saying, it’s one thing to talk, it’s another thing to do the action and, and --

CHAIR VICTORINO: Mr. Nishiki --

COUNCILMEMBER NISHIKI: ... and the last time, yeah, and I --

CHAIR VICTORINO: --I would --

COUNCILMEMBER NISHIKI: --I want to say that --

CHAIR VICTORINO: --ask you not --

COUNCILMEMBER NISHIKI: --this is what your representative said, Mr. Franks said to Jeff and that’s what he reported to us that you guys would not, will not do any tests, and so, you know, in the spirit of cooperation you need to sit down and just not give us this type of --

CHAIR VICTORINO: Mr. Nishiki --

COUNCILMEMBER NISHIKI: --words.

CHAIR VICTORINO: --I think she answered the question and I’m going to allow, you know, I’m going to stop you here. Thank you, Ms. Warner, ‘cause I don’t want this to become a back-and-forth issue.

COUNCILMEMBER NISHIKI: No, I’m done.

CHAIR VICTORINO: I think she’s answered it, and I think that’s fair enough in my mind. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you, Chair, and thank you, Ms. Warner, for being here. I read your, the material you provided today and I just want clarification. I heard you say that you were not wanting to repeat the test ‘cause you had already done it. But you do acknowledge that it’s two different kind of tests that we’re talking about? What you did was a five-day, three-day constant run test, and the Department’s standard, from what I understand, is a 10-day constant run pump test at maximum draw. So it appears they’re two different kind of tests and that the
results of course might be different because of the difference in the tests. Do you acknowledge that?

MS. WARNER: I understand your question and the 10-day test is not a standard by the Department of Water Supply. The standard I think for a public well is five days, so that’s something that could be looked at.

COUNCILMEMBER BAISA: I’ll clarify that with the Director when we get there. Thank you.

MS. WARNER: Thank you.

CHAIR VICTORINO: And before you say anything, Mr. Molina, one moment, I want to make one more point clear. Ms. Warner, when you put in here you notified the Department that you guys are running the tests back in 2008, at that point, you were still considered a private well. There had been really no real discussion about any, any purchase by the County at that point in time. Am I correct?

MS. WARNER: There had been meetings with the County about the well. I’m talking about different alternatives.

CHAIR VICTORINO: Yeah, no, no. I’m asking because we will be involved in developing if the well was to be turned, dedicated, or purchased by us. At that point in time, that hadn’t been a real discussion ’cause you were still moving in being a private source. Am I correct?

MS. WARNER: There was nothing definitive saying that we were working with the County on it.

CHAIR VICTORINO: Okay. Just so that we get that clarified that we don’t get involved with private wells unless they’re going to be dedicated to us or the possibility of purchase and something more firm than just discussion, yeah.

MS. WARNER: Right, no, we had talked about the possibility of dedication and purchase, but --

CHAIR VICTORINO: Okay, thank you. Mr. Molina?

COUNCILMEMBER MOLINA: Thank you, Chairman. Good morning, Ms. Warner. Just referencing your letter of today October 26th, the last paragraph where you mention that Mr. Franks wrote to the Mayor’s Office in response to the, the new pump test request. In here you say, you state that, it essentially says, that retesting is fine if the County wants to do this second test and we would be happy to help coordinate all aspects of this test; however, it is not an expense that we will incur and it would be up to the County to pay for, and it goes on to further mention that since this letter was sent by Mr. Franks, that there’s been no response back from the Mayor’s Office. First of all, how much is this, I guess, test would cost and when did, I guess, Mr. Franks make this request of the Mayor’s Office?
MS. WARNER: The letter to the Mayor’s Office was in late September and the pump test would cost about $300,000.

COUNCILMEMBER MOLINA: Three hundred thousand. Okay. Now you do mention that, we also offered to sit down and come to terms of a negotiation for the sale of the well. As part of your negotiation that would be something that you would consider, I guess, negotiating the price or cost share or something for this test?

MS. WARNER: We’re open, we’re open to talking about how the pump test could be accomplished along the lines with the negotiation of the well. It’s just to ask us to do that before any kind of agreement, when it’s not an expense that serves us in any way, it’s not, it wouldn’t be smart to do that.

COUNCILMEMBER MOLINA: Okay, all right, thank you. Thank you, Chair.

CHAIR VICTORINO: Thank you, Ms. Warner.

MS. WARNER: Thank you.

CHAIR VICTORINO: Appreciate your coming today. Thank you.

MS. WARNER: Thank you.

CHAIR VICTORINO: Next is John Oliver and he’ll be followed by Mahealani Ventura, and Mr. Warner [sic] is here to speak on all three items. And, Committee Members, you are in receipt of some documents and I’m going to say first of all, that these are brought to us as water issues and I’m going to take it up as a water issue, yeah. And we’re going to take it up in one swoop. In other words Mr. Oliver, I mean, yeah, Mr. Oliver, it’s all one item. It’s, you know, even though you signed up for three, we’re going to incorporate it into one, because this really deals with water, yeah. It’s not like yesterday where we had different issues. This all comes under the water, so…

MR. OLIVER: I agree.

CHAIR VICTORINO: Yeah, so I’m just going to have you three minutes, give your presentation, and then and that will go, hold true for the rest of them. I’m not going be separating the, the three, okay. So go ahead.

MR. OLIVER: Yeah, my issue will basically cover all of them.

CHAIR VICTORINO: Okay, thank you, John. Go ahead.

MR. OLIVER: So with that, John Oliver. I’m addressing you as office holders and agents of the State of Hawaii, as agents of the United States of America. The office you swore to, your oath, you
swore to uphold all the commercial contracts and treaties with the United States of America also. So with that, and the issues of water, first of all, yesterday, you...yesterday’s testimony you all received an electronic communication to every governor of every state, United States of America from the State Department. And I was concerned because since January, I was asking police officers, I was asking every official I could find who held an office and an agent, and I couldn’t find anybody who had received this memo which is extremely important and it’s actually addressed to you from the State Department. So I’m concerned about the public policies of the State of Hawaii and the County of Maui that are, seem to be refusing to implement these type of treaty obligations. But this all has to do with water and I’ll make it, I’ll try to simplify everything and bring it to, to the issue of water.

But I wanted to state from this, it says, this memo says, this electronic communication contains information on several human rights treaties in which the United States is a party and which are implemented through existing laws at all levels of government Federal, State, insular, and local. That’s the first paragraph and I’m just trying to hit on the issues.

And then down on the second paragraph at the bottom, it says, because U.S. treaty obligations may apply to all levels of government throughout the territory of the United States and because of the important issues of U. S. law and practices addressed in our reports, we wish to make you the, make you and the appropriate members of your staff aware of these reports. That concerns me that you guys were never aware.

Also, third paragraph, second page, up above it says, the U.S. department coordinating with other relevant agencies, reviewed the treaties and relevant provisions of U.S. law and determined that existing law in the United States were sufficient to implement the treaty obligations. So they want these things implemented.

And it, at the bottom of that paragraph, a very important quote states, although these treaties do not rise directly to individually enforced rights, the U.S. Courts, the United States is bound under international law to implement all of its obligations under these treaties and take these obligations very seriously. So this is coming from D.C. So I, I wanted you as officeholders to make this public that you have, are fully aware of this and you didn’t trash it.

