

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

December 13, 2011

Council Chamber, 8th Floor

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Robert Carroll (out 11:14 a.m., in 11:25 a.m.)
Councilmember Elle Cochran
Councilmember G. Riki Hokama (in 9:05 a.m., out 10:53 a.m., in 11:03 a.m.)
Councilmember Mike B. White (in 9:35 a.m., out 10:00 a.m., in 11:04 a.m., out 11:29 a.m.,
in 11:38 a.m.)

EXCUSED: VOTING MEMBER:

Councilmember Gladys C. Baisa

STAFF: Kimberley Willenbrink, Substitute Legislative Analyst
Yvette Bouthillier, Committee Secretary

ADMIN.: David Goode, Director, Department of Public Works
Dave Taylor, Director, Department of Water Supply
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Michael Howden
Ryan Churchill, President, Maui Land and Pineapple Company
Kaniloa Kamaunu
Johanna Kamaunu
Tom Royer, Board of Director Member, Maalaea Community Association
Kent Hiranaga
Mark Hyde
Michael Silva, President, Hawaii Society of Professional Engineers
Irene Bowie, Executive Director, Maui Tomorrow
Victor Pellegrino, *professor emeritus*, University of Hawaii-Maui Community College
and a Kalo Farmer in Waikapu
Gordon Cockett
Alice Lee
David DeLeon, REALTORS® Association of Maui, Inc.
Lucienne de Naie
Jason Medeiros

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

Zachary Franks, General Manager, Piiholo South Hui
Others (15)

PRESS: *Akaku:* Maui Community Television, Inc.
 Harry Eagar, The Maui News

CHAIR VICTORINO: . . .(*gavel*). . . Good morning and Merry Christmas to all. This is the meeting of the Water Resources Committee for December 13, 2011. I want to first of all thank everyone for being here this morning. I know the weather has not been very cooperative, but when somebody says show me the water, the last few days I think we've all been able to show them some water, yeah, and hopefully it'll be better in the future. Anyhow, let me introduce the Members that are here this morning. First of all, I'd like to introduce the Vice-Chair of the Committee and the Vice-Chair of the Council, Mr. Joseph Pontanilla.

VICE-CHAIR PONTANILLA: Good morning.

CHAIR VICTORINO: Good morning. Our young lady from West Maui, Ms. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good morning, Chair.

CHAIR VICTORINO: Aloha. And our handsome gentleman from East Maui, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning.

CHAIR VICTORINO: And of course I am the Chair, Michael Victorino. Ms. Baisa is excused from today's proceedings, and Mr. Hokama and Mr. White should be joining us very shortly. So thank you for those that are here. We have public testimony and we'll start that in a few minutes. We have just one item on the agenda today, the...it's WR-8, Water Availability. The Committee is in receipt of the following: County Communication 11-0...excuse me, 11-306 from myself, Councilman Victorino, transmitting a draft bill to amend Chapter [*sic*] 14, Maui County Code, to (1) to allow an engineering report to be accepted by the Department of Health to constitute proof of long-term reliability on sources of water; (2) exempt large lot [*sic*] and water source development agreements from private entities for [*sic*] the provisions in Chapter 14.12, Maui County Code; and (3) to allow the Director of the Water...Department of Water Supply discretionary consideration in [*sic*] factors listed in Section 14.12.050, Maui County Code, when reviewing and commenting on engineer reports; and (4) to provide that the Chapter in 14.12, Maui County Code, shall expire in two years from effective date of the ordinance. And No. 2, a proposed bill entitled A Bill For An Ordinance Amending Chapter [*sic*] 1, Title 14, Maui County Code,

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

Related To Water Availability, transmitted by the Chair of the Committee at the November 29, 2011 meeting. The proposed bill incorporated nonsubstantive revisions. Also today you will get...you're receiving or you should have received a bill for...that was...would be actually a bill to...for the ordinance amending Chapter [*sic*] 1, Title 14, Maui County Code, relating to water availability. There are some amendments from our last meeting that I took very much to heart, and I made these changes and I propose these changes today. But we'll discuss these changes after our public testimony, and the public should be able to get the new revisions from the desk back there. Ms. Willenbrink has made it available to all. Let me now introduce...since I've gotten to this point, I need to introduce the Staff that's available for our help today. We have our Director from the Department of Water Supply, David Taylor.

MR. TAYLOR: Good morning.

CHAIR VICTORINO: And we have from the Corporation Counsel, Mr. Junior Kushi...oh, excuse me, Edward Kushi. Sorry. I don't know, we go back a long way, I forget myself every so often. I apologize, Ed. And also joining us later will be the Director of Public Works, Mr. David Goode. Our trusted Staff, invaluable, today will be Kim Willenbrink, our Legislative Analyst, and Yvette Bouthillier, the Committee Secretary. Okay. After all of that, I think we're ready for public testimony, with no objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. Let us start with the...I have so far signed up ten testifiers, and so if you would, testimony will be allowed for three minutes with one minute to conclude. Please wait a second or two because...to see if Members will be asking you any questions so that you don't have to be called back. I will also ask everyone to turn off cell phones or other noise-making devices. Decorum will be conducted in this Chamber at all times. And I'd like to take a moment to recognize the attendance of the Lanai representative, Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR VICTORINO: Good morning, sir. Okay. Our first testifier will be Mr. Michael Howden and he's speaking on his behalf, and he will be followed by Ryan Churchill from Maui Land and Pine Company. Mr. Howden, good morning.

...BEGIN PUBLIC TESTIMONY...

MR. HOWDEN: Aloha. Good morning, Chair Victorino, Members of the Committee. I want to speak against the bill. I find it well intentioned but ill advised. Well intentioned in that it wants to put pressure on the County to develop water

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

resources which we all need and are in agreement with. Ill advised in terms of the steady degradation of our water resources, especially in Central Maui. The Iao and Waihee Aquifers according to USGS, the geological service, the salinity in the aquifers has risen more than 20 feet in the last 20 or so years. We depend on these aquifers for over 75 percent of all publicly transmitted waters in the County of Maui. What the Department is not pointing out is that there's no redundancy in our public systems nor has there been for years. Director Taylor speaks of the Water Department as a utility whereas in fact it is a public system and it does not meet professional standards in terms of water redundancy. I find it curious that Director Taylor will appear at public meetings and his basic opening gambit is tell me what you want rather than some frank assessment of what our access to water resources are. You know, if we really want water resources--and this is something that was discussed both publicly and privately by Mayor Arakawa during the election--we need to take...we need to...the County needs to use the power of eminent domain to take control of both EMI and the Wailuku Water Company which are selling and taking public trust waters. I assume that there are discussions taking place. Deputy Director Paul Meyer indicates that they have something like 28 options on water resources, but publicly we see very little movement towards meeting the needs of our communities. Thank you.

CHAIR VICTORINO: Thank you, Mr. Howden. Questions for the testifier? Seeing none, thank you.

MR. HOWDEN: Thanks, Mike.

CHAIR VICTORINO: And again, Merry Christmas, my friend. And the next testifier is Ryan Churchill from Maui Land and Pine, and he will be followed by Kaniloa Kamaunu. Mr. Churchill.

MR. CHURCHILL: Good morning, Chair Victorino and Members of the Water Resources Committee. My name is Ryan Churchill, President of Maui Land and Pineapple Company. I'm here to provide testimony on WR-8. You should have a copy of my testimony including the attachments in your binder. MLP operates multiple water systems across the island, including wells, surface water, and wastewater systems. In addition, MLP owns a PUC regulated water company and has several agreements with the County of Maui regarding water use. We opposed the passage of the Show Me the Water Bill when it passed and testified for common sense language to include in the original bill which failed to get in. Within a few months of the bill passing, MLP unfortunately had to appeal the County's decision of the applicability of Show Me the Water Bill to a large lot subdivision we are processing. After nearly two years we prevailed in our appeal but wasted about \$50,000 and a lot of County time in that process. Therefore, based on our experience with Maui's water resources and relevant experience with shortcomings of the bill, we respectfully provide input as you deliberate this, this matter. The Show Me the Water Bill should be repealed. It is unnecessary,

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

adds a bureaucratic layer to the permitting process, is preempted by State laws, and does not provide any additional protection to existing or future water resources, which should be our true goal. Here are examples to illustrate this point. Prior to this bill, if a project planned to utilize water from the County of Maui, Department of Water Supply and could not satisfy DWS' concerns, the project would not receive approval. See Exhibit C, example of denial by DWS prior to Show Me the Water Bill. DWS was authorized to approve or disapprove projects based on availability of water within its system. Show Me the Water added another layer of processing and further imposed DWS review on projects within private water systems, and for private water systems not utilizing DWS services, there are existing State and Federally agencies that specifically manage what was added to the DWS via Show Me the Water. As you know, the State Commission on Water Resource Management is responsible for regulating water use, and the State Department of Health and EPA are responsible for water quality standards. In addition, if it is a private system such as Kapalua Water Company, the PUC further and intensively scrutinizes the availability of water for projects any time a project is added. See Exhibit D, example of a decision and order for Kapalua Water Company expansion. And to add even more scrutiny, once a development is eventually approved, developer faces additional tests when registering with HUD and the State DCCA to sell the units. See Exhibit E, HUD subdivision regulations requiring proof of water from a private or government source. Again, Show Me the Water is an unnecessary layer of bureaucracy and a waste of time on applicants and the Department of Water Supply. Regulation is well underway by State and Federal agencies. In summary, Show Me the Water is duplicative and unnecessary from what was and is already being done by other government agencies. The DWS has always controlled approval of projects that plan to utilize County water, and there are numerous agencies already administering developments that utilize private water systems. Let the County of Maui DWS focus on being a water utility and improving its systems. We support passage of WR-8 and specifically the changes that terminate the entire ordinance. Mahalo.

