WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

November 30, 2010
Council Chamber

CONVENE: 9:03 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Danny A. Mateo
Councilmember Bill Kauakea Medeiros
Councilmember Michael J. Molina

NON-VOTING MEMBERS:
Councilmember Wayne K. Nishiki (In 9:20 a.m.)

EXCUSED: Councilmember Sol P. Kaho‘ohalahala

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

ADMIN.: Jeffrey Eng, Director, Department of Water Supply (Item Nos. 12 and 18)
Herbert Chang, Engineering Program Manager, Engineering Division, Department of Water Supply (Item Nos. 12 and 18)
Guy Hironaka, Real Property Manager, Department of Finance (Item No. 18)
Edward S. Kushi, Jr., Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Zachary Franks, Managing Member, Piiholo South, LLC (Item No. 18)
Rosemary S. Robbins, Environmental Protection Agency’s (EPA) Upcountry Oversight and Advisory Committee (Item No. 12)
Dick Mayer (Item No. 18)
Sherman D. DePonte (Item No. 18)
Elle Cochran
Ruth DePonte
David Taylor
Mercer “Chubby” Vicens

PRESS: Harry Eagar, The Maui News
Akaku--Maui County Community Television, Inc.
CHAIR VICTORINO: ... (gavel) ... Good morning. The November 30th Committee meeting for the Water Resource Committee will come to order. We have a quorum this morning and let me introduce the Members that are here this morning. First of all, I would like to introduce our Vice-Chair, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning, Chairman.

CHAIR VICTORINO: Good morning. Our Vice-Chair of the Council, Mr. Michael J. Molina.

COUNCILMEMBER MOLINA: Good morning, Chairman.

CHAIR VICTORINO: Thank you for being here. And our lovely young lady from Upcountry, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Good morning.

CHAIR VICTORINO: Good morning, sir. And our Council Chair, Mr...from Molokai, Mr. Danny Mateo.

COUNCILMEMBER MATEO: Good morning, Mr. Chairman.

CHAIR VICTORINO: Good morning. Excused this morning...he had to have some, some business to take care on the island of Lanai is the Lanai representative, Sol Kaho'ohalahala. We have two Members that are Non-Voting Members that are not here this morning; if they do come we'll recognize them. And of course, I am the Chair of the Committee, Michael Victorino. I would like at this time to take a moment to represent the Administration, right now representing the Director of Water Supply, Mr. Jeffrey Eng, will be Herb Chang. Good morning, Mr. Chang. Thank you for being here. Deputy Corporation Counsel, Mr. Edward Kushi, Jr.

MR. KUSHI: Good morning.

CHAIR VICTORINO: Good morning. And then, also for the Department of Finance in case we need to call upon him, Mr. Greg [sic] Hironaka from the Property Assessment Manager at Department of Finance. Our Legislative Analyst and, of course, our Committee Staff, who we have been so invaluable to us all, Ms. Kim Willenbrink and our Committee Secretary Ms. Tammy Frias. Thank you all for being here this morning.

We have two items, but before I go on to the two items, after public testimony I would like to ask your consideration, we have a number of items, RW...WR-15, the Lanai Water System Acquisition Appraisal; WR-27, Assessment Through...Access Through the Hans Michel...
Property For Maintenance And Operation Of The Kahana Valley Stream. Those two items I would like to have consideration to be moved so that those will be moved up in pursuant to Rule 21 of the Rules of the Council, yeah. So those will be referred to next year’s Council. So after public testimony if there is no objections, I would like to move those two items and get that completed just in case we take too long and we lose quorum, yeah. So with no objections, I would like to start public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. Public testimony again will be limited to items on the agenda today. If you have not signed up, you can sign up on the table outside in the lobby of the eighth floor. We’ll limit three minutes per testifier with one minute to conclude. Please state your name and who you’re representing if you are giving public testimony. Also, at this time, I would like all to please if you have cell phones put them on silent or vibrate. We would like to keep decorum in this Chamber for the day, okay, for the morning I should say.

Okay, we have just one testifier this morning and that testifier will be talking to us about WR-18, Piiholo South Well. The testifier, of course, we all know, Mr. Zach Franks and he is the Managing Manager of the Piiholo South. Good morning, Mr. Franks.

...BEGIN PUBLIC TESTIMONY...

MR. FRANKS: Good morning, Chairman Victorino. Good to see you and happy holidays to everybody and congratulations to all who were reelected, and also congratulations on your transitions to those who are, are leaving us. You’ve done great service to the County, each and every one of you, and personally I appreciate the time that you’ve given me in the past and all the courtesies that you’ve extended towards me and my associate, Cindy Warner.

I’m speaking to you about the resolution that apparently is up for further consideration to be passed on I believe to the next Administration with your imprint, and I want to discourage you from doing so. The resolution was Resolution 10-40. I want to give you a little bit of history. I don’t think it was ever a constructive proposal. I think it was offered by Mr. Nishiki for the purpose of derailing Kula Ridge in which it failed. Mr. Nishiki never consulted with us and we were the prime player in this. So it was not really, in my opinion, the kind of resolution that one would offer if one wanted to go forward with a...contributor to the County in a substantial sort of manner. The...but, but one of the most outrageous things about the resolution is that it proposed that the County of Maui take 95 percent of our well production without giving us any compensation while at the same time asking Piiholo South to add very substantially to the County’s Upcountry water system. I mean, it patently unrealistic, absurd proposal and also a taking of private property which can never happen because we would not consent to it.

I wrote, but, but, but nonetheless, Piiholo South did try to go ahead in negotiations with, with the Mayor and the Water Director to whom I wrote, and neither one of them ever answered me. So
your, your encouragement to them to negotiate with Piiholo South apparently did not go, did not go well. And I don’t think that asking the future Administration to negotiate with Piiholo South on the basis of this resolution is a good idea. It really poisons the water rather than encourages either Piiholo South or to...Piiholo South to come forward and to be forthcoming and for the Administration to come forward on a realistic basis. This is much as if somebody were to say to you listen...well, if the County Council were to say to you we want 95 percent of your house and we’ll give you 5 percent of its value, what do think of that? You would think of that that you were being disrespected. And, and you would be upset.

And I can tell you I was very upset when I saw that resolution come through and I would be upset quite frankly if you, if you chose to pass this on and saying, this is a good idea. I think it’s a very bad idea. I think it sends a negative signal to the people of Maui that the County Council favors expropriation and it sends a very negative signal to the Mayor, to Piiholo South, and just not what, what you ought to be doing in my opinion. The resolution has failed completely. It did not derail Kula Ridge, it has not brought the Administration and Piiholo South together, and a new Administration and new Council are coming in, a new Water Director is coming in. Let’s start over again, let’s consign 10-40 to history. Thanks so much for hearing me today.

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

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Yes, Mr. Pontanilla, go ahead.

VICE-CHAIR PONTANILLA: Thank you. So, Mr. Franks, did I hear correctly that you don’t agree with this resolution?

MR. FRANKS: You heard correctly.

VICE-CHAIR PONTANILLA: Thank you.

MR. FRANKS: Yes.

CHAIR VICTORINO: Any other questions for the testifier? Seeing none, thank you, Mr. Franks, we do appreciate it and appreciate all your working with us to resolve this issue.

MR. FRANKS: And thank you for your part, Mr. Chairman.

CHAIR VICTORINO: Thank you very much.

MR. FRANKS: Yeah.
CHAIR VICTORINO: We have one more testifier, Rosemary Robbins will be testifying on WR-12 and she is a member of the Upcountry Oversight Advisory Committee. Go ahead, Ms. Robbins, yeah, thank you.

MS. ROBBINS: Good morning everybody. Before I start I would just like to say thank you to the Water Department for its...and Gladys for the opportunity to have made available to the folks Upcountry information and materials for free at their Upcountry Kula Community Association last week. It lets them know that you’re all doing a good job and trying to get stuff done, and early congratulations to Dave Taylor who is the DWS incoming Director and Paul Meyer as the Deputy Director.

I’d like to take the opportunity to take a look at WR-12 this morning. Item 3 under that description on Page 1 of the meeting agenda speaks about exemptions from an ordinance amending, no, it speaks of an exemption from requirements in the policy and there were three. One was exemption from water availability policy infill development. I’m concerned about jumping over a policy; also, secondly, residential dwelling units developed by nonprofit organizations; and thirdly, public, quasi-public construction in the Central, West Maui water system areas. Yesterday in the paper it spoke about a 100 percent affordable housing opportunity in Kihei that sounds like it would also be looking for those exemptions, and I’m hearing concerns expressed in the community that what the heck good is a policy if all the exemptions are granted. And then the water that’s going to be going to South Maui for that is definitely going to affect the quantity of water that would be available perhaps for people Upcountry. I didn’t have an answer to that.