And with that, I’d like to go to the water issue, and this book is from the Second Circuit Court, these are probates. There’s over 900 of them. They’re old. They’re before 1893. This, the record of these estates are still held in custody or in, let’s say, under the jurisdiction now they’ve assumed the authority of these probates. I don’t want to say they...they’ve assumed it, okay. So for 117 years these estates, which some of these people’s homes are on, have been allowed for you to make revenues from the County and State without ever addressing the actual owners. This is a matter of international law, it’s a matter of treaty, and I understand that you’ve been obviously told that you don’t have jurisdiction which is true. It’s...probates are private. But once the State of Hawaii has assumed, you know, the obligation and any other of its entities, now they’re held liable which means us agents, every individual in here being aware of this can and, and be held liable from this point on. And I just want to know that, you know, as far as I’m
concerned everyone deserves a right to water, period. We all know that. And everyone deserves the right to a meter. Nobody’s disagreeing with you guys. My point is at what expense does somebody else, are you delivering this precious resource? So there’s some issues that I think at some point and I think the council, there is a council now sending this issue internationally who would love to sit down with you guys, you know, at some date and with Corp. Counsel and maybe discuss some of the issues. So I just wanted to make everybody in public aware--


MR. OLIVER: --that it’s a concern of mine that people are being deprived in this process.

CHAIR VICTORINO: Thank you, Mr. Oliver. Any questions to clarify the testimony by the testifier? Seeing none, thank you, Mr. Oliver.

MR. OLIVER: Thank you.

CHAIR VICTORINO: Oh, you have a question?

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. I...aloha, John.

MR. OLIVER: Good morning.

COUNCILMEMBER KAHO‘OHALAHALA: Good morning. Can you help us, my understanding when you said in your testimony that the resources that are being gained by the County or the State, can you clarify what, what you’re . . .(inaudible). . .?

MR. OLIVER: Any, any, basically any tax revenue that’s being derived from these private estates is not being accounted for. You know, you’re accounting for the revenue but you’re not counting from the source of where it’s derived. You’re just leaving this whole source over here and you’re not telling the world or anybody that these, these are actual accountholders. They’re holding the estates to this day, and we’re coming public with it now because it’s, it’s gotten so much attention and internationally that people are really concerned. So it’s going to be an ongoing issue, it’s going to start elevating, and it’s something that, you know, maybe some, some conversations and some organization between the parties should start to happen because that’s basically what this treaty’s all about. You know, because in my mind, it’s definitely a deprivation of rights on a pretty enormous scale for a 117 years.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, so the follow-up in...the deprivation are really to those people that are the original owners of land that you’re . . .(inaudible). . .

MR. OLIVER: Yeah, the Kanaka Maoli and not Native Hawaiian because Native Hawaiian is a U.S. classification which really is a fiction. It describes, it doesn’t describe the actual asset holders, but it, it involves everybody because now there’s a concern, and I’m not trying to generate any panic here, but I’m trying to say that there’s a concern for everybody involved because the issues
aren’t going to go away, they’re right there in front of us. You know what I mean? They’re right there at the courthouse.

COUNCILMEMBER KAHO‘OHALAHALA: Okay and then --

MR. OLIVER: So...(inaudible)...

COUNCILMEMBER KAHO‘OHALAHALA: --for us, for us as the Council because we’re here trying to make decisions concerning water, how, how do you bring this information forward so that the Council is aware of some of the things that are historically still left to understand and...or left undone...(inaudible)...?

MR. OLIVER: First of all, I’d like to say that of course I’m not a Kanaka Maoli so I can’t...you know what I mean? I can only speak as a witness and I, and I’m being, you know, married to a family and witnessed the whole process that got me involved, but what I want to say is I cannot speak for the council, but the council would be happy to put together anything you request.

COUNCILMEMBER KAHO‘OHALAHALA: What...

MR. OLIVER: And that, yeah, that’s a council that’s been put together recently and, and she can probably elaborate a little bit more on that.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. I just think...

MR. OLIVER: Because I can’t speak for the Kanaka.

COUNCILMEMBER KAHO‘OHALAHALA: Yeah. I just think that it would be good for the council to come to some better understanding and to be educated a little bit more so that we understand some of those issues that, that you’re bringing to us, and I’m not sure if, if all of us feel like we have a good grasp on that kind of information and knowledge so...(inaudible)...

MR. OLIVER: I would agree to that because I think education is the key to, to all of this, so I’m sure that the Kanaka Maoli, this council would love to assist you.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

MR. OLIVER: And Mahealani probably can address that.

COUNCILMEMBER KAHO‘OHALAHALA: Mahalo, thank you.

CHAIR VICTORINO: Thank you. Thank you, Mr... specifically on the item and discussion, yeah please. Go ahead, Mr. Medeiros.
COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I’m referring to your written testimony that was submitted that you spoke on. I, I’m just trying to get some clarification because it says, Memorandum from Adrian M. Fenty, Mayor of the District of Columbia. So what does the Mayor of D. C. have to do with U. S. Human Right Treaty Reports?

MR. OLIVER: All agents of the United States are registered as U.N. agents. They’re all United States which you guys are too inadvertently through U.S. Code. They’re all agents of the United Nations and I have to bring that Code in but I do have it, and that’s FBI agents, they’re all United Nations agents by U.S. Code.

COUNCILMEMBER MEDEIROS: So my question again is why is this from the Mayor of D. C.?

MR. OLIVER: Because he’s acting agent on, on the U. N. Council.

COUNCILMEMBER MEDEIROS: Okay.

MR. OLIVER: Yeah. And they would send message to him because he’s your district director since you’re all agents of the United States. He’s the head, the po‘o, he’s the head of it. So he’ll send it out to all the other agents. The governor is . . . (inaudible) . . . disbursed.

COUNCILMEMBER MEDEIROS: And then secondly, in the first paragraph it says, we would appreciate your forwarding this communication to your Attorney General’s office. Why wouldn’t the Attorney General get a copy of this directly?

MR. OLIVER: We have sent it to everybody we can. As soon as we got it, we did send it out.

COUNCILMEMBER MEDEIROS: Okay.

MR. OLIVER: And then we waited to see if they would implement it and obviously they didn’t, so that’s why we want to bring it to you just to make everybody aware.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your testimony this morning.

MR. OLIVER: Thank you, guys.

CHAIR VICTORINO: Thank you, Mr. Oliver. Okay. Next testifier, Mahealani Ventura and followed by Dick Mayer.

MS. VENTURA: Aloha kakahiaka.

CHAIR VICTORINO: Good morning.

COUNCILMEMBER KAHO‘OHALAHALA: Aloha.
MS. VENTURA: Aloha. Since I was referred to in the testimony before mine, I have a few things to answer on that. The District of Columbia is where the municipalities under the State Federal Corporation is incorporated so it does include the State of Hawaii and its municipalities which is county. And then just to make a slight correction to the, the mana`o that was heard today, I believe that memo--I don't have it in front of me--is from the U. S. Department of State, from the U. S. Department of State to the Administrative Officer of the District of Columbia. Okay. And then I'm here to give mana`o and testify on the items WR-12, 18, and 16, and I will just proceed in that order, okay.

So water availability, you're looking to write the language relating to exemptions from Water Availability Policy. I'd like to recommend exempting the water that is derived from Royal Patented Estates, okay. In particularly speaking for and on behalf of my family as Po'e Ilina, I'd like for you to notate exempting taking water from, first of all, any of the A&B systems, Alexander and Baldwin, subsidiaries EMI, with subsidiary HC&S. A portion of their claimed water sources happens to be located on Royal Patented kuleana that is still within my family and in fact has never been transferred by required court order to any other party. So as you could imagine, we're, we're very good friends with EMI, yeah. So I'd like for that exemption to be included in your documentation. You can exempt anything deriving from Royal Patent 1396, Royal Patent 1395, and adjoining kuleana, okay, and that would be in the East Maui area. Okay. All right. And, you know, in that way I think that we would avoid any misunderstandings or trespasses, yeah. And I also believe that a human right is the right to water and that is definitely an obligation of this Council whenever they conduct, you folks conduct any operations or affairs and agreements having to do with water, that is your obligation is to protect the human right that it is, yeah.

Next item, Piiholo South Well. I can appreciate the need to negotiate a private agreement. I can totally get that, right on. But we need as the heirs once again to these estates, we need to see the documents of transfer from Office of Executor or Executrix to Office of Executor or Executrix to administrate over those estates. Piiholo is within an, an ili `aina, within an ahupua'a under some original patentee's name. Royal Patents include a bundle of rights: civil, inherent, judicial, judicially devised, intended rights as well. That's where your beneficiaries come in. The principals or parties thereto--you must, you must be aware--should provide you with the legitimate documentations of transfer, yeah. You're going to have a running issue of title issue, title issue, and circumventing the process just builds more issue upon issue. We've been there.