CHAIR VICTORINO: Thank you, Mr. Churchill. Any questions for the testifier? Seeing none, have a Merry Christmas, too, Mr. Churchill. Okay. The next testifier is Kaniloa Kamaunu, followed by Johanna Kamaunu.

MR. KAMAUNU: Aloha, Council.

CHAIR VICTORINO: Good morning, sir.

MR. KAMAUNU: As normally, Kaniloa Kamaunu from Waihee Valley. And my stance has always been that this discussion should include the kuleana, and basically it's because as I stated before, maybe for the new ones that are here, it's due to the entitlements already in place which have already been done with my kupuna which is the actual owner of the property. See, there's a misconception that land

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

here can be just sold and that the person buying that land becomes the title owner, but yet you do the research, it's not so, especially when it comes to kuleanas. The kuleana basically was quieted by the king himself to that awardee, and if you look at section...or HRS 7...172-11 it states clearly who the entitlee [*sic*] and who is actually the person that is...has title to the land. And you guys have it as listed as land patents, and this Council in the 1872 law which talks about the Royal Patents, and this is the same law that you have, and it states, 172-11, land patents on land commission awards to whom, for those whose benefit, every land patent issued upon an awarded a board of commissions to quiet title shall be in the name of the person to whom the original award was made even though the person is deceased or the title to the real estate thereby granted has been alienated from the king, and all the lands so issued shall inure to the benefit of the heirs and assigns of the holder of the original award. This is HRS 172-11 clearly stating that in 1872 that the land was quieted, alienated by the king and the kingdom to for me Piimai waa who owns and still holds the land title. If you call upon Land Commission awards, royal patents, the only name that's going to show up there is Piimai waa. Oh what has happened is through the tax...through the real property tax, what they've done is taken his name out, put the tax map key on top, and they put us as the heirs as the owner, but it intrudes on the law that is already here which states that the owner even though he be dead is still the owner. So that means if he's still the owner, all entitlements, all rights--meaning water, use of lands, use of things that are on that property or in the ahupuaa--is his entitlements and I am just the heir, and as the heir I am entitled to the protection of this law which the State recognizes which is the Kingdom law. So what I'm saying, the things that are happening here with the decisions on water--especially coming from Waihee--is my concern because I am kuleana, because my entitlements through my, through my kupuna is already pa`a, as Hawaiians would say, it's already there. So you have to deal with me, you have to deal with my concerns, and you have to bring me to the table because I am first and utmost, all kuleana is first. The public interest of the County of Maui is a foreign interest to the kuleana of Piimai waa, and because he has the entitlements, you have to bring us forward, you have to consult with us because we have vested rights declared. Yeah. Thank you.

CHAIR VICTORINO: Thank you. Questions for the testifier? Seeing none, again, Merry Christmas.

MR. KAMAUNU: Merry Christmas.

CHAIR VICTORINO: Johanna Kamaunu, followed by Tom Royer.

MS. KAMAUNU: Aloha, everyone.

CHAIR VICTORINO: Aloha.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER COCHRAN: Aloha.

MS. KAMAUNU: This not where I wanted to spend my morning but...and whenever it comes to the discussion on water I'm concerned about it, and I'm concerned because while I'm sitting here listening to Mr. Taylor give his testimony and I'm really concerned that I have a person in charge of the Water Department that feels as he does about the Show Me the Water Bill. That had a purpose, and I still believe that purpose is there. If developers have a problem with it, we need to find out what their problem is, and if it's financing, I really think that, you know, everybody's got it hard today. But for me right now, the Show Me the...the Show Me the Water Bill worked where was its purpose. I, I feel differently about the language of this bill. If it would address more how you're going to increase the water production from these watersheds, I would be more willing to hear what you're trying to get at if there were ways to say that this is how we're going to get more water from the watershed, this is how we're going to improve the resources, but I don't see that happening in this bill. All I see is a way that it's going to be taken out and used and nothing put back, nothing to regenerate that usage, so that's my big concern with this, this bill. Thank you.

CHAIR VICTORINO: Thank you, Johanna. Questions for the testifier? Seeing none, Merry Christmas, my dear. The next testifier, Tom Royer and he is testifying as a representative from the Maalaea Community Association, followed by Kent Hiranaga. Good morning, Mr. Royer.

MR. ROYER: Aloha. I'm Tom Royer. I'm an oceanographer who's been studying freshwater in the north Pacific Ocean for more than 40 years, and now I'm a *professor emeritus* at the University of Alaska and Old Dominion University. But I'm now a fulltime permanent resident of Maalaea, and I'm asked...I've been asked to provide testimony on behalf of the Maalaea Community Association. At the last Water Resources meeting, a comment was made that the water amounts on Maui are not a problem, but nevertheless we are concerned with the long-term variability of Maui's water resources. This issue was addressed in the 2008 US Geological and...US Geological survey and Department of Water Supply publication entitled Groundwater Availability in the Wailuku Area. In that report which is the result of a four and a half year study, water forecasts for the Wailuku area were made for 30 and 150 years into the future. The study cautioned that in the future there would be problems with sustainability, and it would be best if the Department of Water Supply reduced withdrawal from existing wells and develop new wells to redistribute water withdrawal over a larger area. This would also help minimize increases in salinity levels in the existing wells. It's important to note that the study did not include potential effects of climate change, and that will probably reduce rainfall rates on Maui and affect recharge rates into our aquifers. Clearly a long-term view of our land use and water resources is necessary. Drilling wells to withdraw water from our aquifers should be done in a coordinated, well-planned manner to assure long-term sustainability under future

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

adverse conditions. The whole island ecosystem needs to be considered, not just some particular land being proposed for development. The County needs to retain control of where these wells are located. They need to determine what their withdrawal rates are and what salinity levels will be to ensure that the water will always be available to future generations. Weakening protective measures already in place does not seem to us to be the way to go. I'd like to finish with a, a little holiday story entitled The Two-Layer Punch Bowl. And in it for a party a hostess created an attractive two-layered punch with champagne on the top and a heavier clear liquid on the bottom. She used salty water for this lower layer. After instructing her guests to...that the lower layer was only there for aesthetic purposes, she gave straws to them and invited them to drink. As the evening went on, she refilled the upper layer with champagne on a regular basis; however, she began to have difficulty keeping it filled as additional unexpected guests arrived. As the champagne layer became thinner and thinner, the guest straws became deeper and deeper into the bowl. Suddenly they were drinking the saltwater and the party was over. The hostess--also known as Mother Nature--could not keep up with the demand. Maui's freshwater is sitting on top of seawater. If Mother Nature cannot replace it fast enough, our party, too, will be over. Thank you.

CHAIR VICTORINO: Thank you. Thank you. Questions for the testifier? Seeing none, Merry Christmas to you, sir. Kent Hiranaga, followed by Mark Hyde.

MR. HIRANAGA: Good morning, Chairman Victorino and Council members.

COUNCILMEMBER COCHRAN: Good morning.

MR. HIRANAGA: My name is Kent Hiranaga, and I am here to testify as an individual in support of the proposed amendment to the Show Me the Water Ordinance. I was born and raised on Maui. I am a small business owner. I served as a member and chair of the Board of Variance and Appeals. I also served as a member and chair of the Board of Water Supply. Currently I am the chair of the Maui Planning Commission. As a member of the Board of Water Supply, I served both when the board was semiautonomous and transitioned to advisory status. I have reviewed the proposed amendment and offer the following comment. In order to be consistent with the Residential Workforce Housing Ordinance, I suggest a development consisting of five or more and not four dwelling units be deemed a subdivision. I believe it is the County's and the Department of Water Supply's responsibility to provide an adequate supply of water so the County community plans can be implemented. Water should not be used as a planning tool but should be an available resource so the residents of this County can afford to live here. Under the current ordinance, only a very limited number of housing developers have the financial strength to develop their own source of water. By limiting the supply of housing, the cost of housing will increase. I prefer repealing the entire ordinance, but I believe the proposed amendment is a step in the right direction. Thank you for this opportunity to testify.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Thank you, Mr. Hiranaga. Questions for the testifier? Seeing none, Merry Christmas to you, sir. Mark Hyde, followed by Michael Silva who is testifying on behalf of the Hawaii Society of Professional Engineers. Good morning, Mark.