So just to let you know there are folks out there that are wondering why Upcountry again is being left out when we’re talking about quantity, and as you know, my concern is primarily quality for this. And I would be curious to know whether or not Piiholo South water has been reevaluated at whose cost and by whom because those questions are out there. So thank you for hearing them.

CHAIR VICTORINO: Thank you, Rosemary. And let me make couple of quick clarifications.

MS. ROBBINS: Good.

CHAIR VICTORINO: First of all, there is, there is concern out there that today we’re looking to pass a resolution, but if you all remember, this resolution was already adopted. So there’s no action as far as passing resolutions today. It’s just a review and that’s the first thing.

MS. ROBBINS: Thank you.

CHAIR VICTORINO: Secondly, Upcountry has been dictated with the Upcountry meter list and availability of water in the Upcountry area whereas South Maui and West Maui there’s a little difference in that area. That’s why they were pointed out specifically. I cannot include the Upcountry area because of the water meter list, and until that is taken care of there is nothing
else that can be truly done up there unless they’re done privately, yeah, Rosemary. So just so that you have a clarification why and we’re not two interconnected systems. Maybe one day it will be interconnected but at this time, they’re two separate systems. Central and Upcountry are totally separate systems and it includes West Maui. West Maui is also a separate system in itself. So I hope that clarifies that that’s why this resolution or this, this, looking at the “Show Me the Water” Bill primarily went with South Maui and, and Central Maui along with West Maui, because it’s the same systems whereas Upcountry was a separate system and it’s still mandated with the Upcountry meter list. Until that is taken care of, almost everything else has to be done privately.

MS. ROBBINS: Thank you. And that does definitely speak to the quality end, to the quantity end of the water. The folks up there are concerned about the fact that if we’re not doing anything about getting qualitative quantities Upcountry which is going to rule out the Piiholo South in its present reality, that’s, that’s the maybe on down the line that you just spoke of --

CHAIR VICTORINO: Yeah, and that’s exactly what it is.

MS. ROBBINS: --and they’re concerned about that.

CHAIR VICTORINO: Sorry about that. No, no, no and that’s fine, I mean, I just want clarification so that we’re not getting all wrapped up in the...in, in issues that down the road as you just heard a moment ago with Mr. Franks, you know, the new Council, new Administration will be looking at different options, yeah. And I don’t want to speak ahead of the curve because I want to give the Administration, the new Administration the opportunity to bring back their, bring forward their plans, give Mr. Taylor and all of the others that will be coming in an opportunity to work with us. So, so at this point, it’s just a review of what was going on as far as the Piiholo South Well.

MS. ROBBINS: Okay, but on the WR-12?

CHAIR VICTORINO: WR-12 is just to take a look at it, to see if there is some whereal [sic] to look at that. If not, we will just forward it to the next, next Council.

MS. ROBBINS: Okay.

CHAIR VICTORINO: Okay.

MS. ROBBINS: Thank you much.

CHAIR VICTORINO: Thank you. Any questions for --

MS. ROBBINS: Aloha.

CHAIR VICTORINO: --the testifier? Seeing none, thank you, Rosemary.
MS. ROBBINS: You’re welcome.

CHAIR VICTORINO: And then the last testifier I have signed up is Mr. Dick Mayer and he’ll be looking at WR-18. He’ll be speaking on his behalf. Good morning, Dick.

MR. MAYER: . . . (inaudible) . .

MS. FRIAS: Documents were distributed.

CHAIR VICTORINO: Sorry, Dick, we did make copies of your email.

MR. MAYER: No problem. I...one or two word changes, but that’s fine.

CHAIR VICTORINO: If you want it to be passed out --

MR. MAYER: Yeah, let me pass it out.

CHAIR VICTORINO: --why don’t you ahead, Tammy, pass it out please. Oh, I mean, Kim, if you don’t mind please.

MR. MAYER: Probably the timer’s going. I thought that the resolution had not been passed and so the wording is, is wrong, but I think that the facts I’m raising here or the issues I’m raising are of concern. I would hope that when the Department begins looking at this well that they will do, consider the following things, and I’m just going to read one, two, three, four.

Tests for an extended period must show that the well delivers a dependable supply of water without negatively affecting nearby wells such as the County’s Pookela Well and the Maui Land and Pine’s Piiholo Well and others in the area. The tests should prove that the installed pump is properly sized and if the well diameter meets Department of Water Supply’s requirements.

Number two, which I personally have some concerns about, tests must show that the well water is totally safe from a health perspective, including safe from the residues of the long-term application of chemicals on the surrounding pineapple fields, and please see the items below and we’ll come to that.

Number three, that the County will determine the total cost of the purchase which would include payments for the well, bringing electric power supply to the wellhead, pumps at the surface to pump the water up to tanks, water tanks themselves, transmission lines and water treatment filters to remove any chemicals that may be found in the water.

And number four, cost figures (in cents per thousand gallons) for pumping the well water up approximately 1,600 feet to the surface and then hundreds, if not thousands of additional feet up to the Lower Kula and Upper Kula waterlines. These costs should be compared to water revenues per thousand gallons and net profit or loss from water sales.
Now my concerns down below with regard to number two, because we must protect Upcountry residents' health; here's the rationale for number two. The Piiholo South Well is located in an abandoned pineapple field. It was reported by the well owners that the initial short-term, four-day water test showed a TCP chemical level of 40 parts per trillion. Although a TCP level of 40 parts per trillion is below the Hawaii Department of Health’s present standard, DOH is now reviewing the standard in light of more recent toxicological tests in California and elsewhere. Based on those extensive studies, California’s EPA is now recommending much stricter TCP standards, .7 parts per trillion. Piiholo South Well original test results of 40 parts per trillion would not meet these standards. Attached are several documents, one from the EPA, one from the California where they recommended and I’ve highlighted the location in those documents of where those results are.

They also mention that the chemical can possibly be removed by granulated charcoal. Question would be to what degree that can be removed? Can it get down to those very stringent levels that are being recommended in California? And in California, they did very extensive toxicological tests on TCP. My own personal concern is I had cancer 14 years ago and I lost a kidney at that time. So I only have one and I’m fortunate to be here now. But this chemical apparently works on the kidney and that’s why I have a very personal interest in making sure that not only myself but all the residents of Upcountry are safe, and I’m hoping that the Water Department will thoroughly test and make sure that the health standards, even the most stringent and particularly the most stringent ones being now recommended in California by more recent results are applied. Thank you.

CHAIR VICTORINO: Thank you. Questions for the testifier for clarification?

COUNCILMEMBER MEDEIROS: Question.

CHAIR VICTORINO: Yes, Mr. Medeiros, please.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Good morning, Mr. Mayer.

MR. MAYER: Good morning.

COUNCILMEMBER MEDEIROS: Thank you for your testimony and your presence this morning. I just wanted to make one...to ask a question to clarify parts of your testimony. When you talked about that the Hawaii Department of Health present standard is 40 parts per trillion --

MR. MAYER: Yes.

COUNCILMEMBER MEDEIROS: --and then you said that in recent tests, California is recommending a much stricter standard of, you said .7; is that correct?

MR. MAYER: That’s correct.
COUNCILMEMBER MEDEIROS: Because your written testimony is just seven.

MR. MAYER: Originally I had said 7 and, and I made a mistake in the dot, and it’s .7 parts per trillion.

COUNCILMEMBER MEDEIROS: It is .7?

MR. MAYER: Yes.

COUNCILMEMBER MEDEIROS: So did California go from 40 parts per trillion to .7?

MR. MAYER: California never had a standard before. Hawaii was the only state, and the Federal government did not even have a standard because it’s a chemical apparently that may have been only used for selected crops like pineapple and apparently now in California. And they found it in California in a number of locales, so they figured they’d now have to develop a standard for it. So they did a very thorough 44-page study and I have a copies that I think that I emailed to all of you of that study, and upon which that study they now have…making this recommendation.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Mayer, for that clarification. Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. Any questions, any other questions for Mr. Mayer? Seeing none, thank you, Mr. Mayer.

MR. MAYER: I would like to just offer thanks to all of you who will be ending your terms in the near future for all the service you’ve done. It’s been a pleasure working with you and I wish you well throughout the holiday season and beyond.

COUNCILMEMBER MEDEIROS: Thank you.

MR. MAYER: Thank you.

CHAIR VICTORINO: Thank you, Mr. Mayer. We have one more testifier, Sherman DePonte speaking on WR-18. Mr. DePonte?

MR. DEPONTE: Hello, I’m Sherman Dudley DePonte, owner/operator of Akamai Land Surveying, professional land surveying Hawaii, California, and Arizona. It’s kind of like I keep coming here and I keep speaking and I feel it’s, it’s an obligation now, I need to do this. And one of the things I’ve seen through the past and I’ve been here a lot, a while, is basically management in the Water Department needs to be fixed. I think this last, this past election has spoken pretty loud and clear we need change, we want change, the people, the silent majority has spoken again, and we, the people on that list has, is, needs, needs response. We need you people to help us and get our water meters, get the water, get the infrastructure, and also find that Department accountable for what they are doing. They are spending our hard-earned tax money in the wrong places and we
need that to be accountable. I can tell you because I’m a professional in this community and I work each day with people that I see their dreams get stolen by that Department. Now we need to get on it.