Next Item 16, development of new sources of water. We have a lot of water and I encourage this Council to take a look at the watershed partnerships. They get a fiscal budget of $10 million or something a year. I don't believe that wells and water are the problem, yeah. Be on notice, as I am here also to give you, that there is certain parties that you're looking at, namely Alexander & Baldwin, Inc., East Maui Irrigation Company, and Hawaiian Commercial & Sugar Company, all under A&B now, that are debtors on certain valid liens and whatever they're claiming they're under, under the A&B and that corporation are under lien, and so you're dealing with debtors and you need to maka'ala the fact that they are affected by liens and any transactions that they propose to transact with you or others based on the allegation that there's a shortage of water,
you need to be aware of the fact that there are valid liens out there that need to be released prior to negotiating a new contract so that that contract turns out to be valid. Okay. So that is my testimony for you today. Mahalo.

CHAIR VICTORINO: Thank you. Any questions to clarify the testimony given? Mr. Kahoʻohalahala?

COUNCILMEMBER KAHOʻOHALAHALA: Okay, you made reference to the Piiholo South and so my question is because you say that there are potential Royal Patent inheritance to those properties of which Piiholo South is so, then can you clarify that if those issues are not resolved then what are you, what are you expecting that this Council should be looking or be aware of or be understanding of?

MS. VENTURA: The Council should be looking for documentation of transfer of administrative offices such as executor and executrix over open probate estates.

COUNCILMEMBER KAHOʻOHALAHALA: Okay, and then if those are not provided for, then in terms of what is being discussed today in, in agreement perhaps with the, the County Administration and the owners of Piiholo South, then how would that have an impact on our decision-making at all?

MS. VENTURA: Well, if you did not require it, you would be participating in, in knowledge of a crime in not reporting it, which is I believe under Title 18, USC, Section 4, it's Misprision of Felony. If you're, if you're knowledgeable of a crime being committed, a disparagement to another human being, injury being committed to the families or those beneficiaries still within that estate whose assets are held within that estate, then you must report it.

COUNCILMEMBER KAHOʻOHALAHALA: Okay, and then this would be information then the Council would pursue by seeking the potential landowner or the present landowner in providing those documentation?

MS. VENTURA: Right, right. And the ownership of clarification, you know, that quiet title is not the remedy, never is. As a title examiner, I've voided alleged court orders that transfer title. What...so don't look at that as remedy. The remedy is to go back to the Royal Patent or have someone else do it, and just take note of documentation transferring without break, up to the present claimant today.

COUNCILMEMBER KAHOʻOHALAHALA: Okay, and then I just have one other question and you mentioned earlier that A&B, EMI, HC&S are under liens.

MS. VENTURA: That's correct.

COUNCILMEMBER KAHOʻOHALAHALA: Can you explain that to us?
MS. VENTURA: I'd be happy to. Well, first of all the Royal Patent itself acts as a lien because it is a first right, first claim of record. Any title—you guys know this, it’s...HRS adopted it—any title is to be derived from a Royal Patent, that’s the, the rule. There’s documentation that I just happened to bring with me here today that are valid liens placed on the record. Document...

CHAIR VICTORINO: Excuse me, Ms. Mahealani.

MS. VENTURA: Should I, yeah, should I go into this with the document numbers and ...

CHAIR VICTORINO: Yeah, no, no, I’m not going to allow it. Would you leave that if you can and we will forward it on to the right...and all of this will be transmitted to, to...I’m not even sure at this point who I’m going to send it to, but it will be forwarded to the right parties. Because again, I’m...we’re not in a court of law or anything of that nature, but we will take it and put it into the documents and forward it onto our Corporation Counsel.

MS. VENTURA: And incorporate it into your actions too.

CHAIR VICTORINO: Thank you.

MS. VENTURA: It’s...so what I’ll do is I’ll scan these documents that I have with me, I didn’t make copies for you all today, but I’ll scan them and I’ll email them like you told me yesterday to email the information.

CHAIR VICTORINO: Yeah. I appreciate it. Thank you.

MS. VENTURA: Okay, mahalo.

CHAIR VICTORINO: Mahalo.

COUNCILMEMBER NISHIKI: Chair?

CHAIR VICTORINO: Yes, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah, Mahealani, just because you spoke about valid liens.

MS. VENTURA: Right.

COUNCILMEMBER NISHIKI: And then you said trace it from what you consider to be the Royal Patent and then, and then follow that and, and if it is a quiet title, that that is not something that we should accept. Okay. My question is has there been any case and I don’t know if it’s the case of the Supreme Court or if it’s your World Court that you talk about that deals with and has come up with any type of settlement or final decision to say to us today that we should follow what you say.
MS. VENTURA: Well, first of all, I’m not telling you to follow what I say.

COUNCILMEMBER NISHIKI: Okay.

MS. VENTURA: And, and it is not my consideration of what the Royal Patent is. It is 200 years before my birth. I could, you know, look at or you could look at 1886, Bishop v. Thurston, the court, the legitimate court of inherent and original jurisdiction determined that there could be no overlaying or re-patenting of an already issued valid Royal Patent. That was in 1886. So there’s a precedent already, and let me tell you folks there’s tons of precedents out there, they’re just being suppressed or, or concealed from you.

The next precedent which would be more recent was in 1996, in Napeahi v. Wilson where as Judge Ezra declared that the Royal Patent is the boilerplate. It cannot be patented over such as with a TMK system or an account that’s floating over the land. We have to look at the fact that if there is no transfer, legitimate transfer of all interests that make up ownership of rights, resources and all of it bundled up together, then you do not have the complete title. Yeah.

COUNCILMEMBER NISHIKI: Thank you.

CHAIR VICTORINO: Thank you.

MS. VENTURA: You’re welcome.

COUNCILMEMBER NISHIKI: Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you. Thank you, Ms. Ventura.

MS. VENTURA: All right. Mahalo.

CHAIR VICTORINO: All right. Next to testify will be Mr. Dick Mayer and he’ll be testifying on all three items, followed by Pilialoha Teves. Go ahead, Mr. Mayer.

MR. MAYER: Thank you very much. Good morning, Council Members. All three items and I’m just going to try to be quick on all of them. WR-12, the water availability item, there are two, two items in there, you’re asking for three different items to be added to the ordinance and one deals with nonprofits, Item E. And I just want you to look at whether you also want to include, for example, if a nonprofit were to put up a housing development under workforce housing 50 percent let’s say as an example might be market units, 50 percent the affordables, do you want to exempt the market units as well? That’s something you should consider and make it...make clear in the ordinance, doesn’t apply to the whole thing. Otherwise, it could be a sizeable number of units that eventually get built and somehow got exempted when you really didn’t intend to be.
The next item is Item F where you talk about exempting public and quasi-public construction. In general, I would 100 percent be in support of that but again, just a caution, we may have some very large public, quasi-public entities such as the new prison that's being proposed with 800 inmates, huge quantities of water being consumed on the grounds as well as for human use. So you may just want to make sure that there is some review of that, that they don't just totally get exempted, otherwise they would totally avoid the water availability issue, and that might have interactions with the rest of the community. So just something to be cautious of.

With regard to the next item on your agenda, and that's WR-16, I'm going up numerically on these, and that's the development of new sources of water. You just heard several discussions and the term A&B mentioned. This is the agreement with East Maui Irrigation and A&B and also with water coming from the West Maui, Na Wai Eha. I would hope that you would look at that agreement, memorandum that you're discussing in light of the decisions being made by the State Water Commission and with regard to the East Maui streams as well as the Na Wai Eha streams, and see how that agreement interacts with those, those decisions rather than just automatically going on. And also, there's some language in there that looks a little vague to me, it talks about A&B getting water for domestic housing, but un-specifies, does not specify the number of units, the number of housing, the amount of water, et cetera. That's something, I guess, to be negotiated, but just a green light on, on that is something you may want to look at more carefully or ask your attorneys to, to investigate. Can you tighten that language up so it's very clear otherwise you may give a huge amount of meters out so it's just sliding right through.