MR. HYDE: Good morning. Thank you. I've submitted written testimony to all of you, and I would hope that you will take the time to read it. I appreciate the Chair's stimulating conversation about water, I think it's really important. At the same time, I don't think this is the right bill, and I oppose abandoning the Show Me the Water Bill. There's a seminal question that I don't believe the County has answered and I think should be the focus of this Committee, and that is as the previous speaker just said, he believes it is the County's responsibility to develop water. Mr. Jencks was here at the last hearing and he said I believe it is the County's responsibility to develop water. The Chamber wrote in the paper that it is the County's responsibility to develop water. The question that I think you need to ask yourselves and answer is do you believe that's the case? Because if you look at the circumstances that we're in, we have a mismatch between water supply and water need. Mr. Taylor has asked on several occasions, including at the last hearing, tell me what the population growth is going to be and where that population growth will be. And I assume in that, that he's saying that then I will plan for water for the future, but as I look at it as a citizen and...I don't think there is the organizational alignment, commitment to making sure that future water needs are going to be met. I don't know whether that is the Mayor's responsibility or is it the Department of Water Supply's responsibility? Is it your responsibility as a Committee? And until you get that clarity of who is responsible and get the vision, where do we need to be and then execute underneath it relentlessly, I think the discussion about particular bills and whether it shall or may really should be tabled. If you don't have good organizational alignment, it's rare that you can achieve terrific results. The questions about this bill specifically, has it been discussed with the Department of Water Supply? What does the Department of Water Supply think about this bill? Does this fit into a big picture plan? Is there a big picture plan? If there isn't a big picture plan, why isn't there a big picture plan? Maybe that's what we need to do. And I think another question is just exactly how will this bill if passed generate more water, and how much more water, and when? And are we the people entitled to answers to those questions? I think we are, and I think we need to have a big picture. So with that in mind, I, I come to you with more questions than answers, and thank you for listening.

CHAIR VICTORINO: Thank you, Mr. Hyde. Questions for the testifier? Seeing none, Merry Christmas to you, sir. The next testifier is Michael Silva, followed by Irene Bowie from...the Executive Director from Maui Tomorrow. Good morning, Michael.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. SILVA: Good morning, Chair Victorino and Council members. My name is Michael Silva and I'm here representing the Hawaii Society of Professional Engineers, Maui Chapter. I apologize for not making the first reading, but we have submitted the written testimony today which I'm just going to read so everybody could hear. The Maui Chapter of Hawaii Society of Professional Engineers recognizes the importance of having a verified water source prior to subdivision approval as emphasized in the existing ordinance; however, the ordinance does need to be modified. The existing ordinance puts tremendous burden on landowners, because one, they cannot get water from the County, and two, it is economically infeasible to install a well, especially for a small subdivision. We recommend two modifications to Section 14.12.30.D which addresses projects located in Central and West Maui where new County water meters are available. First replace "residential dwelling units or less on contiguous parcels" with "lots or less", just pretty much includes subdivision of all lots, not only residential units. And second, increase the number of lots allowable under the exemption from ten to a higher number. These two modifications will clarify and expand the exemptions. We also support the proposed language that will allow construction plans to be reviewed prior to the final verification of a water source. This will save time by allowing the engineering report for a private water source and the subdivision construction plans to be reviewed concurrently instead of sequentially as required under the existing ordinance. Thank you for your consideration.

CHAIR VICTORINO: Thank you, Mr. Silva. Questions for the testifier? Seeing none, Merry Christmas to you, sir.

MR. SILVA: Merry Christmas.

CHAIR VICTORINO: The next testifier is Irene Bowie, followed by Victor Pellegrino.

MS. BOWIE: Good morning, Chair and Council members. My name is Irene Bowie, I'm Executive Director with Maui Tomorrow Foundation. Comprehensive plans integrate social, economic, and environmental planning into a framework that Zoning and Subdivision ordinances must conform to. A comprehensive plan's effectiveness will often be judged by the ordinances and rules developed to implement it. When Maui County's Show Me the Water Ordinance was adopted in 2007, the Department of Water Supply described our water situation as dire with studies indicating that water levels in the Iao Aquifer had been steadily declining as salinity levels rose, and Water Department figures showed all County systems operating at or over system capacity. The purpose of the Water Availability Ordinance was to protect existing County water systems from over pumpage by requiring developers to have a reliable source of water to supply a subdivision before receiving subdivision approval. Allowing this law to expire in two years makes no sense in light of recent USGS studies which caution that in response to increased withdrawals from the freshwater lens system of the Iao

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

Aquifer, water levels have declined, the transition zone between freshwater and saltwater has risen, and the chloride concentrations of water pumped from wells has increased. And despite this week's weather, reduced precipitation throughout the State, due to climate change, continues to result in a significant reduction in groundwater and stream recharge. The purpose of the Show Me the Water Ordinance was to protect existing County systems from over pumpage by requiring developers to have a reliable source of water to supply a subdivision before it receives subdivision approval. With no available supply in the County systems, why would you allow a developer to receive subdivision approval unless they have a verified source of water to supply the subdivision? Before you consider sunseting this Water Availability Ordinance, the County of Maui needs to bring this community a clear and comprehensive plan to develop new water resources. Give us reliable information on where and how new water resources will be brought online. The proposed changes in this draft bill, including weakening language from DOH approved engineering reports to accepted reports, are far from comprehensive, premature, and should not be approved. Thank you.

CHAIR VICTORINO: Thank you, Ms. Bowie. Questions for the testifier? Seeing none, Merry Christmas. I would like to take this moment to show the presence of Councilman Michael White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR VICTORINO: Good morning, Mr. White. Okay. Mr. Victor Pellegrino, and then we he will be followed by Gordon C. Cockett.

MR. PELLEGRINO: Good morning, everyone. Thank you for allowing me to be here. My name is Victor Pellegrino, *professor emeritus*, University of Hawaii, Maui Community College. I am also a taro farmer. I already gave you my testimony, and I want to repeat one part of it before I begin a point. The County of Maui illegally purchases surface stream water up to 8.7 million gallons per day at present and thereby violates the Hawaii State law documented in 1978 when the State of Hawaii Constitutional Convention identified the State's obligation to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people. This is Article XI, Section 7. In addition there's a clear statement, all public natural resources are held in trust by the State for the benefit of the people, Section 7. Article also states, the State has an obligation to protect, control, and regulate the use of Hawaii's water resources for the benefit of its people. If the County Council wants to rewrite the Show Me the Water Bill and kill it two years from now, it must first address the County's lawbreaking procedures and the cost of this water purchased from the private water companies and charged wrongly to every Maui resident using water.

Now this is a very complex amendment and water is a very complex issue. It is a microcosm here on Maui, and we're dealing with water right here and now. But it

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

is a world problem as well. For example, in Alaska, Lake Sitka may be drained of 6 million gallons of water per day. These will be barged in large water tankers much like oil tankers. The water wars have begun. Israel has previously stopped two-thirds of the water supply into Palestine. India is now becoming one of the have not's of water. Why, I don't know. But Africa has issues with water. Russia wants water. The Suez Canal companies are taking water and selling it. The privatization of water throughout the world is a massive danger. I am proposing this for this bill, I propose that this amendment include the following statement: the County of Maui shall not purchase water from privatized water companies nor water transportation systems operated by private water companies within one year of the passage of this amendment; no privatization of water in the County of Maui shall be allowed, and considered illegal with the passage of this amendment. Now the reason I say this is because water has become money, and these privatization companies now...for example, the one that wants--it's an American company, America--one wants to take the water out of Lake Sitka. It's going to garner \$19 million a year in profit selling water. The Aswan Dam, where does the water come from? Ethiopia. Egypt has said dare you take any water, Ethiopia, and we are going to be at war. Again, that's the microcosm, the large issue regarding the privatization of water. We are violating the law by buying water from these private companies. These private companies are getting bigger and bigger, and they're going to swallow us up. And what is the reason that most places want privatization? Because oh, we can't take care of the sewers, we can't take care of the water, we can't take care of the purification, we don't know how to do it, et cetera, let the private companies do it. And what happens to the water? You're going to pay over and over. Nestle, Pepsi Cola, companies like Coca Cola, happening in Michigan. Texas now wants to drain water from the Panhandle and sell it. Austin, Texas is now in much need of water. California's water comes from Colorado. So I say we have a problem. We have a concreted stream, Iao Valley. Get that concrete out, let the water percolate into our, our aquifers. Mike, thank you very much. I think you started something that needs some community discussion, it needs a long-term discussion...I don't mean years but we gotta get a lot of people involved in this. It's, it's more than just this Show Me the Water, it's more than the County or privatization, it's, it's, it's a very complex issue. I would like to recommend one thing, that everybody read this book, the title is *Water: The Epic Struggle for Wealth, Power, and Civilization*. The author is Steven Solomon. And I'd also like you to read the MED report that nobody has...I guess nobody's seen it yet. How many of you people have seen it? I gave a copy to Mike last week. Mike, you need to share that. Scary about what's happening on Maui. Mahalo.