Mr. Nishiki at one time came out and tried to find out about the CIPs, what CIPs are being taken care of so that the people on the list can be taken care of once that water is available. There was no follow up on that and we need a follow up on that. Basically which ones, what are you taking care of, are you taking care the guy on the last on the list because he’s your friend or something or whatever the reason? Why? We need that. We need accountability.

And one thing we need is we need that well. We need that Piiholo South Well. The thing is why is it costing so much for that Piiholo South Well? The reason, I think if you find the accountability in that Department you’ll find out why it’s costing so much. For me, my experience have been the bar was here, it goes here, then it comes here, then it’s out of my reach, 1.2 million it’s out there and it’s not right. It’s not right for us, the people, to be waiting here for this water when the water is available. We have a new Mayor and I’m looking forward, you know, he was an old Mayor, but now he’s the new Mayor, and I’m looking forward to working with him because he show us promise. We’re going to move towards the future to taking care of this County and our people. That’s what elected officials are for and I feel you guys have done your part, but your hands are tied and you need to get in there and get into that Department and find out what are they doing to help us? Again, I’m sporting the red shirt from 1894, the church, we’re still praying for water Upcountry and I hope somehow we can get this taken care of. Thank you.

CHAIR VICTORINO: Thank you, Mr. DePonte. Questions for Mr. DePonte?

COUNCILMEMBER MEDEIROS: Question.

CHAIR VICTORINO: Yes, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. DePonte, thank you for your testimony. I just wanted to ask you and to get clarification on your testimony. So are you in support of trying to utilize Piiholo South Well so they can, we can alleviate the water meters list Upcountry and provide some more water to Upcountry?

MR. DePONTE: Yes, Mr. Medeiros. I am, I am for that, and to further on that it’s basically we need that water whether it’s for to help the Upcountry people all the way in Kula, sometimes waterlines won’t support that or the infrastructure won’t support taking that water from Piiholo all the way to Ulupalakua, but that water can be used right in the Makawao area already and with little, little money out. You have Kula Ridge that put out what, 2 million, wants to put out towards that that would take care of the financing of getting that well, first of all. Secondly, get, put in, start putting in waterlines here and there where it’s needed to bring that online, ready to go. I think it’s common sense. I’m not sure, but let’s work with it.
COUNCILMEMBER MEDEIROS: Okay, and if I may, may I ask you, you’re on the water meter list and what number you are?

MR. DePONTE: I’m like 76 on the water meter list.

COUNCILMEMBER MEDEIROS: Okay, and what area of Upcountry do you live?

MR. DePONTE: I’m at the very top. I’m at the 4,000, 4,000, 4,000 around 54 elevation.

COUNCILMEMBER MEDEIROS: So what area is that, Kula or…?

MR. DePONTE: Kula, Haleakala Acres.

COUNCILMEMBER MEDEIROS: Oh, I see.

MR. DePONTE: Going up to the Crater.

COUNCILMEMBER MEDEIROS: Okay. Thank you for your testimony and for the information.

MR. DePONTE: You’re welcome.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none, thank you, Mr. DePonte, and happy holidays.

MR. DePONTE: Happy holidays to you, all of you.

CHAIR VICTORINO: Okay, Mr. DePonte was the last testifier to sign up. I will allow anyone else who would like to testify to come forward. Seeing none, with no objections I would like to close public testimony at this time.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

COMMUNICATIONS FOR REFERRAL TO THE COUNCIL CHAIR FOR THE 2011-2013 COUNCIL TERM
ITEM NO. 15:  LANAI WATER SYSTEM ACQUISITION APPRAISAL (C.C. No. 10-121)

ITEM NO. 27:  ACCESS THROUGH THE HANS MICHEL PROPERTY FOR MAINTENANCE AND OPERATION OF KANaha VALLEY STREAM (C.C. No. 06-160)

CHAIR VICTORINO:  As I had mentioned earlier, with the Committee's okay, I would like to take up for referral to the next Council, to the Chair for the next term, WR-15 and WR-27, and again, let me, let me read those over so that you and the public understand what these two mean.

First of all, by way of background, I would like to inform the public that under, about Rule 21 of the Rules of the Council which is the reason we are here today for this reason. This rule that says, "all pending Committee items will automatically be filed at the end of each Council term with the notable exceptions, such as items that have been reviewed by the Planning Commission and forwarded to the Council or by the Administration for a legislative action; or two, if they are listed on this agenda today to be forwarded to the next, for the next term." So if it is okay with with, the, the Committee, I would like to make my recommendations for WR-15 and WR-27, but before I do that, is there any questions on these two items? Yes, Mr. Pontanilla.

VICE-CHAIR PONTANILLA:  Thank you. It's not these two items that I have a question on, but should we take action on 12 and 18 and we decide to defer these two items to next year's Council, can we do that --

CHAIR VICTORINO:  Yes, we can. If I'm...

VICE-CHAIR PONTANILLA:  -- without any referral?

CHAIR VICTORINO:  ...(Inaudible)... Kim, we can...Ms. Willenbrink?

MS. WILLENBRINK:  Thank you, Chair. It's my understanding that you are going to reintroduce both of those items into the next term in January sometime at a Council meeting.

CHAIR VICTORINO:  W-18 [sic] and W...

MS. WILLENBRINK:  WR-12.

CHAIR VICTORINO:  Twelve, okay.

VICE-CHAIR PONTANILLA:  So it's going to be reintroduced rather than deferred or what we're doing right now?

MS. WILLENBRINK:  That's my understanding.

CHAIR VICTORINO:  That's my intention, yeah.
VICE-CHAIR PONTANILLA: Okay, fine. Thank you.

CHAIR VICTORINO: Okay. So, any other questions...and let me stay specifically on WR-15 and WR-27, and WR-15 is the Lanai Water System Acquisition Appraisal. That is County Communication 10-121, from the Director of Water Supply, transmitting a final report entitled, *A Water System Acquisition Appraisal as of March 10, 2010*, prepared by Brown and Caldwell Environmental Engineers and Consultants, and that’s in the book. So any questions in that, on that one? Okay, seeing none.

And then the second one is access through, is that RW...WR-27, Access Through the Hans Michel’s Property for the Maintenance and Operation of the Kahana [sic] Valley Stream. That is based on County Communication 06-160, subject was Councilmember Jo Anne Johnson, transmitted copies of a correspondence relating to the maintenance and operation of the Kahana [sic] Valley Stream intake, wells and tanks, and that is been ongoing. So with no objections, I would like to make my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR VICTORINO: Thank you. I would like to entertain a motion that we refer the items attached to our agenda to the Council, Council Chair for the term beginning January 2, 2011, in pursuance to Rule 21 of the Rules of the Council. First motion will be to forward WR-15, Lanai Water System Acquisition and WR-27, Access Through the Hans Michel Property for the Maintenance and Operation of the Kahana [sic] Valley Stream.


COUNCILMEMBER MATEO: Second.

CHAIR VICTORINO: It’s been moved by Vice-Chair Pontanilla, and seconded by Member Mateo. Any discussion on these two items?

COUNCILMEMBER MEDEIROS: Mr. Chair?

CHAIR VICTORINO: Yes.

COUNCILMEMBER MEDEIROS: Yeah, on your agenda it says, Kanaha Valley, not Kahana.

CHAIR VICTORINO: Oh.

COUNCILMEMBER MEDEIROS: Kahana is a different area.
CHAIR VICTORINO: Oh Kanaha. I’m sorry.

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR VICTORINO: Excuse me, and I did say Kahana. I apologize.

COUNCILMEMBER MEDEIROS: Well, yeah.

CHAIR VICTORINO: That’s for correction purposes. The operation of the Kanaha Valley.

COUNCILMEMBER MEDEIROS: Thank you.

CHAIR VICTORINO: Okay, sorry. Thank you for that correction. I apologize. I did say Kahana. I apologize. Okay. All right now that we have that correction, any questions, any further discussions? All those in favor say “aye”.

COUNCIL MEMBERS: “Aye”.

CHAIR VICTORINO: All opposed? Let the record show--one, two, three, four, five--seven ayes; one excused. No, six ayes; one excused and that excused Member is Mr. Kaho‘ohalahala.

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

NOES: None.

EXC.: Councilmember Kaho‘ohalahala.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending REFERRAL of communications to the Council Chair for the term beginning January 2, 2011.

CHAIR VICTORINO: Okay, thank you, Members, and before we go on any further I’d like to recognize the attendance of Member Nishiki. Good morning, Mr. Nishiki --

COUNCILMEMBER NISHIKI: Morning.
CHAIR VICTORINO: --and thank you for being here. Okay.