The third item that I want to discuss is regarding the, and I hope I have four minutes to discuss this item, if possible?

CHAIR VICTORINO: No.

MR. MAYER: No? I thought each item that I could...

CHAIR VICTORINO: No, I said everything was incorporated into one because they're all one water issue. So go ahead, Mr. Mayer.

MR. MAYER: This is not, this is a separate water issue and that deals with the Upcountry Piilolo Well situation. First three items here, one is I hope you will get accurate numbers on the cost of the infrastructure that the County would have to bear in any negotiations, and you, you’re conscious of that before you purchase that well. It could be sizeable. You heard $300,000 just to test the well. Number two, the cost to pump, the cost of electricity to pump that water out of the well, I hope you recognize that in light of the amounts that you’ll be selling that water to domestic users and farmers, et cetera. And thirdly, and most importantly, regarding health, health issues, the State of Hawaii produced its standard that the applicant mentioned earlier and said that they met that standard. That standard was set up I think in the 1990s. The Federal government has subsequently come out with an EPA report which I'll be leaving with you, that...a fact sheet that just came out last year 1999, excuse me 2009, in which they make the statements and I'm just going to read a few quotes from it: the State of California recognizes
TCP, the chemical that’s already been identified in there as a human carcinogen. Short-term exposure may cause eye and throat irritation, long-term exposure lead to kidney failure in mice. And then they go on and talk about standards and they talk about the fact that...no Federal standards have yet been set; the State of Hawaii standard, they mention what those are; and then they talk about the California Department of Public Health has established a notification level which is about one-eightieth of what the Hawaii standard is for drinking water on a lifetime excess and a draft public health goal which is about one-thousandth of what the Hawaii standard is. What I’m asking is that when you ask the Department of Water, Water Supply to make, to test the water and whatever, that they do not just look at what the old standard in Hawaii is, but what the latest scientific analysis is showing with regard to the safety of that water. I have had a tumor on my kidney, I had the kidney removed. I’m very concerned for myself and I suspect, I’m also concerned and I am concerned for residents. I want to make sure that water is safe. It’s not just the quantity, it is the safety and I would like you to make sure—I am not a scientist, I can’t tell you whether that’s safe or not—but I want to make sure that we have the latest health recommendations and not just an old Hawaii standard that was done many, many years ago, and that would be the report I would hope the Department of Water Supply will look at. Thank you.

CHAIR VICTORINO: Thank you, Mr. Mayer. Questions to clarify the testimony of the testifier? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Yes, thank you, Chair. Just to be sure, you will be leaving a copy of that for us to read because you threw a lot at us in a very short time.

MR. MAYER: Right. I’ll leave a copy. And this is only a summary, a four-page summary, based on a toxicological report which I read last night which is about 200 pages long. I’m not going to leave you that unless…I’ll give you the references if you need it, and that gives a much more detailed analysis of how the tests were conducted.

COUNCILMEMBER BAISA: Thank you very much.

CHAIR VICTORINO: Thank you. Thank you, Mr. Mayer, appreciate that.

MR. MAYER: Thank you.

CHAIR VICTORINO: Alright, Pilialoha Teves speaking on behalf of the ohana, followed by Eric Kanakaole.

MS. TEVES: Good morning, Council. My name is Pilialoha Teves. I’m here to represent my ohana as well as the Human Rights Task Force. Josie Carson could not be here this morning. Between October 8th and October 22nd, the Human Rights Task Force, which I’m a part of, went around Maui. We had meetings in Kahului, in Hana, in Lahaina as well as in Kihei, and my testimony this morning, I’m going to read from the document that I gave to you.
The Human Rights Task Force Committee gives notice and testifies to the following certifying in fact.

The factual information has been received by the Royal Patent Estate Judicial devisee’s and beneficiaries from October 8, 2010 to October 22, 2010, demonstrating unbroken chain of title, withholding of estates and escrow funds by the administration known as the State of Hawaii, Incorporated.

As to the specifics, the heirs who are successors in interests, titles and rights in and to the Royal Patent Estates are being victimized presently under a scheme of occupant’s administration without legal premise or treaty. We find that those Royal Patents which do not expressly reserve water and mineral rights deliver them wholly and completely in the Royal Patent to the judicial devisees and heirs. We find that the State of Hawaii, Incorporated and its subsidiaries--which the County of Maui is a part of--lack the required legal transfer to administrate over their estates, violating the Declaration of Human Rights, inter alia, among them the right to inherit their water ancestors left to them.

So what I personally heard over and over again and it didn’t matter what area we were in, is that these families whether they were kalo growers in Keanae or in Hana, fishermen living subsistence, living off the land, there’s no water. There’s kalo, as you all know, the kalo’s been diseased, the water’s being upheld by AMI and for...I mean EMI, for sugar. These people can’t make their living, they don’t have a way of life. It’s always being impeded. The limu is suffering, there’s algae overgrowth in the water from chemicals, and it goes on and on even in Lahaina. The baby fish out there they’re dying, they don’t even come in because there’s no water reaching the coastline and it continues along that vein, and part of my kuleana is to make sure that these people’s voices are heard and that we can do whatever we can as a committee and let everybody know and let you folks know that this is part of the big picture. The United States is going to go up for human rights violations on November 23rd before the . . .(inaudible). . . of three nations, and we’re in the process of putting information together so that they have it as part of their, you know, the information about what’s really going on here in Hawaii and that things aren’t being just kind of swept under the rug for hundreds...since 1893.

CHAIR VICTORINO: Thank you, Ms. Teves. Any questions for clarification on the testimony? Mr. Kaho‘oalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Aloha.

MS. TEVES: Aloha.

COUNCILMEMBER KAHO‘OHALAHALA: So help me understand then by your testimony today that providing this document is giving then the Council its fair warning, is that what you said?

MS. TEVES: We’re just letting you know, you know, what we’ve, what I’ve been a part of and what we’re doing, and these people that are on the aina are the heirs and the judicial devisees and their
water is being cut off. And you look at Na Wai Eha, you know, it’s like when is that going to start running? The only time we see water is when there’s an overabundance of it from rain, otherwise it’s all being diverted.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, so just, just so I understand then, by this body now taking action on water issues that are before us today, you’re saying that some of those actions would be depriving those heirs to those resources?

MS. TEVES: Exactly. Exactly, and even the non-heirs that live out there because everybody deserves to have water and it shouldn’t just go to, to big business.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, and then as a result of an action we might take, then tell me what would be in your understanding the, the consequence or the things that are to follow?

MS. TEVES: I can’t speak about consequences or what’s to follow. My personal kuleana is to, is to make people aware and get the word out and wake people up to that, to the fact that they’re, you know, people don’t think about their human rights being violated. You know, that’s like oh, I don’t have water, my parents didn’t have water, my grandparents didn’t have water, this is the way it is, but it’s not. And a lot, you know, people get beat down, they don’t want to say anything, you know, because they fear that, you know, something is going to happen to them. And, you know, it’s like oh, status quo this is what we have to live with, but it doesn’t have to be that way and it’s, you know, if I can do anything about it personally, it’s not going to be that way. There’s enough for everybody.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, mahalo

MS. TEVES: And that’s our keiki, you know, and our future.

COUNCILMEMBER KAHO‘OHALAHALA: Okay. And again, I think just help the Council to understand, you know, what’s its responsibilities are in regard to these kinds of these issues because I think it’s something that we really, really need to have.