CHAIR VICTORINO: Thank you. Questions for the testifier? Seeing none, Merry Christmas to you, sir. The next testifier, Gordon C Cockett and he's testifying on his behalf, followed by Alice Lee.

MR. COCKETT: Good morning, Mr. Chair --

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Good morning.

MR. COCKETT: --Members of the Committee. My name is Gordon C Cockett, in some areas referred to as kupuna. I have lived here on Maui all my life, I did not come from somewhere else. I have, I have not heard of the reason or the need for this change. A previous speaker called this bureaucracy. Really? Or is it protection for the people who have lived here all their lives? I'm talking about the original, not the amendment. Another testifier says that the bill works, why does it need to be changed? At an earlier meeting, a lady stated that there are 600 wells already on Maui. I never guessed at this figure. But isn't this, isn't this is a concern? We don't want to drink saltwater, do we? Most developers have come here from somewhere else and laugh all the way to the bank, that is their goal. Another testifier said that there are some developers who don't have the resources to show us the water. Time for a change on their part, not ours. Thank you.

CHAIR VICTORINO: Thank you, Mr. Cockett. Questions for the testifier? Seeing none, Merry Christmas to you, sir. Alice Lee testifying on behalf of Hui O Na Wai, followed by Dave DeLeon testifying on behalf of the REALTORS® Association of Maui. Good morning, Ms. Lee.

MS. LEE: Good morning, Mr. Chair, Members of the Committee. God bless America where we can come up here and disagree with people and still be friends. I'm testifying on this issue because I'm really concerned that we have just too many regulations on the books and we need to delete some of them. I think there's a lot of misunderstanding about this particular ordinance. It hasn't really helped. Nobody can show evidence that this is worth the paper it's written on. We already have sufficient restraints and constraints in the law, in the Department of Water Supply that takes care of any possible abuses. I've been looking at this new recommended changes that you've initiated, Mr. Chair, and I agree with some of them. And the last one I have to say on the repeal section that I'm wondering if this Committee is really serious about this ordinance. If the people who actually build the water systems, who actually develop the projects are telling you this is not effective, it is not useful, it only hinders projects from going forward, why wouldn't you repeal this? Because they are the people who are responsible for all the projects on Maui, not people who are speculating, who are theorizing, who are conceptualizing. These are the people on the ground doing the work and they're telling you this ordinance doesn't work. What we need are problem solvers. We don't need people to continually complain and identify different issues surrounding the same problem. We need to solve our problems. We need...for instance, we all know that there is 427 million gallons a day in Maui County with a population of about 150,000. We all know that there's 407 million gallons a day available on Oahu with a population of 1 million. Now something's wrong with that. Now if the complaint is let's not tap any more water in Central Maui, then obviously the alternative is to go to East Maui, but the

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

idea here is to look for solutions. We all know we need new water. We have 1,700 people in additional population every single year. What are we going do? Tell them to move someplace else? These are our children, these are our grandchildren, they deserve a future, and we deserve to give it to them. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you. Questions for the testifier? Seeing none, Merry Christmas to you.

MS. LEE: Thank you.

CHAIR VICTORINO: Dave DeLeon testifying on behalf of the Maui...REALTORS® Association of Maui, I should say, excuse me, and then followed by Lucienne de Naie. And Lucienne is the last signed testifier, signed up testifier, so anybody who is interested in testifying, please go back to the table and sign up, I'd appreciate that. Mr. DeLeon, good morning.

MR. DELEON: Good morning, sir. Aloha. I'm Dave DeLeon speaking for the REALTORS® Association of Maui. Our association follows water governance and supply with great interest, because having a good source of water is essential for our community to continue to grow in a strong, sustainable manner that can support our future population. Many of our members noted with great interest *The Maui News* story on census data, which recently ran, which said that the main way our population is growing is the old fashioned natural way, babies. For those keiki to have...for those keiki to be able to find employment and housing in the future, we have to provide for growth now. That includes providing an adequate water supply. In that context, RAM wishes to go on the record for the repeal of the existing County Water Availability Ordinance, aka, Show Me the Water. We take this position because this ordinance was written for a different economic era, because it was really meant as a land use regulatory tool, and because we do not support its consequences. And those consequences include, by not preparing for the future water...our future water needs, our economy will not be able to respond in a timely manner when and if the economy warms up again. This ordinance creates a fragmented water system which has already had numerous private water system failures that the public sector has had to respond to. For some private systems, the result is in...is in...results in extreme...extremely high monthly water costs because of poor economy of scale. Promoting a fragmented system negatively affects the economy of scale for the public system as well. RAM believes that partial fixes and adjustments will simply be the equivalent of readjusting the deck chairs. RAM believes that Maui County should be in charge of our water systems. By promoting private water system developments, this ordinance does the opposite of that. Mahalo.

CHAIR VICTORINO: Thank you, Mr. DeLeon. Questions for the testifier? Seeing none, Merry Christmas to you, sir.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. DELEON: Thank you.

CHAIR VICTORINO: Lucienne de Naie--oh, we have some more, okay--followed by Jason Medeiros.

MS. DE NAIE: Good morning, Chair Victorino --

CHAIR VICTORINO: Good morning.

MS. DE NAIE: --and Council...Committee members. It's beginning to look a lot like Christmas. My name is Lucienne de Naie, I'm testifying on my own behalf. I brought to your attention last time this idea that we've had a lot of private wells long before we had any Water Availability Bill. I just wanted to refer...there seemed to be some misunderstanding about the document. This is the Board of Water Supply, County of Maui, a regular meeting, February, 2005, Chair Michael P. Victorino, and attached to this is a 30-page document listing all the wells that currently existed at that time, not drilled since 2002. These...some of these drills...wells were drilled in the '30s and '40s and '50s. My point is we've always had a lot of private wells because the County doesn't have a lot of land to drill wells. In fact, you may not know, the County almost didn't have the Pookela Well because Maui Land and Pine was going to drill right next door, and luckily the Board of Water Supply jumped in there and said, you know, we need this water for the public. And you know why they did? For the same provision that's in this Water Availability Bill, because the Director was instructed to review and say, you know, Water Commission, you're okaying this, we're not okay with it. We need to have our staff at our Water Department weigh in on these well permits from Molokai, from Lanai, from Maui, because they know better what's going on here, what the County's needs are than the Water Commission, the Department of Health, and these other regulatory agencies. So we definitely...I'm glad this language was changed so that it says the, the Director, you know, shall consider. I think we need the strongest direction to our Director as possible, that we need to have the local voice in there talking about our water planning for the future. I've heard again and again that this bill hasn't helped, that it, it hasn't done anything in four years, and I just want to bring to your attention that before we had a Water Availability Bill we had moratoriums, we had drought warnings, we had all the things that we had now. So is this a function of the bill that these things still continue or is it a function of how our system is designed and the fact that basically a few corporations control the most...the, the majority of our water? And it's difficult for us to kind of undo that in one fell swoop. It's a, it's a gradual process. I, I, I was surprised to hear the real estate association say that they only want projects that have public water sources, because there are some major projects that I'm sure they'll be supporting like Olowalu, so forth and so on that have private water sources. It's like I agree that private water sources are less than desirable, but in some areas they are going

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

to be what we're going to have. And we need to try to figure out if real affordable housing can exist with private water sources. We have some tough decisions to make. But let me just say the last...my last statement. Ms. Lee made a statement that we all know that 427 million gallons is available here and that Oahu has less than that and has, you know, a larger population. Well we know how much water is in Oahu because it's been tested, they've invested in this over the years. We do not know how much water is in Maui, and just to prove that point, in 2008 where our Water Use and Development Plan was updated by the State, Maui's aquifer sustainable yield dropped by 50 million gallons. Now that shows me that they're basically saying, gee, we thought it had 50 million gallons more but it doesn't, and when you look at the facts, they've never done the research to verify the majority of that 427 million gallons. So you're rational people, get the facts. Leave this bill in place, it's an important tool. It allows us to look at project by project and see how it affects the whole of our public and private water supply. Thank you.

CHAIR VICTORINO: Thank you, Ms. de Naie. Questions for the testifier? Seeing none, Merry Christmas to you, dear.

MS. DE NAIE: Merry Christmas.

CHAIR VICTORINO: And the last testifier to sign up to this point--and I'll give anybody one more opportunity to sign up--is Jason Medeiros.

MR. MEDEIROS: Aloha.

COUNCILMEMBER COCHRAN: Aloha.

MR. MEDEIROS: Merry Christmas. My name is Jason Medeiros, I'm speaking in favor of Mike Victorino's amendments. Straight up, I have been against the Show Me the Water Bill from its conception. I believe that it is just a layer, you know, put on as an anti-development ploy. Our people, people like myself, people that I hang out with, we're hurting. Everybody knows that, you know. The construction industry needs jobs. To add another layer to stop development, you know, is, is wrong. Most of the people that have come and testified for Show Me the Water, you know, are anti-development. And we are raising kids. Where are they going to live? You know, if we do not have affordable housing, way are there...where on Maui can they live? I believe that you people honestly care about the future of our kids, you know, and I leave everything up to you, you know, but don't forget us, okay? Merry Christmas, everybody.