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

CHAIR VICTORINO: First discussion item we will now move into is WR-12. Today's discussion will be about Correspondence Number 3 on your agenda dated October 19, 2010, from myself, transmitting a draft bill entitled, A Bill for an Ordinance Amending Section 14.12.030, Maui County Code, Relating to Exceptions [sic] for the Water Availability Policy.

The purpose of the draft bill is to revise the Section of 14.12.030, Maui County Code, to exempt infill development, residential dwelling units developed for nonprofit organization, and public, quasi-public construction in Central and West Maui water systems. Okay, at this time I would like to open the discussion...well first of all, I’d like to give the Department and let me also recognize--I apologize--the presence of the Director of Water Supply, Mr. Jeffrey Eng. Good morning, sir. Mr. Eng, would you or Mr. Chang would like to open up on, on this item and give us an overview?

MR. ENG: Thank you, Mr. Chairman, and good morning, Committee Members. You know, at this time the Department does not have any comments on this draft proposal. We are very open to hearing your discussion on these recommendations. Thank you.

CHAIR VICTORINO: Thank you. Questions for the Department or...okay, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, thank you, Chairman, for bringing this forward. Question I have for the Department. I don’t know if you were the ones that drafted this ordinance. I’m kind of interested in E., Residential dwelling units developed by nonprofit organizations as workforce housing, pursuant to Chapter 2.96 of this Code, in the Central or West Maui water system areas. So I’m assuming that only nonprofit organizations will have this exemption, and if private developers were to develop, you know, we’ve heard testimony this morning about one developer in Kihei trying to provide through the 201H. And as far as the 201H, there are exemptions that are being requested not only for water but other things. So, this developer who comes in with 100 percent affordable housing project, although it’s more than 20 units, this will hold only 20 units or, or if a developer comes in with 100 percent affordability how does this rule apply, if it does?

MR. ENG: Mr. Chairman?

CHAIR VICTORINO: Yeah, Mr. Eng, go ahead.

MR. ENG: Member Pontanilla, I am not the author of this draft ordinance, so...

CHAIR VICTORINO: May, may I stop you right here, Mr. Eng, just so that there’ll be clarification. I want everyone to understand that this bill actually originated with myself through a lot of public
input, nonprofit groups coming to see myself asking for us to look at this matter. Okay, so let us not, and I apologize to Mr. Eng because I think we’re all thinking it came from him. It really was authored by myself looking for, for some change. So if, Mr. Eng, you would like to comment on what you think this will and how this will work, I’d be more than happy to allow you, go ahead.

MR. ENG: Thank you, Mr. Chairman and Member Pontanilla. Yeah, I’m not really familiar with the intent of this, but I tend to concur with your opinion is that, you know, if the community does want to encourage development of workforce housing, we may not want to restrict it just to nonprofit organizations. Thank you.

VICE-CHAIR PONTANILLA: Thank you. And thank you for your comment, Chairman, in regards to why this ordinance had come about, and, you know, my, my only concern is the number of units, 20, I don’t know how that number came about. You know, I look at family subdivisions, but more family subdivisions are like Upcountry. That’s the area that, you know, we really don’t have any water to provide support. Then of course, 20 units and below would spur up some needed, I guess construction work, with water being available. But I...can you explain to us the rationale?

CHAIR VICTORINO: Well, okay. What this was is I have been approached by a number of nonprofit as well as small areas such as Kahului, Wailuku and as well as South Maui for infill, going with the infill and they have like 10, 12, 15 dwellings that they want to put in, in between two already developed subdivisions or developed areas. And these, as you well know, as you drive around these areas you see these areas, you know, you have homes, homes and then it’s blank, this empty space, right, and a lot of them have been held back without water...I mean, you know, or this not being able to. So a lot of them want to build affordable housing. They’re small developments, they’re not major developments, they’re not in the high-end districts like Wailea or Makena, these are mostly right in residential, existing residential areas such as Central and South Maui, and also West Maui. And so it was my intent to, to see what the, the, the will of the, the Council was in looking at that to make sure that these infill as we call, and this is even part of the General Plan, the General Plan had said that they wanted us to continue to look for infill instead of sprawl. So I’ve kind of followed along that same pattern as the General Plan was bringing forward.

As for the area of nonprofits, I’ve been approached by a number of nonprofit groups that want to build homes that are not connected to developers but want to bring forward affordable housing. And so, and, and some of them weren’t, didn’t want to go through the, the, the 201G [sic] program, and so that was another thought that this would also give them an opportunity in the area of water to be able to move those projects forward. And the number 20 was a limitation so that somebody doesn’t take advantage and all of sudden build 200 new homes somewhere or try to make it an infill and quote, unquote, “out here in Waihee”. They might call some of this development infill, and that’s 200, 300 homes; is that? I don’t consider that infill. I consider that sprawl. So that was the Chair’s intent was to bring this forward to see what, you know, all of you thought about it, and I think you, many of you have been approached by people in this area. So
this is what the Chair’s intention was. So, now I hope that clears the air as far as this is concerned.

VICE-CHAIR PONTANILLA: Okay. Thank you, Chairman, for that explanation, and most nonprofit organizations when they do come to the Council basically what they do, they construct for affordable housing rather than workforce housing. So maybe some clarification, you know, rather than workforce housing, you know, affordable housing should be the proper term. So thank you for your explanation.

CHAIR VICTORINO: Okay, that would be fine. I mean, we can make changes as far as that. Any other questions from the Members? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. This is a very interesting proposal and it definitely merits a lot of discussion, because making exemptions to the so-called, “Show Me the Water” Bill, is a big deal. We all understand the need for couple of things driving this. One, of course, is the need for workforce affordable, you know, housing that we can put our people in. Second thing, of course, is to get our economy going and get people back to work. So those to me are the, you know, very good rationale for taking a look at this.

Concern I have is that I’m not hearing from the Water Department their position. I think it’s really important that as Members of this Committee that we have some guidance from the Water Department. Do they think this is a good idea? You know, we have no idea what the breadth of this is, and my understanding is that even though we have very serious shortage problems Upcountry, we also have concerns in other areas about having enough water. And so without hearing from them that they feel that this would not be impactful on existing consumers or existing supplies, I’m a little, I’d like that information to make a decision.

CHAIR VICTORINO: Okay, thank you. Other questions from the Committee Members? And I’ll, I’ll address that question, if you have others then I can ask one time.

COUNCILMEMBER MOLINA: Question.

CHAIR VICTORINO: Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you, Chairman. Just a question, so we’re working off of the bill that’s attached to your October 19, 2010 letter, yeah?

CHAIR VICTORINO: That is correct.

COUNCILMEMBER MOLINA: With regards to the focus on the Central or West Maui water system areas, so as far as if a nonprofit wants to put in some type of infill project in Upcountry, how does this, would that bill also apply to them? Because the focus I guess here is just the Central.
CHAIR VICTORINO: As I stated earlier, I really don’t have, we don’t have the authority to, to do that Upcountry unless they have a private system because of the fact that the water availability, you know, I mean, this can only be made available in areas where water is available, and as best as I can understand, in Central and West Maui water is available for these kinds of things, Upcountry it’s not. So, and that’s why as I stated to Ms. Robbins, you know, that’s why it specifically said, Central and West Maui systems.

COUNCILMEMBER MOLINA: Okay. Yeah, thank you for that clarification. You know, like Member Baisa from the Upcountry area so we just, for me, I just wanted to get some clarification of the applicability of this to Upcountry. So thank you.

CHAIR VICTORINO: You know, Mr. Molina and Ms. Baisa, I wish in heck that by next year some time we can have this be applicable to all the water meter list and we’d be all done with that. Of course, we’ll keep working at it, right? So, anyhow, any other questions? Yes, Mr...

COUNCILMEMBER NISHIKI: I’d, I’d like you to ask also the fact that doesn’t the “Show Me the Water” Bill pretty well state Mr. Chairman that if there is really--and, and Jeff needs to answer this question--if there is no water, then how can we allow more to occur?

CHAIR VICTORINO: Okay.

COUNCILMEMBER NISHIKI: Yeah, if there’s no water, there’s no water. Finally...

CHAIR VICTORINO: If there’s no water, there’s no water, but go ahead.

COUNCILMEMBER NISHIKI: Finally, I, I, I, I, I look at the other areas that you want to exempt which is under 2.96 which is a concern that I have. If we are looking at trying to exempt affordable housing, I can maybe see a good reason, but you’re going to also allow the other end of the spectrum to also be exempted. And so my question is, again to Jeff, should that be also allowed? If the thrust is, is to help the affordable, then this ordinance should say only projects that are 100 percent affordable, and maybe that would be the way to move what you’re trying to achieve. And finally, it would seem that--

CHAIR VICTORINO: I going stop you right here, Mr...wait, wait...