MS. TEVES: Well, we’d be very open to, you know, setting up a meeting with the Human Rights Task Force and share with you, you know, in detail, you know, information that was shared with us.

COUNCILMEMBER KAHO‘OHALAHALA: Okay, mahalo.

MS. TEVES: Thank you.

CHAIR VICTORINO: Mr. Molina?
COUNCILMEMBER MOLINA: Thank you, Chairman. Good morning, Ms. Teves. If I could get some clarification from you, you mentioned the United States going up before I guess for a trial regarding human rights violation. What was the date and where will that trial be?

MS. TEVES: November 23rd and it’s in the, up at the U.N. somewhere.

COUNCILMEMBER MOLINA: United Nations?

MS. TEVES: Yeah, yeah.

COUNCILMEMBER MOLINA: Okay. Thank you.

MS. TEVES: Sure.

COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR VICTORINO: Thank you, Ms. Teves.

MS. TEVES: Thank you.

CHAIR VICTORINO: Eric Kanakaole, and he’ll be speaking on behalf of the konohiki and the ali`i, followed by Rosemary Robbins.

MR. KANAKAOLE: Good morning, Chair; good morning, Council Members; and good morning the . . .(inaudible). . . corporation. I’d like to speak on behalf of the konohikis and the ali`is, and my testimony this morning is I want to make a statement and my statement this morning is that back in 1991 and 1992, I purposely went to the Federal Court. And what I did was I went there to fight for my legal rights which concerns water and that’s what the issue I took to the Federal Court. And when I did that, we came under konohiki. And we took the President of the United States, during that time it was President Bush, Sr., and we took the Governor of Hawaii, which was Governor John Waihee, and also, we took the Mayor of Maui, during that time it was Hannibal Tavares, and last, but least, we took the Bishop Trust to court. And mind you, we had a lot of results from that.

And just to make things more simple is that we went there for ownership and we made and had a title search done on the Ahupua’a of Ulaino which consist of 10,111 acres more or less and we know that it consists of more acres. But what we did was we took this 10,111 acres and we had it surveyed, and as we surveyed it and our surveyor came back with the stamp of the State surveyor on it proving that we did own it legally. Now when we got our title search, it says Queen Emma and her 20 heirs that she had listed on that documentation.

Now for me to know that that documentation was legal and also good was we took it to University of Hawaii and we took it directly to Williamson B. Chang who was the professor of the law school of Richardson Law School. And he took it, and we worked with him for about a
week or two weeks, and he came back and told my cousin and I that it was bona fide documentation. So as he said that, we went and entered the court system.

So during the two years of our court system, we proved to them that we had all the water itself. So we actually have what you call a deed, which is a title search for this area, and we also have the certificate of boundaries. Now during that time, EMI took us to court because they claimed they owned 32 percent. Now mind you 32 percent of coming into the court room, I don’t think that’s very smart because if you come in with 51 that means I only have 49, but they came with 32, and during that time it was Deborah Wright, who was the attorney at that time for them. And as she spoke and dumped all the documentation on us, I turn around and showed her the title search. I said if you read it, it will say 32 percent which is still in question. But although you control 32 percent, I’m telling EMI, EMI this that if you look real good under all of that names you’ll find two words, it says, “and others.” So I took 100 percent and subtract 32 percent, I said 68 percent is still out there.

So my question to them was, did you invest it for the family or did you, you know, save it for the family or did you take it? Now my answer to that, of course, was no comment. So I know for the fact that these families that I represent, which is konohiki heirs, that we do own this parcel and many more parcels. Now for all of those years that we have been fighting, I’m still here and that’s the reason why you have a documentation that says, “Na Konohiki” that I have served this morning to all of you, it says $74 billion. I entered this back in 1991, and I told them back then if you don’t come up and sit down and make parley, parley so we all can be comfortable and people like those that can appear waiting for water for 20 years could have their water.

Till today they didn’t show, and what happened to all my documents was they shove it up in the library. So there were other attorneys that were helping families to go get their water rights and they couldn’t get my documentation because it was locked up. Now any time you lock up public information I’m pretty sure that, you know, you got ’em on the run, and for that fact I say that, you know, I’m not here to say that I own the water, I’m going to take all of the water. No, I’m here to work with all of your people to make it better for everybody, such as those who came up here and make their testimony. And the government knows that, you know, and they know that I’m still back in the picture, you know, so they try to get me on a, what you call, I didn’t file my documentation within the time limit, but I did, and I have a lot of proof to it and I have a court case to prove it. So if the Council wants any documentation, I’ll be glad to give it to them.

CHAIR VICTORINO: Thank you, Mr. Kanakaole.

MR. KANAKAOLE: Thank you very much.

CHAIR VICTORINO: Okay, thank you. Any questions for the testifier?

COUNCILMEMBER MEDEIROS: Question.

CHAIR VICTORINO: Go ahead, Mr. Medeiros.
COUNCILMEMBER MEDEIROS: Aloha, mahalo for your testimony. The 10,100 acres, I'm not sure if I heard you right or wrong, you said Ulaino?

MR. KANAKAOLE: That's true.

COUNCILMEMBER MEDEIROS: Okay, so in Hana by Honomaele?

MR. KANAKAOLE: That's true. All the way up towards...I think you know where the _____ used to have their fruit stand.

COUNCILMEMBER MEDEIROS: Right.

MR. KANAKAOLE: Yeah, all in that area because --

COUNCILMEMBER MEDEIROS: All that, okay.

MR. KANAKAOLE: --because that whole area where our other families, the Oliveiras are living, that's all Hawaiian Homestead land, all that land is included in the Ulaino Ahupua'a.

COUNCILMEMBER MEDEIROS: Okay, Mr. Kanakaole, mahalo for that information.

MR. KANAKAOLE: Thank you.

CHAIR VICTORINO: Thank you, Mr. Kanakaole.

MR. KANAKAOLE: Thank you very much.

CHAIR VICTORINO: Rosemary Robbins and followed by...Jay, I no can pronounce your last name, I'm sorry. I'm dead already. We need to take a break, but we have with Ms. Robbins and four more testifiers. Should we just kind of finish it up and then we can close public testimony? It's almost 10:30, so is it all right with the will of the body to finish?

COUNCILMEMBER MEDEIROS: Yeah, go ahead.

CHAIR VICTORINO: Okay, thank you. Go ahead, Rosemary, sorry. Just wanted to clear it with the body, yeah.

MS. ROBBINS: I gotcha, feel better.

CHAIR VICTORINO: Yeah.

MS. ROBBINS: Good morning, Rosemary Robbins. Confident that zero people on the County Council and zero people at the Department of Water are driven by a mean-spirited orchestrated plan to
harm folk’s health. You’re not up to that. We need to know that. And also recognizing, though, that unintended consequences are nonetheless consequences. I’d like to just share a few documents with you.

You’ve been announcing for years that I’m part of the Upcountry Oversight Committee and part of what that EPA required Oversight Committee’s work was when it got a half a million dollars that came to the Department of Water to address water problems, was to do the research on the documents so that we could highlight things and help out everybody who is a decision maker in this. So I’d like to just quickly bring July 28, 2006, from the Department of Health Director, Dr. Fukino and she writes in here that, there are organic and other chemical contaminants that have been detected and confirmed in drinking water wells, select nonpotable wells, which is what the H’poko system is at right now, and fresh water springs through the site...throughout the whole of the different counties. So it’s all, this has other parts to it.

Also, I want to bring to your attention in that same document it says, In most cases once a groundwater source becomes contaminated it remains contaminated for many years. There are maps that show that a few wells that were previously not contaminated by a particular chemical are now showing positive detection of chemicals known to be present in nearby wells. So when we have clusters of wells, and this one looks like it’s okay and then it gets tested again and oh shoot, it’s not okay. Speaking to the need to deal with current information so that we have the history and we have the current.