CHAIR VICTORINO: Thank you. Any questions for the testifier? Seeing none, Merry Christmas to you, Mr. Medeiros. Mr. Medeiros was the last testifier. Is there anyone who wants to testify? Oh, okay. And please fill out the form after you're completed with your testimony. Good morning.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. FRANKS: Good morning, Chairman Victorino, and good morning, Council members. I'm Zachary Franks from Kihei, and also the general manager of the Piiholo South Hui. And I had no intention of testifying this morning, but I've listened to the testimony and the deliberations last week or the week before. And I just want to speak to something that Mr. Hyde and Mr. DeLeon, Ms. Lee spoke to which is that we need comprehensive planning done. We need it done for the benefit of all the people of Maui, not done by individuals. I speak with maybe at least a unique point of view of anybody here this morning, in that Piiholo South has developed a well with 2 million gallons capacity ability to pump per day. We've made it...we've offered it to the County over a period of the last three years. The County has shown very limited interest in it, and it, it shouldn't be really our responsibility or any other developer's responsibility to provide water, it should be the responsibility of the County. But we were forced by the Show Me the Water Bill to develop this water for ourselves. It turns out we, we hit upon a large resource, and we're content to use the water for ourselves as other developers who will be forced under the Show Me the Water Bill to do so. However, wouldn't it be better if the County had drilled that well and made that water available to all rather than just to individual developers such as ourselves relying on themselves and developing the water for themselves? I think the public good is more important than the private good here, and that's what I speak to today. Thank you.

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

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Mr. Franks. I'm just curious, what is the reasoning for County not being interested? Or that you've been told, I guess.

MR. FRANKS: Well I don't really know what the reasoning was of Mr. Eng's Department. I don't...I can't speak to that, but they were clearly even antagonistic toward this idea. You know, I mean one could theorize about it and say well it's anti...we, we...they didn't want to have more people Upcountry having water, that's a theory. But I, I...and in terms of Mr. Taylor's Department, they're looking at all of the alternatives. I'm a strong supporter of what they are doing right now in doing their analysis. I think it's, I think it's the right thing to do. I just hope that, whether there is a Show Me the Water Bill or not, that the County starts to take seriously its responsibility to all of the people of Maui, particularly the people Upcountry who have suffered long and hard.

COUNCILMEMBER COCHRAN: Thank you, Mr. Franks. Thank you, Chair.

CHAIR VICTORINO: Thank you. Other questions for the testifier? Seeing none, Merry Christmas to you, sir.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. FRANKS: Merry Christmas to you, too, and to all of you.

CHAIR VICTORINO: Okay. Mr. Franks was the last testifier--and please sign up in the back, please, Mr. Franks--was the last testifier this morning. I give anybody one more opportunity who has not testified. Okay. Seeing none, I'm going to call for...well and then also I wanted to make sure that all the written testimony that you received, that you have it in front of you. We did receive a number of testimonies, and I wanted to point out that we did receive from former Councilmember Michelle Anderson, written testimony, from Brett Gobar and from the Chamber, and Warren Shibuya, written testimony, so I wanna make sure that is entered into the records, with no objections.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. At this time I'm going to call for our morning recess. We have to set up the projector...

MS. WILLENBRINK: Did you close public testimony?

CHAIR VICTORINO: Not yet. You know, I didn't close public testimony so I'm sorry. Thank you for reminding me. . . .(chuckled). . . With no objections, I'm gonna close public testimony.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR VICTORINO: Thank you. At this point in time, I would like to take a morning recess, and we're going to set up the projector so we can view all the changes and we'll go step by step and, and see how all this turns out. This meeting will stand in recess 'til 10:15. . . .(gavel). . .

RECESS: 10:00 a.m.
RECONVENE: 10:15 a.m.

ITEM NO. 8: WATER AVAILABILITY (CC 11-306)

CHAIR VICTORINO: . . .(gavel). . . This meeting of the Water Resources Committee will come to order again. If you would turn your attention to the wall over there, I think we'll have a better time to understand the changes that we are proposing. I think all the Members have received that. I think you will look it over, and I'll start right from the top. Again, this is WR-8, a bill for an ordinance amending Title...Act 1...Title 14, Maui County Code, related to water availability. We'll

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

start with Section 1. Yeah, is that all right? I...yeah, I think everybody can read. Yeah, I think that's good. Thank you, Ms. Kim. Okay. So upon listening to Members and the public at large, the first change is to actually put it back to what it was, and it is...the word "accepted" will be removed and "approved" will be reinserted in all areas starting with an "Approved engineering report" and then we go, and any area where the word "approved" was bracketed is now back in and "accepted" has been bracketed out. Any questions in this area? This is for Section 1, "approved", and you can see it on the board there. We're inserting "approved" and taking out "accepted". No questions? Okay. Moving right along.

COUNCILMEMBER HOKAMA: Chairman, question please.

CHAIR VICTORINO: Yes, mister...by the way, let me...before you, before you ask your question I need to put in one more statement. Also, this was in review and response from the Department of Health from Stuart Yamada's office. Joanna Seto, she did say that under the HRS there is no definition for "accepted engineering reports" and that "approved" is what they would look at it, so that's why that has been reinserted upon checking with the State Department of, State Department of Health, yeah, Clean, Clean Water Division, yeah. Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. My area of concern in this area, Chairman, is about whether or not for me this...why would I ask the State Department of Health for this? I'm not concerned about, at this point in time in the development of water, the quality. You know, I'm more concerned about the capacity and the quantity and where it's located, and I would think that would be more appropriate with the Commission on Water Source Management. And it is interesting, and maybe you have it, Chairman, and you could direct me if I've misplaced it or haven't seen it, do we have comments from the State Water Commission regarding this subject matter?

CHAIR VICTORINO: Nope.

COUNCILMEMBER HOKAMA: I, I, you know, would hope maybe in a future meeting, Chairman, you would consider asking that division of the State government to give us some comment, because in development of water, I'll be more concerned about how they view it and what they would approve to permit...have a drill permitted. And then should we move forward to whereby it should be considered then for some potable consumption, then for me makes sense to have the Health Department give comment on the quality and safety of that water that we may be consuming. So I just share that comment, and I thank you, Chairman.

CHAIR VICTORINO: Thank you. And that has never been an issue as far as the availability, water bill was...but I mean something that we can put in and, and

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

look at in other areas, yeah. So any other questions with that first area, Section 1? Okay. And then moving down to the bottom part...

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Yeah, oh, yes --

VICE-CHAIR PONTANILLA: Question.

CHAIR VICTORINO: --Mr. Pontanilla. I'm sorry, go ahead.

VICE-CHAIR PONTANILLA: So as the Water Department approve the engineering report, it goes the Director of State Department of Health pursuant to their rules, so it's just a matter of the Health Department accepting the approval of our Director here?

CHAIR VICTORINO: No, I think that's not correct, but I'll have Mr. Taylor answer that question. Mr. Taylor.

MR. TAYLOR: I think what the bill says, the bill recognizes that we're not...the County and the Department of Water Supply is not in the regulatory approval process for any private water system. What this says is it directs us to comment on these and give our comments to the State Department of Health. So we would never...we are...we have no authority to approve or not approve, it just directs us to comment on them.

VICE-CHAIR PONTANILLA: Okay, fine. Thank you.

CHAIR VICTORINO: Thank you. And before we go any further, and I apologize. Mr. Taylor, and, you know, you...and I'll call Mr. Goode up, too, from Public Works because as we move...progress, I'd like you up here, too, Mr. Goode, Director of Public Works. But, Mr. Taylor, before I go any further beyond Section 1, you had some comments you wanted to, to bring forward, so and I apologize, I meant to do that first and I went right into the bill itself.

MR. TAYLOR: Okay.

CHAIR VICTORINO: I apologize, Mr. Taylor, but go ahead.

MR. TAYLOR: Thank you, Chairman Victorino. And, and frankly, my comments actually follow right on Member Pontanilla's issue about the regulatory process and the Department of Water Supply's role in that. And I would direct you to Section 14.12.050 which is where...which is titled Director's Comments on Engineering Reports, meaning the Department of Health engineering reports. There are 15 items where the language is either shall or may or review any and all

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

of these things. Somehow it directs us to look at, you know, 15 items. Item G says the adverse impacts of any water needs on residents currently being served by our Department, and M, the adverse impacts to water needs of residents on any sort of County wait list. Essentially those two items, G and M are something we already do as the system operators. Every sort of application for any sort of project goes through our Department, goes to our planning group, and if it's something that may impact us negatively, we comment on it just like any neighbor would comment on something that impacts them. All of the other items are very important and are things that other agencies have legal responsibility to review, things like the General Plan and relevant community plans. Well the Planning Department looks at that. All of these other items are looked at either by the Department of Health, the State Commission on Water Resource Management, or the Public Utility Commission. It's a little awkward to have our Department commenting on these things when we are not in the regulatory process. I think it's confusing to the public as some of the testimony today. We heard a lot of testimony about kuleana rights and, and stream flows. I think keeping this language gives people the wrong impression that, that the Department of Water Supply has some sort of authority over these things, and, and perhaps that's why people are testifying here rather than at the State Water Commission. And finally, I just want to mention liability. We're in a lawsuit right now from a private water system, because those plans came through our office many, many years ago and we either made a comment or didn't make a comment about something, and so now that they're having some problems, they're naming the County saying hey, the County commented on this. So I see this whole Section 14.12.050 as being redundant to other agencies, causing confusion to the public, and frankly, you know, just adding to our liability of us commenting on things where we are not in the regulatory process. Our Department's recommendation is to remove Section 14.12.050. We will still look at Items G and M, because of course we will look at, you know, as a matter of course, we will always look at things that affect us. But it would resolve this confusion that somehow we're commenting and we're giving comments to the Department of Health and the State Water Commission about things that are completely under their purview, and frankly, a lot of these, we don't even have any special knowledge in. And again, it would solve that confusion. So that is my recommendation is to get rid of this section, because I think it would help clarify with the public and, and deal with liability issues.