COUNCILMEMBER NISHIKI: --a water allocation bill should be something that you should be looking at.

CHAIR VICTORINO: You’re out of order now and I’m going to stop you there. Let’s answer the questions as they were asked. Okay, so first of all, Mr. Ching...Mr. Eng--I said Ching, sorry--Mr. Eng, answering Ms. Baisa’s one, first of all, Ms. Baisa’s question.

MR. ENG: Thank you, Mr. Chairman, and, yeah, I believe Ms. Baisa’s and Member Nishiki’s questions, concerns are somewhat similar.
CHAIR VICTORINO: Okay.

MR. ENG: And if I just may make a comment regarding the exemptions in general. You know, this body did make an attempt to support some earlier revisions, amendments, and for exemptions to this particular Chapter 14.12, I think it was about a year or so ago. This affected exemptions for large lots, you know, subdivisions that are not served by the public water system. A lot of it was for clarification. You know, I would like to recommend that this body take a close look at this entire Chapter 14.12, because right now it looks like we’re trying to make attempts with the Administration and the Council to make attempts to add exemptions, and many of them are well warranted but kind of on a piecemeal basis. And I think we have to take a closer look at this entire chapter on water availability, because even what is being proposed today I can see needs a lot of refinement, particularly like in infill development. You know, I know the Chair indicated that he didn’t want more of the upscale, luxury residential development to be included, but it doesn’t really specify that also, it just says, developments that would be served by the Central or West Maui water systems. So I would like to recommend if this could be actually deferred and an appropriate amount of time spent on studying this. Thank you.

CHAIR VICTORINO: Thank you, Mr. Eng. Any other questions for Mr. Eng? Okay, all right, so if there is...then I will make a recommendation if there’s no more discussion on this matter.

COUNCIL MEMBERS: Recommendation.

CHAIR VICTORINO: I would like to recommend deferral of this item which at the end depending on what happens with WR-18, I will make a recommendation as far as Council Rule...Rules of the Council, No. 21. So with no objections, I would like to defer Item RW...WR-12.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: SPK).

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Yes, I’m sorry. Go ahead, I’m sorry.

VICE-CHAIR PONTANILLA: Just a comment.

CHAIR VICTORINO: Mr. Pontanilla, go ahead.

VICE-CHAIR PONTANILLA: Just a comment.

CHAIR VICTORINO: Sure.

VICE-CHAIR PONTANILLA: Before you take the vote.
CHAIR VICTORINO: Yes.

VICE-CHAIR PONTANILLA: I hope when we look at this ordinance the next time that we put in some provisions, because I can see this nonprofit organization getting monies from private developers to create affordable housing, which is okay. But I think we need to have some kind control in regards to that type of method and we’ve seen it before. And when we review the bill again, you know, something like that to protect the people as well as this County in regards to what is being proposed. Thank you.

CHAIR VICTORINO: Thank you, and I will make sure that’s incorporated in our next draft that we bring forward, okay, so that we can include all of that. Mr. Mateo?

COUNCILMEMBER MATEO: Mr. Chairman, thank you, and in addition while we’re, we’re doing considerations at this point for the next bill, if it could also include for the sake of discussion 100 percent affordable housing developments instead of just leaving it at the nonprofits to do. I think it warrants consideration from the body whether, whether or not 100 percent affordable developments should in fact also receive considerations for exemptions as well. Thank you, Mr. Chair.

CHAIR VICTORINO: So duly noted. I will make sure that that also is part of the consideration when it’s brought forward.

COUNCILMEMBER MOLINA: Chair?

CHAIR VICTORINO: Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Chair. Just a procedural question. So if your recommendation is to defer, then wouldn’t it automatically file at the end of term? Because I’m just curious before we finalize your recommendation, I don’t know if it was your intent you want this matter to carry over into the next --

CHAIR VICTORINO: Yeah. I…

COUNCILMEMBER MOLINA: --or you’re going to just reintroduce it then?

CHAIR VICTORINO: I going just, I going reintroduce this one, yeah? You’re not on...

MS. WILLENBRINK: Excuse me, Chair. Yes, your options right now before you defer the item --

CHAIR VICTORINO: Yeah.

MS. WILLENBRINK: --if you want to refer it to the next Committee or the next Council as is, now would be the time to make that motion. If your intention is to defer the item, reexamine the bill,
and then reintroduce it at an appropriate time next term with or without revisions, then it should automatically file.

CHAIR VICTORINO: Okay, I think I'll go on option number two, sounds easier. That way I can reintroduce and bring in all the incorporating, what has been discussed today. Yeah.

COUNCILMEMBER MOLINA: Okay, thank you.

CHAIR VICTORINO: Okay, thank you. So the deferral would be an automatic filing of the communication, yeah. So all those in favor of deferring signify --

MS. FRIAS: There's no motion.

CHAIR VICTORINO: --I guess signify by say, call for the...we didn't make a motion.

COUNCILMEMBER MOLINA: Yeah.

CHAIR VICTORINO: No, no objections...well, anyhow, let me add, so now it's been clarified. Any objections to deferring the matter?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: SPK).

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Okay, thank you.

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

CHAIR VICTORINO: Alrighty, and moving onto the last item today, WR-18, Piiholo South Well (State Well No. 5118-04). I would like to call upon Director Eng from the Department of Water Supply concerning the County’s negotiation, if any, to enter into a Water Source Agreement with the Piiholo South, LLC relating to State Well No. 5118-04. The Committee may also consider filing the County Communication No. 10-159 and other miscellaneous communications dated August 17, 2010 and all other related actions. At this time, I’d like to call upon Mr. Eng.

MR. ENG: Thank you, Mr. Chairman and Committee Members. Actually there’s nothing to report to this body. There has been no communication with the developer. Thank you.

CHAIR VICTORINO: Thank you. Questions for Mr. Eng? I guess that’s pretty clear cut. ...(chuckle)... Yes, Mr...
COUNCILMEMBER NISHIKI: Yeah, Jeffrey, you know, this is the sad part about what has been brought to us. In meetings we pretty well exhausted and asked the developer if he would be willing to proceed in working with the County on the purchase, and it was an attempt to work out something that would be acceptable to both sides. Then today, it almost, we almost get a letter that if, if Members would read it from Piiholo South--I don’t know if you have it in front of you, Jeffrey--he acts as though the Administration was not willing to work with him. And it, it, in fact in the second paragraph it says, “10-40 has the stated purpose of encouraging the Administration to negotiate an agreement that amounts to Piiholo South providing 90 percent of its well to the County free of charge, after Piiholo South, substantially…” You know, if you read it, Mr. Chairman, it’s almost like a whitewash in, in, in looking and seeing whether there has been a real sincere effort made by this developer, and as you’ve seen, nothing’s been done. And, and, and, and, Jeffrey was saying to, to them, do all of these tests and that’s the only way that the County can pretty well start as a starting point negotiate something, but I guess it is frustrating to see that nothing has been done except that that it asked the County to pay a lot of the upfront charges in subsequent letters also to the County of Maui. So, Jeffrey, if I can ask you this question. After we had pursued through this resolution in trying to see any kind of movement, I realize that it takes two people, two sides to cooperate with each other. Has there been any at all, since that last statement that you made to us about what the developer had stated to you in trying to work out a situation? And what was that response he gave to you?

MR. ENG: Mr. Chairman?

CHAIR VICTORINO: Mr. Eng, go ahead.

MR. ENG: Member Nishiki, the Department and the developer has not had any meetings nor communication since that time. I’m not aware of any meetings with the, with the Mayor’s office nor any meetings with members of this body. But as far as the Water Department itself, we have had no communication whatsoever. And our position remains the same; we need to verify the water quality.

COUNCILMEMBER NISHIKI: Anyway, thank you. I guess it only goes to, to, to show, Mr. Chairman, as much as government officials and this Committee in its sincerity, and I’m sure all of us was sincere about pursuing getting and working out for an outright purchase. Unless someone is willing to show some sincerity by acting, it is merely words. And again, you know, what, what, what can we do, you know, other than pursue some other methods I guess, because it’s, it’s really five steps that we’ve taken to, to work with the developer. But then, you know, these kinds of communications to us only shows to me that really there’s no sincerity. You know, so don’t waste my time, you know. As far as I’m concerned, go back to the mainland.

CHAIR VICTORINO: Thank you, Mr. Nishiki. It is my hope that, you know, again, this is another issue that the new Administration has to look upon and the new Council, and it is my hope that what you have just said is not the fact, I hope that all parties can come together and come to a reasonable conclusion that is fair to the people of Maui County. That well is one of many issues that may really take care of the Upcountry water meter list. Okay, this may be one of many
issues, and I'm hoping that this will come to transfer with the new Administration. We are here to do whatever we can. We'll work as diligently as we can. I think we have tried in many areas and that's something I want to thank all of the Members and you, even as a Non-Voting Member, but a Member who has attended almost every meeting for your diligence in this area. There was a lot of things that we had to discuss, a lot of areas we needed to cover, and I'm proud to say that many, many accomplishments have been taken care of, many issues have been resolved.