Okay, would also like to bring to your attention another document. You’re welcome to copy these at some point. Another document from January 2008 that was the optimization study that the Oversight Advisory Committee also worked with, and in that final report which came out in February of ’08, it says that, only some of the Upcountry systems were available for review when they came. Studies have been conducted by Boyle Engineering, we also dealt with that one, Marc Edwards and others on several aspects of water chemistry. Unfortunately these data were piecemeal and quantitatively inadequate. Shoot. Okay, the good news is that on the back sheet of that summary statement in the executive summary the EPA has identified ways that we can do better. So they’re here checked off...maybe not met.

Also the Boyle outfit which that report came out in October 21st of ’05, it says that, there were difficulties with management information system and that people had information, whether or not they adjusted it, shared it with other departments and divisions and it got to be a bad joke, that’s why they called them divisions, everybody’s in a separate silo. So what good is the report and the data that led to that report if indeed the report is not shared honestly and timely?

There was another testifier this morning that brought something up, and last month on September 21st I got this from the EPA web about drinking water contaminants. So this up to date as was the previous testifiers and it talks in here about herbicides, insecticides--remember “cide” coming from the Latin word, “cida” meaning to kill--in here and some of the stuff that is recorded as being in our water with the research having been done by outfits like the EPA and the Centers for Disease Control and the National Institutes of Health, and if we look back and listen
to the Kanaka Maoli here, there is history of this too. It talks particularly about DBCP which we have in our wells and it identifies pineapple specifically as one of the row plants, plants planted in rows, that have increased risks of cancer. And the other identification that we put in here in addition to the liver and the kidney and the other that we heard this morning is reproductive difficulties. We're having children born where they're being traced around the world with these same negative ingredients, these contaminants, where the children are being born with dual sexual identification. We're talking about taking care of our children and our grandchildren, what are we doing about not sufficiently perhaps addressing the fact that these little ones are being born...well, with the rest of their lives to try and figure out who they are. So we really need to deal with that.

Runoff is a huge issue. So the people living Upcountry get from higher Upcountry runoff and from middle Upcountry get...watch that water flow by. When we do, it seems we have no water or we have lots of water at a given time with that rush downhill, and then you go over and you take a look at what's happened with these statistics for the people in Kihei, shoot, they didn’t have those kinds of plantings but they're getting water that's got the contaminants in them. So this is, it’s island wide for this island. Molokai and Lanai have kind of gotten off the hook because they didn’t get involved in some of this stuff to begin with. So we went back, we checked...

CHAIR VICTORINO: Ms. Robbins, I'm going to stop you at this point because you’ve gotten way more than four minutes because we started the clock real late.

MS. ROBBINS: Oh, sorry.

CHAIR VICTORINO: So I will stop you at this point, and is there any questions to clarify the testimony by the testifier? Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair, and thank you, Rosemary --

MS. ROBBINS: You’re welcome.

COUNCILMEMBER BAISA: --for being here, and thank you for your diligence. As we look at water availability, you know, this Council is really challenged as is this whole County Administration, everybody trying to find water. I know you’ve spent a lot of time and a lot of energy and you’ve, you know, you are probably quite knowledgeable on this subject.

One quick question and I, doesn’t have to turn into a scientific dissertation because we don’t have time for it, but I would like your, your answer. Do you believe that it is possible we’re using filters or ultra violts or whatever it is that we use to purify water, that it’s possible to do that for human consumption?
MS. ROBBINS: Perhaps all of them together ...(chuckle)... well-documented because we’ve got a cocktail of a lot of junk ingredients in this contaminants that we may need to have multiples to clear it up.

COUNCILMEMBER BAISA: So with proper combination and good documentation and diligent monitoring you think it’s possible?

MS. ROBBINS: I think the people to ask about that are the EPA and National Institute of Health and those folks and I would defer to them on that.

COUNCILMEMBER BAISA: Thank you very much. I think it’s important when we discuss, you know, possible contaminated water. Either we believe it can be cleaned up or we don’t believe it can be cleaned up and that’s where we go from there. So thank you very much.

MS. ROBBINS: You’re welcome. You obviously need the water. Yes.

CHAIR VICTORINO: Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Ms. Robbins, thank you for being here and for your testimony. I just wanted to find out being that when you develop a well that’s overseen by the State Department of Health that certifies it, and the State Department of Health is the State agency that represents the EPA. So if they certify a well, do you think their certification is not correct in doing that?

MS. ROBBINS: First of all, I never developed a well, but if...

COUNCILMEMBER MEDEIROS: Well, we’re talking about the quality of the water.

MS. ROBBINS: I got you, yep. If the State Department had data that was not piecemeal, that was not obsolete, then I think they would be in a much better situation to deal accurately with the larger agency, the Federal and with those of us at the smaller agencies and where, where we live. So crucial that we get that stuff together.

COUNCILMEMBER MEDEIROS: Yeah, and I understand your perspective on it. But the EPA doesn’t come to Hawaii to do a test on a well, they assign that responsibility to the State Department of Health which does test the water. And what I’m trying to get to is that if they certify it, do we go beyond that and say well, we’re not going to accept their certification and have to do more testing and who would do that?

MS. ROBBINS: I think we would have to ask why there is a continuing question.

COUNCILMEMBER MEDEIROS: Okay, all right, thank you for your perspective.

MS. ROBBINS: Okay.
COUNCILMEMBER MEDEIROS: Thank you, Chair.

CHAIR VICTORINO: Mr. Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: I just want to clarify your comments, and you stated earlier that the Department of Health had indicated traces of contaminants. And is this specifically to Maui Island and to the sources of water that we currently have access to?

MS. ROBBINS: Yes, and they published a graph for each one of the islands identifying what the problems were, where they were, what the results were of consumption of contaminated water like that, and the fact that the water can travel from known site to, darn it, other site that we thought was okay.

COUNCILMEMBER KAHO'OHALAHALA: Okay. And then, when you also indicated in your documents there that the EPA did even list some of those remedies, what are they?

MS. ROBBINS: The reason needed for the remedies is on the previous page, I won’t read that, but it’s in the executive summary from that February 20, '08 report. The green stuff, the good stuff, options and recommendations for improvement address the findings on that previous page. With respect to Administration and management, improve communications between and within operating divisions, set quantitative performance goals, foster interdivisional teams to address water quality problems, establish a formal training program, address staffing shortages; that’s to do with the management administrative end of it. Then it says with respect to operations establish process control monitoring of plant performance, develop written guidances and procedures for tasks, establish procedures for operations studies and for review of emergency responses, inventory and stockpile essential equipment and supplies, and establish a preventive maintenance program.

CHAIR VICTORINO: And, Ms. Robbins...

COUNCILMEMBER KAHO'OHALAHALA: Okay. Thank you.

CHAIR VICTORINO: Ms. Robbins, that report was given by, to us from, and that was for our Department of Water Supply, is that correct? Was that not forwarded to the Department of Water Supply?

MS. ROBBINS: Well, they had it and the Oversight Advisory Committee had it.

CHAIR VICTORINO: Yes, and it was submitted, because I remember reviewing that from the Department from the Oversight Committee a number of years back.

MS. ROBBINS: Okay. February '08 it was issued. They came out for 11 days.
CHAIR VICTORINO: Yeah.

MS. ROBBINS: But the stuff from the previous like the Boyle one, had these pretty much saying, awe shoot.

CHAIR VICTORINO: Okay, thank you.

MS. ROBBINS: Yeah.

CHAIR VICTORINO: I just, I just wanted because there is reports out and that is in our files. So okay, thank you very much.

MS. ROBBINS: You’re welcome.

CHAIR VICTORINO: Next testifier is Jay Protacio and then will be followed by Kuuiipo Naone.

MR. PROTACIO: Good morning, I’m Jay Protacio. I’m part of Aunty Ruthie’s ohana. I just wanted to comment on Mr. Nishiki saying that it was a give and take process. Well, the Board of Water Supply have asked us to put money in escrow as Aunty said, we did that. They asked us to do the infrastructure off of the main pipe, we’ve done that. They asked us to plant Jacarandas, we’ve done that, although there’s no water to water the Jacarandas and we have to truck it in, we have done that. So we have given and we have given and we have given. We have been on that property for 93 years. Ninety-three years, that’s longer than all the World Wars, Empire State Building, Mount Rushmore and we still don’t have water. How much more do we have to give before we can finally take a meter? Thank you.