CHAIR VICTORINO: Thank you. Any questions for Mr. Goode in that respect? And we'll cover, we'll cover that area afterwards, but I just wanted to know if anybody had any specific questions for Mr. Goode...I mean not Mr. Goode, Mr. Taylor, I'm sorry. I get the two David's mixed up, I apologize. And, Mr. Goode, you had some comments you wanted to add, so I'm going to give you an opportunity at this point if you wanted to add some comments.

MR. GOODE: On this particular section, I have no comment.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Not, not on this section. Okay, all right. So as we go in and you have some on certain sections. So again, Section 1, right, that's the only area that I'm asking right now, Section 1. I want to go down to the point where we have taken out the language where it says...are you there, Kim?

MS. WILLENBRINK: I'm not sure where you are.

CHAIR VICTORINO: I'm down at the very bottom of the page where we start, except as otherwise permitted by law for purpose of this article. Okay, there. That section, I'm asking for that complete removal of that section, and it reads, except as otherwise permitted by law, for the purpose of this article, a development consisting of four or more dwellings...dwelling units on a lot, parcel or site, including planned unit developments and condominiums reviewed, approved and established and pursuant to Hawaii Revised Statutes, shall be deemed a subdivision. And I think, Mr. Taylor, you felt that...oh no, Corp. Counsel, you felt this was redundant, right, that it's already covered?

MR. KUSHI: Yes.

CHAIR VICTORINO: Mister, Mr. Kushi.

MR. KUSHI: Yes.

CHAIR VICTORINO: Okay. So they asked to have that removed and I did. Okay. Any questions in that area? Seeing none, then if, if there's no objections, I can do this by consensus or I can do this by vote for Section 1 through "each condominium unit." Do I have consensus on approving that part of the language? In other words, basically we're going back to what it originally was.

COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay. Okay. Thank you. Then flipping over, then we'll go down to 14.12.030, Exemptions. And again, large lot subdivision as defined in Section 18.16.270 as of this Code. We're removing that section, that's B, I'm sorry, B. I, I apologize, I didn't give the right lettering, B. So we're now...it now going to read, subdivisions that do not require water service, including, but not limited to, family subdivisions as defined in Section 18.20.280 of this, this Code, consolidation, concurrent re-subdivisions that do not create additional developable lots, road widening lots, utility lots, and easements for access of utility...for access or utility purposes. Any questions in that area?

VICE-CHAIR PONTANILLA: Comments by...

CHAIR VICTORINO: Mr. Hokama.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER HOKAMA: Chairman, maybe Mr. Kushi can help me. I'm looking at under that 030 section, C.

CHAIR VICTORINO: But before we go there, mister, Mr. Hokama --

COUNCILMEMBER HOKAMA: Yes.

CHAIR VICTORINO: --we will review that, but I'd like to make sure that we do B first, and then you can move to C, I have no problem with that.

COUNCILMEMBER HOKAMA: And, and I'll tie it in, Chairman --

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: --so you can understand my question, yeah. Because for like Lanai although it's a private water system, Chairman, it operates through PUC as a public service provider.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: So, you know, this concern about while it's a private water system but required to provide public service. This would not be in anyway applicable to them? Because they are, you know, they have to go to the PUC to set rates.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: You know, the Lanai Water Company, they need approval by the Commission, and so they're recognized as a utility. And I'm wondering whether or not this totally will include or exempt them from this provisions.

CHAIR VICTORINO: Mr. Taylor, if you would like to chime in on that, please.

MR. TAYLOR: I'll just chime in a little bit. There might be some confusion over this term "public water system". Public water system I think is defined by the EPA as any system that serves 25 or more customers or homes or, or services, something like that, connections. I think people might confuse that with publicly owned water system, meaning a publicly owned utility like ours. So I would just caution everyone to make sure you're very clear about do you mean a publicly owned utility or...which means a County owned utility, or do you mean a public water utility as defined by that 25 connection and, and governed under the, the Public Utility Commission. Anything less than 25 doesn't fit under those rules. So I

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

think, I think this term public may be being used two different ways and people may be confused about which way they intend to mean it.

COUNCILMEMBER HOKAMA: How do you view it if you had to administer this, Mr. Taylor? Again, you know, I...I'm trying to get clarity, because if I'm asked when I go home, what does this bill mean to the residents of Lanai, I, I want to give them a straight, accurate answer.

MR. TAYLOR: I would interpret this public water system that, that the Lanai water system would...is a public water system which is privately owned.

COUNCILMEMBER HOKAMA: But a public water system.

MR. TAYLOR: That's correct. It's not a publicly owned public water system, it's a privately owned public water system.

COUNCILMEMBER HOKAMA: Okay. Thank you, Chairman, I got it on the record.

CHAIR VICTORINO: All right. Thank you. Other questions in this section?

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: I heard Chairman.

VICE-CHAIR PONTANILLA: Right here.

CHAIR VICTORINO: Oh, I'm sorry, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: So, Mr. Taylor, this would go similarly with Kaanapali water system as well as Maui Land and Pine?

MR. TAYLOR: That's correct. There are a number of privately owned public water systems on Maui island and Molokai and obviously Lanai.

VICE-CHAIR PONTANILLA: Okay, fine. Thank you.

CHAIR VICTORINO: Okay. Other questions in regards to Section 14.12.030, Exemptions, under B? That's the only change that we're bringing forward. Seeing none, do I have a consensus on this section?

COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay. All right. Moving right along.

MR. KUSHI: Mr. Chair?

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Yes, Mr. Kushi. I'm sorry.

MR. KUSHI: I need to chime in on this since this is --

CHAIR VICTORINO: Okay, yeah, okay, go ahead.

MR. KUSHI: --since this is brought up and, and, you know, people want this on record so.

CHAIR VICTORINO: Okay. Go ahead, please.

MR. KUSHI: Regarding section...Subsection C, again --

CHAIR VICTORINO: Subsection C, okay.

MR. KUSHI: --a public water system not regulated by the Department of Health, and as Director Taylor said is 15 connections and 25 people served. Again, that applies to the initial subdivision where a private, private water system is serving less than 25 people, and it could be, let's say, 10 big lots. Now it also says that provided that this exemption shall, shall not apply to any subsequent re-subdivision of any of the resulting parcels. So in this scenario you have a private water system but the Director will still look at an engineering report for any subsequent subdivision of any parcels resulting from this. So, you know, it's not...you got a free shot on the initial one if it's not regulated by the Department of Health, and if...subsequent re-subdivision of the resulting parcels is not exempt. Okay.

VICE-CHAIR PONTANILLA: So this would be like Item B?

MR. KUSHI: Possibly. Item B is a total separate issue though. Item B involves large lots.

MS. WILLENBRINK: Excuse me, Chair.

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: Yes, sir. I just looked up 14.01, the definition section in the County Water Code, and we do define public water system means the water system owned, operated, and maintained by the Department of Water Supply. We define private water system means a water system constructed, owned, operated, and maintained by private individuals, corporations, or organizations.

CHAIR VICTORINO: See this is where we have all this confusions, we have our Code and we got Federal standards which are different. I agree with Mr. Taylor, if you read that, the EPA, they have where a public system is 25 units or more, 25 served

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

or more, something like that. 'Cause I go to these water conferences and we go into this, this, this back and forth thing all time. Our Code only shows what private and public is. That's where the real problem lies is we're not adapting our language, I guess, to what is applicable in the terms for which EPA or the State Department of Health uses. So now that I get to that point, what do I do next? That's a good question.

VICE-CHAIR PONTANILLA: I, I get one more question for --

CHAIR VICTORINO: Oh, okay. Go ahead, you can ask the question --

VICE-CHAIR PONTANILLA: --Corporation Counsel.

CHAIR VICTORINO: --Mr. Pontanilla.

VICE-CHAIR PONTANILLA: So we can be challenged, go to court, what you just explained to us?

MR. KUSHI: Well what's...what was the question again, Councilman?