You know, I'll go quickly with first of all, I can feel confident now when Upcountry meters are issued that first of all, they got five years instead of two years to get everything done if they needed to do anything, you know, and instead of just 50 percent reimbursement, 75. You know, these are the kind of things that you, this Committee have put forward for the Upcountry area. The Water Use and Development Plan has been a lot of hard work done and I want to thank this Committee because you guys have all contributed a great deal. Other areas for our codifying of the rules, this Committee, again, did not hesitate to get it done. There's still some more pieces of the pie to be done such as the fire issue, the control of the...well, between the Fire Department and the water, as far as Water Department, but something hopefully the next term we will be able to accomplish.

I gotta thank all of you because you guys have all worked very hard, and every one of you brought your own mana'o to the table really with the honest desire to make things better. To the Upcountry residents that sit out there, I say we will have not given up, we will not give up, so long as I sit here I will continue along with whoever the next Council making sure we can get your, and with the new Administration, get water meters to you so that you can build your homes, build your dreams. That is my prayer, that is my intent, that is I think is everyone in this room, and I will, I'll stand on that until the good Lord takes me off this Earth or I'm no longer on this Council. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. And yes, it's certainly been an interesting experience to participate in this Committee this year. We've made some tough decisions. In regards to WR-18, if we look to go where I think we're going which is that you will defer this bill which means it will be reintroduced next year, my concern about this Piiholo South Well proposal is really not so much about a lot of other things. But I am really concerned about the testimony that we keep receiving over and over, and that is about the quality of this well. I know that everybody Upcountry wants our meters. I want mine too. Of course, I know that's not likely to happen because I'm not number 86 on this list. I'm way, way, way at the end of it, but I want to make sure that what we purchase is something that the people Upcountry will be comfortable supporting, and that brings the issue of quality. 'Cause if we buy this well and it brings us a lot of water and then the people Upcountry still have this fear and this concern about quality, I don't want us to spend a lot of money and then wind up in another suit and another inability to use it once we take it. So for me that is an issue that must be settled before we purchase. Thank you.

CHAIR VICTORINO: I can assure you that as we had stated from the get-go that the tests have to be consistent, have to be run for ten days, has to be showing quality, quantity, all of those have to
be. If they’re not met, then we’re not buying a pig in a poke, no way, and I will not spend any County money buying something that is not good for the people of Upcountry or the people of Maui County, even right here.

COUNCILMEMBER BAISA: I concur with you, Chair, the question that we have before us then is who is the expert? You know, we rely upon Department of Health, EPA and those folks and then we have a whole group of other people who feel that, you know, those standards are not appropriate, they don’t work, and I just want us to proceed carefully because I don’t see any point. Unless the water is something that the residents will accept, there’s no sense. So that’s my concern. I know we’re going to do the due diligence, we have to, but I really hope that we can solve this question of quality along with quantity. Thank you.

CHAIR VICTORINO: Thank you. Mr. Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Chairman. I just like to ask Mr. Eng a couple of questions just for clarification.

CHAIR VICTORINO: Mr. Eng?

COUNCILMEMBER MOLINA: You know with regards to the letter, I guess, I have here in the binder, the September 16th letter to Mr. Franks and then I, prior to that there’s a September 24th letter from Mr. Franks to Mr. Silva. Just in terms of the communication between this, you know, proposed consideration for purchase, has Mr. Silva I guess represented the Administration, that’s who Mr. Franks has been contacting with? ’Cause I’m kind of wondering is like what is your role in all of this? I mean, who is the, I guess, the point person for the Administration, is it you or is it Mr. Silva? And because I know, I’m following up on the testimony from Mr. Franks stated here in the, in his testimony, “I wrote separate letters to both the Mayor and the Director seeking dialogue. I never received a reply from either”. So I’m just trying to get, you know, I want to hear from your side with regards to that, so is he communicating more with the Mayor’s Executive Assistant on this or is it you? Because there seems to be some kind of disconnect and I’m just trying to get an understanding of that. So I just want to hear your side.

CHAIR VICTORINO: Mr. Eng?

MR. ENG: Thank you, Mr. Chairman. Member Molina, I don’t have those letters before me. But as I recall, I think the letter that I sent to Mr. Franks was in response to, I believe Mr. Nishiki’s meeting...if I may, if I recollect that correctly. And, and after I sent out that letter, I was awaiting a response and I never received it ,and then some time later and there was really, I think two or three weeks later did I realize a response was sent to the Mayor’s Office and I was not made aware of that. So yeah, you’re, I’m still as much in the dark as you are.

COUNCILMEMBER MOLINA: Yeah. Because and I ask this because I would think you should be the primary person as the Director of Water Supply.
MR. ENG: I’m the one who sent the initial letter, right.

COUNCILMEMBER MOLINA: Yeah.

MR. ENG: I had expected a response. And from then on I don’t know where the communication is going, except for when we’ve discussed it in the various Committee meetings. So, but I would expect that initial negotiations and discussions should be held with the Department first and then it can be brought up with the Mayor and then, then, then onto you, this body.

COUNCILMEMBER MOLINA: And I know in your September 16th letter, I mean, you’re doing your job to ask the developer to do these tests and so forth. So, because when I looked at the letters, I’m thinking now why is Mr. Silva being the one, the contact person, or it seems to be the primary contact person versus, you know, you. Because I would think you’re the Director of Water and, you know, you should be I guess included more in these proposed discussions. So which kind of left me wondering, you know, why there’s been no contact with you and it seems to be more contact with Mr. Silva. So I just found that, you know, somewhat curious. Anyway, thank you, Mr. Director. Thank you, Mr. Chair.

MR. ENG: Thank you.

CHAIR VICTORINO: Yes, Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman, thank you for bringing this thing forward. You know this is an option that we can think about next year. You know, but my belief is that, you know, we should take, take a look at all options including this, but the option that I like is what we have in our hands and work with those options, you know, fixing things that are necessary or even taking a look at the Upcountry Water and Use Development Plan and start planning for those things.

You know, I believe that, you know, we could have solved this problem many years ago with the utilization of the Piihilolo Well at that time seven years ago, but we didn’t for some reason or another. But again, you know, this is an option that we can work with, and I agree with Mr. Eng, I agree with my next door neighbor, Mr. Nishiki, that we need to follow the regulations of the County before we accept any wells. And before we spend any money, you know, we gotta make sure that the money is well spent. But again, we should take a look at what we have, what we can do to fix things or, or plan for new capital improvement.

And that’s another thing capital improvement projects, that we need to somehow review those projects on a more timely basis. Maybe after we get the quarterly reports and, you know, not only Budget and Finance Committee that does a review, but every Committee Member that has capital improvement projects in their control should review those projects, so that we all be aware where we’re at. Presently we, we don’t have anything in regards to the Water Department in, in, in our budget in regards to the Department’s expenses, operations, but we do have a separate capital improvement listing that we try to review but don’t have the time to review.
But again, all of these things that we talk about and even the testifiers they kind of realized that, that somehow we gotta be more diligent in our review, make sure that, you know, projects are being done and being done on time. I, I, I, I, I, I gotta say that, you know, we do have a capital improvement project person that’s in the Managing Director’s Office. I believe she’s doing a bang-up job in trying to corral all of the CIPs that the County has so that, you know, we have one focal that can tell us where we at on every capital improvement projects. But again, you know, I thank the testifier for bringing this thing forward, I, I thank Mr. Eng for his comments as well as my colleague here, Mr. Nishiki. Thank you.

CHAIR VICTORINO: Thank you. Any other discussion on the matter? Seeing none, then I will, with no objection, I would like to defer Item--excuse me, I lost my place again--I would like to defer Item WR-18.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER MATEO: Second.

CHAIR VICTORINO: It’s been moved by Vice-Chair Pontanilla and seconded by Councilmember Mateo. Any other discussion on the matter? Yes, Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you, Chairman. Just to comment on the motion, so I’ll be supporting your recommendation and at the same time I’m appreciative that this matter be brought out next term, because it’s certainly a matter that’s of interest to the area, the Upcountry area. So even though I will not be on the Council, I will still be watching with interest as to what transpires with this. So, you know, and I appreciate the Department’s role in all of this and I would hope that the lines of communication be, you know, extended to the Department first, and while I have certainly great respect for the Administration, but you know, we gotta have the Water Director heavily involved in the communications as well. You know, if Mr. Franks can, you know, you know, work from there first, so that way, you know, the Department has the primary responsibility of ensuring that the well is, you know, safe and everything and so forth. So again, I just emphasize communication and...so that way we don’t have any misunderstandings. And that’s the only the way we can move forward is with better communication on all sides. So please, you know, my only request to Mr. Franks, again, is please go to the Water, directly to the Department first on this matter. And so thank you, Chair.