CHAIR VICTORINO: Thank you, Mr. Protacio. Next is Kuuipo Naone followed by Jeremiah Naone.

MS. NAONE: Aloha, good morning, Kuuipo Naone. I live in Kula, but originally from Keanae. And so I didn’t really prepare anything except to say that everybody know the situation that’s going on in Keanae and though Na Moku, outcome, supposedly was a positively thing, we still do not have water, and it’s sad to me to see the family fighting among each other for water. Now my family has been farming for many years. I was brought up in a taro patch. My son now and my nephew and a cousin now takes care of our farm. I still go home often to help make poi and sell poi on a regular basis.

My son is a student at MCC, who’s taking classes in EMT and he enjoys it very much. So is my daughter. My daughter is in the nursing program. I have a niece who’s also in environmental science. A nephew who’s also going for agriculture. And hopefully one day they all will return home, and when they do, you know, like my son, in my son’s case he goes to school full-time and he’s a farmer, weekend farmer is what we like to say. He’s a weekend farmer. But being in this situation how things are right now, what’s going to happen in the future?
EMI, of course, has control of the water. They have no ownership. And they don’t, they have a lease agreement, but what happens, what’s going to happen to our future? The water is contaminated, I can vouch for that. EMI sprays poisons. We have tour groups going up into the mountains, kaka all over, rubbish, and these are places where families go and gather. Now DLNR is supposed to be monitoring all of this, but...but where is the report on that? You know, people from Keanae can’t be going into the mountains and monitoring all of this. It’s not like we carry a video camera and can be videoing all this. But who is listening to the people?

And then most of all, the people who had the...who have all rights to the minerals, to the water, and hold these Royal Patents, this Palapala Sila Nui, they are the rightful owners, they are the rightful heirs, probates that still remain open. Where, what, where is their rights? You know, something has to be done and there needs to be a balance and the only balance that I see is that these mineral rights, land rights, gathering rights all need to be returned to the people because only the people can do what is right. It is obvious that we are not about owning and keeping for ourselves and making profit for ourselves. We are aloha and that’s what we live by and that’s what we are and we share with all of you, with everybody, but there still needs to be a balance. Thank you.

CHAIR VICTORINO: Thank you, Ms. Naone. Questions for the testifier? Mr. Kaho‘olahala?

COUNCILMEMBER KAHO’OHALAHALA: I’m just curious, you made comments about tours. Can you describe what kind of tours and where are they accessing?

MS. NAONE: Well, you know, it’s all different parts. If you go to Kailua there’s a whole bunch of cars on the side of the road. They all go up there into the mountains and they do their swimming thing. There’s a hike tour that goes up there. There’s a whole different place. I mean, it’s East Maui side is wide, it’s open, and people from all over just, they just jump out and they go touring. They do picnicking. They go swimming way up in the mountain. And, you know, mind you, these are all the waters that you folks all drinking.

COUNCILMEMBER KAHO’OHALAHALA: You made a comment about them leaving their kaka, you know, that’s what I’m more interested in understanding so...

MS. NAONE: Yeah, yeah, because there is no restrooms up there in the mountain. You know, there is no garbage cans in the mountains. Those areas are all sacred. We should all guard it as being sacred. This is water that we drink.

COUNCILMEMBER KAHO’OHALAHALA: Okay, thank you for that.


MR. NAONE: Good morning, aloha.
MR. NAONE: Thank you, Council and Council Chair and Council Members, for letting me speak. First of all, I want to say that I’m a recovering cancer patient. I’ve learned from being a cancer patient that, and I was surprised but, 90 percent of our, that you catch cancer from is environmental, 90 percent is environmental. I learned that pesticides are in our water which we drink which is not monitored most of the time, of course, the Land and Natural Resources, God bless them, they try their best, but they can’t. Just like a parent, you can’t watch your children all the time. You can agree to that. So we can’t watch our water all the time, but we gotta malama the land. Gotta watch.

Another thing I want to say is on this issue of water availability, I just want to say that they have this word, “exemption”. I believe I am a Kanaka Maoli, I learned that being Hawaiian is wrong, being Hawaiian is wrong. So as a Kanaka Maoli under the Ko Hawaii Pae Aina Nation, I don’t want to upset anybody, but that’s where I stand, and I really appreciate you guys listening to me.

I just want to say that the Royal Patent, patentees of the land should be exempt from the water availability. They know what’s really right. They know how to share. They don’t need corporations to tell them how to share. If you look at me and you look at a corporation, I would try my best to share. Look at them, they’ll try their best to keep it, hold onto it and if you guys piss them off, they’ll just throw it out, throw it away, poison it. And what I mean by poison, there has been some stories that they dump poison into the water but I can’t prove it. But if you go to the mysterious Island of Kahoolawe, you might find some because when we had the . . . (inaudible) . . . all of a sudden the fish got poisoned, and there’s no evidence of who did it or if it was done at all, but if you talk to some of the residents there you might find some stories. Check it out. Talk story, kuka, and that’s why I say that maybe this water availability should be exempt from the Royal Patentees, vested heirs.

Also, they have the Piiholo South Well, says that it’s owned by the State. I would like to see the documents that state that the State owns it and just to check out the documents. I’m not an expert on checking on documents, but I did five years worth of looking at documents, original documents and it was surprising to see how these documents were concealed. One of the worst things ever done to the Kanaka was substitutions, to substitute me for Baisa and make everybody believe I’m Baisa. That’s what they did. To concealment. And to have corporations come in and say that they own stuff or at least they pretend to own stuff confuses me. Oh, I’m over. I have a lot to say, but I don’t want to waste your time.

But one thing I will say about this one, this agreement, is that does the State have the priority or jurisdiction under the State well or on any land. Also, the development of new sources of water, you gotta remember now, take a look at my arm. I gotta get poke, I’m part of the land. Every time you drill one well, you suck up the water and the world around it, all the land, all the greenery goes with it. Every time you drill a well, think of yourselves like poking yourself with a needle, a deep needle and then somebody takes away your blood like a corporation and they leave the people dry. Is this what you want to decide upon, have your consciences all dried out?
No. I know you guys are of human in tendencies and I know I might be saying this wrong, but I know each one of you feel it. So let’s be pono if you know what pono is. ...(*chuckle)*... You know, I don’t want to speak too much of a…speak the Hawaiian language, with our Olelo because most of you will have to go searching, but I just want to say Olelo is the first language in the State. If you look at your State Constitution, Olelo is one of them and it’s supposed to be first, and I’m speaking English because I was robbed, but I don’t mind, I’m a Kanaka and I love you all, aloha.

CHAIR VICTORINO: Thank you, Mr. Naone, for your testimony. Any questions for the testifier? Seeing none, mahalo and get well.

MR. NAONE: Thank you.

CHAIR VICTORINO: Mahalo. And the last testifier to sign up today is Josie Carson. And she is a member of the Human Rights Task Force.

MS. CARSON: Good morning, Mr. Victorino and Members of the County Council. My name is Josie Carson and I am a member of the Human Rights Task Force that had been testified earlier that we went to several areas here on Maui and we heard concerns from people, Kanaka as well as non-Kanaka. And their concerns are that they have been displaced, water has been taken, their rights have been violated. They’re unable to swim in ponds that they grew up at.

And in regards to the water, the Piiholo Well, I had a question, I wanted to find out was there a complete and full title search before the project is going to be approved or even if it has been approved? Because from doing family genealogy research, I have discovered that many areas is in open bonded probate, and if that is the case, the heirs or the judicial devisees have never been given their rightful heritage, their rightful claim. So if that’s the case, how can anything be approved? So I’m being here as a Task Force member and I would like the Council, if possible, to answer that question, and this is the end of my testimony. Thank you.