VICE-CHAIR PONTANILLA: Yeah. So if they challenge the County in regards to B and C, can they do that, take us to court?

MR. KUSHI: Well if anybody challenges this ordinance, it's based on the Director's decision, and they can appeal that decision to the Board of Water Supply, and if the Board of Water Supply upholds that decision, they can appeal that to the Circuit Court. Now having said that, this bill applies to subdivisions. The Department of Water Supply does not approve subdivisions. Mr. Goode's Department does. So there's an issue about what body to appeal at. You appeal Director Goode's decisions to the Board of Variances and Appeals. You appeal Director Taylor's decisions to the Board of Water Supply. In either event, if the applicant still loses, they can also go to court on an administrative appeal under Chapter 91. So, yes, they can take us to court administratively.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: Mr. Hokama.

COUNCILMEMBER HOKAMA: So, Chairman, is there a basic difference between our Water Board's...or the Water rule versus State Department of Health since we are referring to State Department of Health?

CHAIR VICTORINO: You know, I, I was looking the original bill just to make sure that if it wasn't...that we had taken that into account or looked at the definitions, and it doesn't appear that it was ever put in the original bill as a definition which

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

means then we go back to whatever definition the Maui County Code has which is 14 point --

MS. WILLENBRINK: Zero one.

CHAIR VICTORINO: --01. And that is the fallback, because in all Maui County Codes it says Title 14, Maui County Code, is applicable unless amended. So I'm going to say there is definite differences between what the Department of...State Department of Health's rules are and, and, and how they, they deem a public system run privately and what we call a public system, the way we define it in our Code. So that's where the challenge is, and this is basically being defined...if I'm correct, Ms. Kim, what we're defining at this point in time is what we rule on as far as the County, not the State, right?

MS. WILLENBRINK: That appears to be correct, sir.

CHAIR VICTORINO: So when we talk public system in this document, we are referring to our Maui County Code. Okay. And so, Mr. Kushi, then with that, that, that premise, you've answered the question that no matter what, we still could be held liable no matter which way we do it, right?

MR. KUSHI: I'm not sure what the term "held liable" is.

CHAIR VICTORINO: Okay.

MR. KUSHI: The ordinance could be deemed invalid.

CHAIR VICTORINO: Invalid.

MR. KUSHI: Yeah. There's no liability involved.

CHAIR VICTORINO: Okay, I apologize. Maybe the best term was...well the validity of the ordinance could be upheld?

MR. KUSHI: Right. And, Mr. Chair, for the record, the Department of Health has its own set of regulations, rules and regulations, and, you know, you need to be an engineer to look at it. But again, they have their own appeals process also.

CHAIR VICTORINO: Yeah.

MR. KUSHI: Okay. So again, I know for, for, for many of us, it's, it's a matter of apples and oranges, but in the whole scheme of things, the regulatory scheme, the Department of Health really approves engineering reports which then comes to the Department to review in a subdivision review. Before the Department of Health reviews an engineering report, your ordinance as it's set forth now requires

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

the Water Director to comment on it in the review agency comment period. But that's all it is, they have no approving authority.

CHAIR VICTORINO: So if I go back to what we are trying to accomplish here, because this is part of the Maui County Code, then I'm going to say at this point whatever our Code, existing Code is what we're going to be following. And so the language in this, Mr. Hokama, would be publicly would be publicly owned and privately would be privately owned for the sake of Maui County, Maui County Code. Okay. So just what Mr. Taylor's answer which is correct was not applicable to this.

COUNCILMEMBER HOKAMA: Again, Chairman, I, I thank you for you allowing our departments' personnel to give their guidance and their comments. Again, I think Mr. Kushi brought up a good point though. Does a...does...do we have enough jurisdictional authority to potentially override a State policy? Because, you know, while I'm a strong home rule advocate, I'm not sure whether it's within our jurisdictional powers at this time. Thank you, Chairman.

CHAIR VICTORINO: Thank you very much. Further questions in this area?

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: So the...thank you. So the term "public water system", does that...you're saying there is no specific definition?

CHAIR VICTORINO: In the Maui County Code there is a --

COUNCILMEMBER COCHRAN: There is.

CHAIR VICTORINO: --definition, and that's the one we're going to follow.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: Okay. There's no question now where we're going. It is in our Code what public water system is, what a private water system is, and for the purposes of today, we're going to stay on the Maui County Code. Okay. So Mr. Taylor's answer is based upon the EPA and State of Hawaii public...Department of Health and their criteria, but we're going to stay with Maui County Code. Okay?

COUNCILMEMBER COCHRAN: Got it.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: All right. Thank you. Any further discussion in this particular area? Okay, moving along. Let's go down to 14.12.040, Written verification of long-term, reliable supply of water. Okay. This was the other area --

MS. WILLENBRINK: Excuse me, Chair.

CHAIR VICTORINO: --that we had proposed change, and the change was to move it from prior to submittal of subdivision construction plans in pursuant to Section 18.20.160...oh, wait. I think I missed something, yeah. I apologize. Erase and I'm going back to where I missed, D. I apologize, Ms. Kim. She was giving me the high sign over there. If you look at D--and I apologize--infill development that is proposed...for the purpose of this chapter, excuse me, is defined as development of ten residential dwelling units or less, and we were going to remove "on contiguous vacant parcels". And now we're reinserting the word "contiguous", okay. After discussion both with the Department and, and others, they felt that it was important to leave that word in to make sure infill development was the purpose of that. Okay. So do we have questions in that particular? And that would be D. I apologize for skipping that one.

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Yes.

COUNCILMEMBER COCHRAN: And then, then carrying on with that sentence, that are already developed.

CHAIR VICTORINO: That I'm taking out.

COUNCILMEMBER COCHRAN: And that...right, that's a removal --

CHAIR VICTORINO: Yes.

COUNCILMEMBER COCHRAN: --from the original. Is that just because it's kind of redundant or what's the reasoning?

CHAIR VICTORINO: Yes. Because contiguous to vacant, you know, is...

COUNCILMEMBER COCHRAN: Already developed.

CHAIR VICTORINO: That's right.

COUNCILMEMBER COCHRAN: Is the same.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: I mean it's contiguous, right? So that was the feeling that we could leave that one out and it would be...it's just basically redundant, yeah. Any questions in D? Do we have consensus on D?

COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay, moving along then. Now we'll move along, right, Ms. Kim? Now we can move down to 14 point...

COUNCILMEMBER HOKAMA: Chairman, Chairman --

CHAIR VICTORINO: Oh, I'm sorry.

COUNCILMEMBER HOKAMA: --I, I apologize, I, I apologize.

CHAIR VICTORINO: No, no problem, Mr. Hokama. And I'm not trying to move too quickly, I hope, but go ahead.

COUNCILMEMBER HOKAMA: Yeah. I, again, Chairman, I, I --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --just want to be clear, yeah, with, with on D --

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: --is this only going to apply for Central and West Maui?

CHAIR VICTORINO: Yes, no changes in that area. No, no changes.

COUNCILMEMBER HOKAMA: Okay. So the other parts of the island is not part of this letter D?

CHAIR VICTORINO: No. As you can see, there was nothing removed.

COUNCILMEMBER HOKAMA: Okay.

CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: I just wanted to be clear, Chairman. Thank you. I appreciate that.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Yeah, yeah. No, no. No, no. There's still...Upcountry has the water meter list. I mean that is the governing factor Upcountry right now, so that's not going to change and...

COUNCILMEMBER HOKAMA: Thank you, Chairman.

CHAIR VICTORINO: Okay. I hope that changes in the near future, but for right now it cannot change, yeah. All right, moving down to 14.12.040, Written verification of long-term, reliable source...supply of water, excuse me. A, No applicable subdivision shall be approved, unless, and what we're removing, prior to submittal of subdivision construction plans pursuant to Section 18.20.106 *[sic]* of this Code. And then it also goes on, the director, and remove shall provide...has provided, we're changing it to, has provided written verification of either (a) a County water meter or water meter reservation and (b) a receipt of accepted engineering report of a long-term, reliable supply of water for the subdivision. Okay. So, Mr. Goode, I think this is the one that I wanted you to, to give us an explanation and to clarify what this intent is. Mr. Goode.

MR. GOODE: Okay. Thank you, Mr. Chair. First of all, the Department supports the proposed language. And what this, what this does in the subdivision process, if you think of the process as a three-step process, one is you submit your preliminary plat, this is telling the County this is what I want to do with a piece of land, subdivide it. You get your comments back. The next step is to prepare construction plans which shows how you're going to build the infrastructure necessary to support that subdivision. And then the third step is the final plat which would include all the changes to the plat that were necessary, adjusting lot lines, et cetera, and approved construction plans. That means it's done, it's, it's final, it's ready to be plat'ed. The current ordinance on the...it's called the Show Me the Water Bill basically says you can submit your preliminary plat, but you cannot even submit your construction plans which would involve a lot of engineering and analysis to perhaps even show folks where the water is. You can't do that until you get the Show Me the Water letter from the Director. What we...what the proposed language do...is doing would actually--that there's a gate, if you will, in front of construction plans--it would move the gate past construction plans to final approval. So it would tell our office is, is that if someone wants to submit construction plans before they get the letter, fine, but we will not give you final subdivision approval and approve your construction plans until we get the letter from the Director. So we're essentially moving that gate between the first and second processes to the between the second and third processes. I hope that was simple enough. We're moving the gate one step farther.