CHAIR VICTORINO: Thank you. And I think that’s been heard by the incoming Administration and by the incoming Water Director who happens to be sitting in the audience today. So I think we’ll, we’ll, we’ll have some changes in that respect, yeah. Seeing no other discussion, I’ll call for the question. All those in favor of the defer...is there any objection to deferring the matter? I’m sorry. Call for the question.

COUNCILMEMBER BAISA: We have a motion.

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CHAIR VICTORINO: We have a motion? That’s right, I did make a motion, I’m sorry, we did. I apologize. I’m not with it today, I apologize.

COUNCIL MEMBERS: ...(Chuckling)...

CHAIR VICTORINO: I’m not really with it, you know, some days you get up in the morning and everything doesn’t go the right direction and I’ve been that way all day, and I apologize. All those in favor of the motion, signify by saying “aye”.

COUNCIL MEMBERS: “Aye”.

CHAIR VICTORINO: All opposed? Let the record read six ayes; one excused, Member Kaho‘ohalahala. Thank you very much.

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

NOES: None.

EXC.: Councilmember Kaho‘ohalahala.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: I will start by saying I want to thank the two Members of this Committee who will not be returning next year, Member Molina for your ten years of service to this community on the Council and on this Water Resource Committee. You have been very diligent in your concerns not only for your district but all of Maui County, and I think you brought great mana’o to the table and I would like to thank you and wish you well in your future endeavors, Chair.

COUNCILMEMBER MOLINA: Thank you.

CHAIR VICTORINO: Vice-Chair, I should say.

COUNCILMEMBER MOLINA: Thank you, Mr. Victorino. And thank you for your leadership of this Committee. You brought out some very hot topics, if you will, but you brought them out and you dealt with them so I certainly appreciate your leadership, and coming the next term I’m sure you’ll have more for us. But thank you for all your mana’o as well, Mr. Chairman.
CHAIR VICTORINO: Thank you. And the other Member would be Member Medeiros from East Maui. I would like to thank you for your service the last two terms on this Committee. You brought in interesting perspectives and you brought in your professionalism also. Like Mr. Molina, you guys really do care, and that’s something that I’ve really been appreciative of everybody on this Committee whether they’re Voting Members or not, they really do care. And that’s something I appreciate, and I think the people of Maui County have to recognize the fact that yeah, we make the best decisions we can make, but we all do care. It’s not like we do this and oh, no problem. We do have sleepless nights trying to get this right, so I want to thank you, Mr. Medeiros, and wish you well in your future endeavors.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman. Appreciate your leadership in this Committee, and like you mentioned in yesterday’s meeting about me bringing a lot of knowledge from Public Works, because you were on the Board of Water Supply at one time, you bring a lot of knowledge and perspectives to this Committee on water. So I think your leadership in this Committee has been good for all of us and for the community. And I appreciate having come into the Council with the same class as you and Gladys, and as I leave this Chambers at the end of the year, I look back with good memories and appreciation for having the opportunity to be here. So hopefully as I said yesterday, I’ll be able to continue in public service in whatever capacity and will always, you know, find you folks whether it’s in Longs or in this Chambers. But thank you, Mr. Chairman.

CHAIR VICTORINO: Thank you, Mr. Medeiros. And then a Non-Voting Member but always here, always giving his mana’o and, and really have a passion for the people, Mr. Nishiki. I’d like to give you a moment if you would like to say a few words, Mr. Nishiki.

COUNCILMEMBER NISHIKI: Yeah, I was just trying to temper my words when I look at...and I’m not very well, do well in that. But, you know, one person because all of us participate in this that’s always on the receiving end of a lot of testimony is Mr. Eng and the Water Department. And I can tell you in the short time that I’ve known this gentleman, I can only comment on his integrity. Oftentimes, we as Members and Non-Members [sic] don’t like what is being said or expect certain things to be said. However, one needs to say it, and similarly as we deal with water development in this County, no water, no life. Understand the huge responsibility that we Members of the Council and, and the Director, and, Mr. Eng, thank you for your time that you have been as Director, and I also want to thank you for your friendship. I think that is more important to me. But again, you know, as we go into the future, understand the responsibility that we, as elected officials and appointed officials have to this community. And unless we stay strong in our dealings, we will run into short givings, Mr. Chairman, and I want to commend you. I’ve had my beefs with you and everything else, but again, that is all part of, you know, how we work in this Council. When I leave, I leave as your friend and to all the Members. So, again, thank you for the association, thank you for the sparks and again, thank you for allowing me to participate.
CHAIR VICTORINO: Thank you, Mr. Nishiki, and let me assure you, we never had beefs, we just had differences. Beef is something I did in high school and I don’t do that anymore, cannot, I’m too old for that stuff. Okay, I will now go with Ms. Baisa, Mr. Pontanilla and Mr. Mateo, just to give everybody a opportunity. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. You know, it’s always fun at the end of a term when we have to kind of wrap it up here and look back on the last two years and kind of review in our heads what we’ve been able to do and what we haven’t been able to do. But I think this Committee has worked very, very hard and I think we made some positive strides, and I feel good about that. Unfortunately, the number one problem in my area has not been solved, the Upcountry people want water and they want it now, and I find them getting less and less generous towards us. They’re beginning to say, come on you guys, you know, produce something. So, for us and this Committee next year, gonna have to work really, really hard with the new Administration and with our Chair to see what kind of strides we can make, because I think it’s time. You know, I was talking about this with my husband the other day who is very passionate about water, and he said to me, well, if you can’t solve the whole problem could you try and solve a little bit of it, I mean I think some progress would be wonderful. You know, everybody Upcountry knows that we probably cannot solve the whole meter list in a short time, but I think if we made some progress, at least we could show that we’re, you know, we’re trying and we are doing the best we can. So that’s the challenge for all of us next, next term.

I want to take my opportunity to thank my colleagues on this Committee who will not be returning, Member Molina and Member Medeiros, from my class of 2006; and Member Nishiki who is a veteran Council Member who has brought much to the table, sometimes a lot to the table, but you know, he is passionate about his responsibilities to the public and I appreciate that. I definitely would like to thank Director Eng for his service to Maui County. I know it’s been a very tough time for you, Jeff. It’s never easy to be the Water Director, but you’ve done the best you could and that’s all anybody can ask for. And of course, I’m a glass half full person, so I’m very excited that we have new faces, new people and we’ll try again for the people of Maui County. So Godspeed to all of you that are leaving us and we wish you all the best. Thank you.

CHAIR VICTORINO: Thank you, Ms. Baisa. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. And I, too, would like to thank you, Chairman, for leading this Committee. I know you’ve made a lot of tough decisions. I think we all did, made tough decisions. I want to wish well my fellow colleagues that not going be here next term. Member Molina, thank you for all of your expertise; Member Medeiros, for your comments in regards to Public Works and Police and Fire Department; and my fellow colleague here, Member Nishiki. I’ve known Member Nishiki ever since I got here. So, you know, I’ve learned how to tolerate certain things and I appreciate his comments though, I appreciate his comments. He brings out, you know, comments from the people actually and most of the comments are from his heart. So, Mr. Eng, Mr. Chang, you know, thank you for your service, especially you, Mr. Eng, in regards to, you know, sitting on the hot chair. You know, everybody is looking for water and, you know, you cannot provide miracles. Like someone said, you know, in order for us to provide for this
County, takes money and are we willing to spend money to provide that infrastructure that we all need. So I really thank you, Mr. Eng, for your leadership in the Water Department. And again, thank you, Chairman. And for our Corporation Counsel, you know, he had a tough job too. So I really thank Junior for, you know, his comments in regards to issues that’s we’ve had in the past. Thank you.

CHAIR VICTORINO: Thank you, Vice-Chair Pontanilla. Mr. Mateo?

COUNCILMEMBER MATEO: Mr. Chairman, thank you very much. And I think a lot has already been said and for myself, you know, this has been probably one of the most difficult Committees that this body has had, you know, has. Water has been an issue, not a recent issue, it is a long-standing issue, and I think this, this term just clearly defined the next step for all of us. Unfortunately, the brunt of it was borne by Mr. Eng and Mr. Ching...Chang, who we went to battle many times, you know, over and over again and we will continue to do that until the issues are all solved. Mr. Eng, as an individual, and as a friend, I thank you for your honesty and your ability to work with all of us and returning our phone calls when we were kind of bewildered at times with certain issues. So good luck to you and thank you. Mr. Chairman, for the Committee Members that are leaving, my amigo at the end, Mr. Molina, you know, as, as...mi hermano, and, you know, thank you. Mr. Medeiros, your contributions to us, keeping us on track a lot of the times is much appreciated; and my friend, Mr. Nishiki, I now know why you keep a bottle of water on your desk. It douses the fire that he spits once in a while because the issues are so, he’s so compassionate with taking care of all our people’s needs. I look forward to working on this Committee again in the next term; and, Ms. Baisa, I read in the paper where the Upcountry meters will be addressed once and for all so I’m looking forward to that because I believe this is the Christmas season, I believe in miracles. ...(Laughter)...