CHAIR VICTORINO: Thank you very much, and unfortunately, I cannot give you an answer right now. I will assure you that all the subject matters that have been brought forward today will be forwarded to the Corporation Counsel which is our legal representation, yeah, and that I think there’ll be times where we’ll get together in the near future to discuss this matter. And at this time I will be giving recommendations to the Committee after our break, but I can assure you there will be no major action today being that all of this has been brought up, brought to our attention. I think this leaves too many open-ended questions that need to be answered, yeah.

MS. CARSON: Good, thank you. I appreciate that.

CHAIR VICTORINO: So, you know, so I thank you guys for your mana’o today. There’s a lot of things that came at us and where lot of us…and we have more questions, and the questions will be directed at your testimony. Go ahead, Mr. Kaho’ohalahala.
COUNCILMEMBER KAHO`OHALAHALA: Yeah. Can you help me understand that when you said that finding those heirs or the heirs have not been properly notified, how does one come to understand who those heirs are? Is it simply by doing a title search? How does the Council...you know, because we’re being told that we’re making decisions that are affecting heirs, rightful heirs to some of those resources or land. And that we are being called upon in terms of violations perhaps on human rights issues as you’re, you’re a part of. So how do we become familiarized or how is that information brought to the forefront so that this body can make other considerations other than just making decisions over land and water, you know?

MS. CARSON: Well, personally what I’ve done is doing my genealogy and I have found my Royal Patent for the family members, I would then start doing, you know, backtrack research, and during that process I would find out whether there is a open probate. And most of the open probates are either...is actually held in First Circuit Court, and then from there you should be able to start to trace genealogy of the heirs of that probate. I mean, it will take some time. It’s nothing that you’re going to have just a fast answer, because I’m still doing research.

COUNCILMEMBER KAHO`OHALAHALA: Okay, and then the open probate, explain that.

MS. CARSON: An open probate is where the Patentee or the rightful owner has passed on and the property is in the court system and the probate has not been actually distributed or disbursed to its heirs, therefore, it just stays there until the court system, which is the court clerk, should actually which is their responsibility to notify the heirs that, you know, you still have this probate open and you need to come and close it. But as far as I understand, I don’t think any heirs has ever been notified by the court.

COUNCILMEMBER KAHO`OHALAHALA: And then so those lands that are in question that are in these open probates or properties or resources they can, they can be sold, they can be...

MS. CARSON: They can’t be sold because since the probate has not been closed, title has not been given to the proper owner or the proper next of kin, the heir or any judicial devisee. So how can title pass over to anybody else unless it’s totally closed?

COUNCILMEMBER KAHO`OHALAHALA: Okay, if one were involved in a, in a quiet title action then that involved lands that were in an open probate, what would happen to that quiet title process?

MS. CARSON: As far as the Kanawai goes to my mana’o, and I’m not a lawyer so I’m just speaking out of, for myself, that piece of aina is still under direct ownership of the Patentee’s heirs. So quiet title really will not apply, not in our Kanawai.

COUNCILMEMBER KAHO`OHALAHALA: Okay, thank you for that explanation.

MS. CARSON: Any other questions? Thank you.
CHAIR VICTORINO: Thank you very much. Ms. Carson was the final testifier that signed up to testify. I will give anyone in the gallery who has not testified an opportunity to testify. Seeing no one coming forward, with no objections, I’d like to close public testimony for today’s meeting.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Thank you. What we’ll do is we’ll take a ten minute, I’ll give you till 11:15, and we will return and I will discuss my recommendations with you due to the amount of testimony that was given today. So this Water Resources Committee stands in recess to 11:15.

RECESS: 11:00 a.m.

RECONVENE: 11:20 a.m.

CHAIR VICTORINO: ... (gavel) ... The Water Resources Committee of October 26, 2010 will reconvene.

ITEM NO. 12: WATER AVAILABILITY (C.C. No. 09-282 and C.R. No. 09-141)

CHAIR VICTORINO: Let me start by saying that today we received a lot of information, a lot of items that connects to what we’ve been or were going to be discussing, and in light of that it is the Chairman’s recommendation starting off with WR-12, the Water Availability, to ask for deferral. And so that many of the questions that were brought up by various parties, we will look to get answers as soon as possible. So I cannot even assure you when these would come back up other than I would not like to bring them with so many, so many dark clouds over them. So if it is all right with the Committee, I would first like to ask for deferral of WR-12.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JP).

ACTION: DEFER pending further discussion.

ITEM NO. 18: PIIHOLO SOUTH WELL (STATE WELL 5118-04) (C.C. No. 10-159 and MISC.)

CHAIR VICTORINO: Thank you. And, and I would also go with WR-18, and that, also, as you read today more information was brought forth, items were brought not only on one side but issues of title and all of that, and the, the necessity for the Administration to continue to dialogue with the
principals in the issue. So I would also humbly ask for all of you for your permission to defer this matter, WR-18, the Piiholo South Well, State Well No. 5118-04. And again, I cannot promise until I get more information back, so if I may defer this item.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JP).

ACTION: DEFER pending further discussion¹.

ITEM NO. 16: DEVELOPMENT OF NEW SOURCES OF WATER (C.C. No. 05-319)

CHAIR VICTORINO: Thank you. And lastly the New Source...Development of New Sources of Water which is WR-16, again, a number of issues were brought up today. We were all here. I think some of these issues we do definitely need to have them addressed, and I would also humbly ask all of you for the permission to defer this item, WR-16, Development of New Sources of Water, with no objections.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JP).

ACTION: DEFER pending further discussion.

ITEM NO. 18: PIIHOLO SOUTH WELL (STATE WELL 5118-04) (C.C. No. 10-159 and MISC.)

CHAIR VICTORINO: Thank you, Committee Members. I am truly sorry. Mr. Eng, and I’m sorry you weren’t here while I was going through this, so I will, if you would like to because we’ve deferred it, but is there anything you would like to, and that the permission of the, the Committee Members on WR-18, Piiholo South Well, if you would allow Mr. Eng if he wants to say anything on this matter.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections. So, Mr. Eng, if you would like to add anything to what we’ve heard today, we’d appreciate it.

MR. ENG: Thank you, Mr. Chairman and Committee Members, yeah, some of the information that the testifier brought forth was new to me. I did send a letter to the developer, Mr. Zachary Franks, on September 16, of which I brought up the subject of the retesting protocol that we would

¹ See further discussion on Item No. 18.
require. And the reason for the retesting, the additional pump testing, was because there was a trace amount of trichloropropane in their, in their test of, I believe, October 2008. And we believe we had to investigate that further to determine what the potential concentration would be. So it wasn’t because we were malice or cruel, we need to know for the public’s sake and safety, and also, if it would require a treatment facility. And so that was the only reason. I did not get a formal response from the developer, but as we heard today, the developer responded to the Mayor’s Office by letter I think in September 24, and I was not copied. It’s unfortunate that even though I mailed the letter to the developer, they somehow bypassed me totally in their response, and I was not copied by the Mayor’s Office either, so this was brand new to me. That’s all I have to report at this time. Thank you.

CHAIR VICTORINO: Thank you. I’m not like going to a lot of questions but, because we already deferred the matter. So if you have any specific questions you would like us to look into, would you put it in writing and then I will make sure we will put it as part of the record, and also, at the meeting we bring this back up that this will be part of the record, yeah. So without any further discussion, comments, the meeting of October 26, 2010, Water Resource Committee will now be adjourned. Thank you, Members. . . (gavel). .

ADJOURN: 11:26 a.m.

APPROVED:

MICHAEL P. VICTORINO, Chair
Water Resources Committee
CERTIFICATE

I, Carolyn Takayama-Corden, 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 12th day of November, 2010, in Wailuku, Hawaii.

Carolyn Takayama-Corden