COUNCIL MEMBERS: ...(Laughter)...
CHAIR VICTORINO: I mean, please. I mean, no, no, no, all joking aside. You can speak your heart because I guarantee you we do appreciate everything you have, have done or tried to do this past term. Mr. Eng?

MR. ENG: Well, thank you, Mr. Chairman. Yeah, this is kind of unexpected and I am unprepared, but I would like to say and express that I really have enjoyed working with all of you folks, being friends and just having a great working relationship with the Department. You know, it’s more than I ever expected. I leave with very, very fond memories. I hope you take care of my staff, Herb and others and J.R. here. I mean, you know, it takes a team, you know, to accomplish anything really and I think we’ve done it within the Department, with this body and with the Administration. And again, I just really, sincerely appreciate all that you’ve done for me as well personally. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Eng, and your friendship, your leadership in the Department was greatly appreciated, and your team members also were very cooperative and that’s something that I hope we can continue with the next Administration, and with the next Water Director, that openness, the willingness to sit down and discuss issues was there and I hope will continue to be there. But we will see, we will see. I wish you nothing but continued success and good health in your future, Mr. Eng. And wherever you go, it’s not aloha, it’s a hui hou, we’ll see, we’ll meet again.

And now, to our Staff, Ms. Willenbrink, who I call the next water expert, at least she had historic perspective. Whenever I didn’t know something, I’d call Kim and say, “Kim, what does this mean, how did this come about?” And she’d either research it or she’d have an answer for me. I’m going to miss her tremendously because next year we’re going to have all new Committee Staff. Kim, don’t go too far because I will be calling. We all will be calling you, but we want to thank you very much, Ms. Willenbrink, for all your due diligence. We really truly, truly appreciate everything, I do, and I think all of the Members do.

MS. WILLENBRINK: Thank you very much, Chair.

CHAIR VICTORINO: You could have said two more words. You know, I gave you two minutes. And of course, Tammy, you’re the quiet one, you sit there, you make sure everything runs smoothly. If I forget something, you remind Kim to remind me, and I want to thank you very much and continued success for your family and good health and nothing but the best for both of you. I know you guys won’t be far away, so we will call you. I want to thank you, Tammy, very, very much.

MS. FRIAS: Thank you.

CHAIR VICTORINO: And to the public out there, you guys come, you give your, your mana’o, you share your concerns, and I think we’ve all tried to listen to what you say and really work hard for all of you, not just Upcountry, not just Central, not just South, not just...all of Maui County, whether it’s Hana or Molokai or Lanai, it doesn’t make a difference. We’re one County and I’ve
been proud to say Maui is no ka 'oi because of that fact. Has it been easy? No, but we’ve made steps in the positive direction, and I’m hoping that new Administration and the new Water Director will help us continue on this journey. And so in the next two years when we close like this in two years, we can say, Dudley, you got your water meter. That would be my biggest, biggest wish, and also you, Aunty Ruthie, also you, I ain’t [sic] forgotten you. You know, all of you. And Rosemary, quality and quantity is always a big part, thank you very, very much. Mr. Mayer, you’re right around the corner, you’re like good news, I can always count on you coming through, thank you very, very much. To the new Members that are going to come in, be ready to work because we’re going to work hard. You know, we worked hard when we were here. To the new Water Director, good luck. My door is open, come see me any time, it’s open for you. And to the public at large, I’d like to say, it’s been an honor and a pleasure serving as the Chairman, to work with this great group of people. I’m going to miss you guys tremendously. You like say something else, Mr. Molina?

COUNCILMEMBER MOLINA: Yeah, yeah, before... when you conclude.

CHAIR VICTORINO: Oh, shucks. Okay, go ahead.

COUNCILMEMBER MOLINA: Yeah, I’m sorry, I’m sorry.

CHAIR VICTORINO: Go ahead, Mr. Molina, I will allow you.

COUNCILMEMBER MOLINA: Thank you. I was so enamored with you, my first turn, you know, I forgot, I neglected to recognize your wonderful staff, these ladies, Tammy and Kim, thank you so much for your service, and you know, I’m leaving as well, so I just wanted to publicly thank you both. It’s been a pleasure working with you folks over the last ten years. To Mr. Kushi as well for his insight and knowledge on the water issues and other legal matters, thank you; and Mr. Chang, it’s been a pleasure working with you. I’ve called on you several times to look into some matters and you’ve been very responsive, so mahalo to you. And last not but not least, my friend, Mr. Eng, and I just wanted to share quickly a personal side to Mr. Eng. He is a very, very tremendously hard-working individual and he had to be persuaded and lobbied very hard by the current Administration to come in as the Water Director, because he had just retired from his company and was looking forward to a life of retirement and spending time with his grandchildren and of course, his lovely wife, Susie, she had a big to-do list for him, but he felt this commitment to serve our community and he sacrificed a lot. So I just wanted to share that side with you about Jeff, and he is, you know, certainly going to be missed. And I’m sure he’ll still be around to add some input on water and other matters in the community. So I just wanted to publicly thank you, Jeff, and, you know, best wishes to whatever you endeavor to do down the road. So again, and thank you, Chair, for allowing me this second and last turn on this, mahalo.

CHAIR VICTORINO: Are you sure that’s the last?

COUNCILMEMBER MOLINA: I promise.
CHAIR VICTORINO: ...*(chuckle)*...

COUNCILMEMBER MOLINA: ...*(chuckle)*...

CHAIR VICTORINO: No, you know, you’re more than welcome because, you know, it’s going to be quite different, you know, the four years, that the Class of 2006, the three of us came in, and all of you were our mentors, you know, in many ways we followed your lead, we learned from you folks. And I want to thank you, Mr. Mateo, you know, for your, you’re, you’re always there. At least, if I had a question, you went in, you know... Okay.

COUNCILMEMBER MATEO: ...(Laughter)...

COUNCILMEMBER BAISA: Mateo’s over there.

COUNCIL MEMBERS: ...*(Laughter)*...

CHAIR VICTORINO: Oh, wait, I know it’s Molina.

COUNCILMEMBER BAISA: Mateo’s over there.

CHAIR VICTORINO: Hey, I told you guys, at least I’ve been having, I’ve been steady, right, I’ve been consistent. I have been very consistent today, you know, I don’t want to change. You know, I learned consistency is important. If you’re screwing up, you keep going the whole day. I’m sorry, I’m sorry, oh, my God. Oh, the public out there must be wondering, boy, what did he have to drink this morning. That second cup of coffee tasted different I gotta admit, but I don’t think it was Upcountry water. I really don’t think so. Anyhow, all joking aside, it’s been a real honor and a pleasure to work with all of you.

And, Junior, I wish you nothing but continued success, and, you know, we have a closer tie because his son’s and my son’s family are very close in Vegas. They spend a lot of time together and when we go up there, we get to spend time with his grandchildren and my grandchildren together, so and then he does the same up there. So we enjoy our grandchildren, yeah, Junior, it’s very enjoyable. And, Mr. Chang, it’s been an honor working with you, and I know you’ll be around to advise us, to help us and help the new Director. So give ‘em good advice now, give ‘em good advice, you know.

I will say in closing the good-byes are sometimes a lot longer than the hellos, but it’s that time when we’re saying good-bye, and if I was to add everything up, I’m proud of what we’ve done, and I’m sad we haven’t accomplished everything, but that gives me another opportunity next year to continue on. And you have my commitment, as I said earlier, that I will continue to work for the people of Maui County very hard to make sure not only Upcountry but the entire County has adequate, quality, and the quantity of water that they need, and that’s my only commitment that I can make. I’ll work with the new Administration, Mr. Taylor and Mr. Arakawa, you have my commitment to work hard with you.
To all of you, I would like to say, a very Merry Christmas and a Happy New Year. Please be safe, we’ve had too many tragedies on our highways already. Oahu had a massive one this past weekend and we had the sad one out in Napili with that one year old. And please be careful, the kids are running around, they don’t know, and our elderly are crossing streets. Please, please be patient. I just saw something at Kaahumanu, one lady was crossing the crosswalk and this kid went right by ‘em. You know, come on everybody, let’s slow down, this is the season to be joyful, the season to be patient which we should be all the time, but more so now. So please have a good holiday season. And to the new Members coming in, we look forward to working with you. This meeting of the Water Resource Committee, November 30, 2010 is now adjourned. . . . (gavel) . . .

ADJOURN: 10:35 a.m.

APPROVED:

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MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:101130

Transcribed by: Carolyn Takayama-Corden
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 13th day of December, 2010, in Pukalani, Hawaii

Carolyn Takayama-Corden