CHAIR VICTORINO: Questions for Mr. Goode? Since he's moving the gate, so now we understand that. Mr. Hokama.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER HOKAMA: So common man's language, the developer can waste money on construction plans prior to even knowing they're going to get an approval for water?

MR. GOODE: I would, I would view it as the developer has the option of pursuing the construction plans which depending on their type of project may actually help give the Director...show the Director where the water is.

CHAIR VICTORINO: Mr. Taylor, you would like to add your comment? Please.

MR. TAYLOR: Mr. Hokama, I mean I think this is really the issue and, and I think you pointed right to it. It allows applicants to spend engineering money, if you will, could be significant engineering money, get a little further possibly before being told no. So in one way...and because that process, the construction plan back and forth process with all the agencies, that can take a year, that can take two years. So it allows them to do that and not wait until, for example, if there's going to be water, you know, three years from now, it allows them to spend the money now and get, get ready, have all their plans approved so as soon as there's water, you know, they can start building. At the same time, it allows them to spend money, take that risk, and does kind of create the...increase the pressure on us to say hey, County, you know, you let me spend all this money, why are you telling me no at this later stage? So it just has to be really clear, and we would be very, very clear that they are proceeding at their own risk and, and spending that, what I'll call that engineering money. So we just all have to be clear that that will be the applicant's risk, because as Mr. Goode said, it still only gets you to that, to that last gate, it doesn't get you through the gate.

COUNCILMEMBER HOKAMA: Okay. So that would mean that they would need to pay the construction plan approval permit fees upfront, right? Because they're going to ask you to approve and review...I mean where they're going to ask you to review prior to this final water approval, so they have fees to pay, correct?

CHAIR VICTORINO: Mr. Taylor.

COUNCILMEMBER HOKAMA: Plan approval fees?

MR. TAYLOR: I, I think we have fees, if we do, they're nominal.

COUNCILMEMBER HOKAMA: Well we're going to go in budget, we'll consider those, those fees. But --

MR. TAYLOR: Thank you.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER HOKAMA: --my point is, if it doesn't go forward with the final approval letter from the Director of Water, is our practice...we're going to keep the money, right? We don't refund once we start...receive the plan?

MR. GOODE: Yeah, correct. If we receive fees for review, we keep that. Same as in a building permit, we collect review fees upfront. If they don't pick up the building permit, we, we keep our review fees.

COUNCILMEMBER HOKAMA: Okay. Can they pay that building permit in advance? They take the chance?

MR. GOODE: No. Oftentimes as the plans go through in a building permit situation, the plans may change and then it's based on the...we base the value of the building based on the final plans.

COUNCILMEMBER HOKAMA: And again, Chairman, you know, we're going to ask staff to review and spend time on things that may never happen. You know, I got better use of our staff time than review plans that may never happen. Thank you, Chairman.

CHAIR VICTORINO: Although I agree with you, Mr. Hokama, there are times when...it's like everything else, you, you take a certain amount of risk in any business. I do in mine, and anybody who has ever been in business, there's an element of risk in everything we do. And there comes a point where sometimes the risk with the reward and the expediency of that reward is worth taking. So sometimes you fail and sometimes you succeed. I really believe this just moves the gamut...this moves it over one more so that it helps the Department, helps the developer. No guarantee because even where it was, it sat there, and yet now they could get everything ready and if and...there is the water or they get water available or they make water available, we make water available, whatever, at that point these...now they can move ahead. And now there may be some housing that's finally built on this island, because this has been the big stumbling block. They, they're stuck in A when they'd like to be in B. Most of them have told them they would prefer it being in B and they're willing to take the risk. Okay, fine. You take the risk, you win, you lose. Hey, it's like buying land, it's like a lot of things out there. People take risks, at times they win, sometimes they lose. And then little people will get water because they'll be ready to move for their housing. So that's the chance I take. I think it's a good move to move it, and I think the Directors, both of them concurred with that. Also they get better plans to review, what kind of fixtures, other things that are going to be all put into place. So, you know, upon their suggestion, I've looked at this and said, okay, I'd like to consider that. Mr. Kushi, do you have something you'd like to add?

MR. KUSHI: Yeah. I need to say something.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Sure, go ahead, sir.

MR. KUSHI: And I apologize to the Committee for not discussing this with the Directors beforehand, but I didn't know that they were going to delete this provision. Again, going back to the original intent of the ordinance and the reference to Section 18.20.170, Construction Plan Review, it was, it was determined at that point in time, this is the time to stop it or approve it, because once they pass Subsection 170, they can break ground. Section 18.20.180 says when these plans are approved and stamped by all of the various agencies they may proceed for...with construction of improvements and utilities, so they're actually into the ground. Then after they complete that, then the Director may give a final plat...a final construction approval. Now there's also such a thing as bonded final. So you want to stretch all these people out to that point in time and at that point in time the Water Director will say no water? You know, again, you talk about liability. Now as, as County attorneys, we always worry about that, leading them down the road and at the end of the road say too bad, too sad. You know, again, there is some risk for development, but I'm sure the banks would be worried. I'm sure partners, investment bankers will be worried that we've led them down the road to almost bonded final and we're saying no water. So what happens then? So again if you're gonna remove the gate, at least put a time where they know they're not gonna have water or they will have water. This is my concern from, from our Department's standpoint, and just letting you know that was the intent of the original bill.

CHAIR VICTORINO: Mr. Goode, you had something you wanted to add?

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: One moment. Go ahead.

MR. GOODE: Actually I think it might be appropriate to take a break.

CHAIR VICTORINO: Okay. Because this is not what we discussed, okay. I'll take a five minute break, please. . . .*(gavel)*. . .

RECESS: 10:53 a.m.

RECONVENE: 11:02 a.m.

CHAIR VICTORINO: . . .*(gavel)*. . . The meeting of the Water Resources Committee for December 13, 2011 will reconvene. At this time, Mr. Kushi, you were able to discuss it with the Departments and get some clarification and you wanna propose a change, so go ahead, Mr. Kushi.

MR. KUSHI: Yes, Mr. Chair, again we apologize for not getting our act together before the Committee. But having met and huddled with the two Dave's, in reference to

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

his gate moving on construction subdivision plans, he has agreed and the department...the Water Director has agreed that the reference section...the point in time where the Water Department needs to provide a written verification would be moved from Section 18.20.160 which is entitled "Construction plans-Approval" to 18.20.180 which is entitled "Completion of construction-Final approval". And we would insert in that. . .or amend that section to reference the section in the bill, 14.12.040. In essence, before. . .the gist of it would mean that before a subdivider would break ground or may proceed with construction of improvements or utilities, the Water Department needs to provide written verification removing the gate so that the staff can then review construction plans, but before they break ground, the Water Department needs to provide some sort of verification. So that, that being said, Section 18.20.180 needs to be amended. I don't have the specific language here, but if the Committee agrees, we can work that out. And going back to your original bill, Section 14.12.040 needs to be revised to put in the reference to the subdivision section which I believe Staff has on the board.

CHAIR VICTORINO: If you turn to the board. . .okay, so what it would read then is no applicable... "No subdivision will be approved, unless..." Okay, I can't read this, Kim, so I'm confused. Can you read it, Kim, 'cause I...

MS. WILLENBRINK: Yes, Chair.

CHAIR VICTORINO: Yeah, and so that everybody can see it.

MS. WILLENBRINK: No applicable subdivision shall be approved unless prior to approval of subdivision construction plans pursuant to Section 18.20.180 of this Code, the director has provided written verification of either (a) a County water meter or water meter reservation or (b) the receipt of an approved engineering report for a long-term, reliable supply of water for the subdivision.

CHAIR VICTORINO: Okay. Are you clear with the change? Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: So, Chairman, following up on one of the comments from Mr. Kushi, what would be need...what would then if this moves forward would be required to be amended in that 18.20.180?

CHAIR VICTORINO: Mr. Kushi.

MR. KUSHI: Yes. The first sentence would be amended to read, when the construction drawings and specifications bear the approval of the Director--which is referencing Planning Director--the Director of Public Works, the Director of Water Supply, the Sanitary Engineer, and District Engineer as required under Sections 18.20.150 through 18.20.170, and Section 14.12.040 of this Code, the subdivider may proceed with the construction of the improvements and utilities.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: And I think you have that in front of you. I had copies passed out to all of you. Kim, they all, they all have those copies, right?

MS. WILLENBRINK: Yes. Yes, Chair.

CHAIR VICTORINO: Okay. Mr. Hokama.

COUNCILMEMBER HOKAMA: Again, Chairman, you know, in all fairness, I like paper, I like it black and white in front of my face what I am going to approve or not approve. So as Mr. Kushi said, that would...that is going to be presented to us in the form of amendment also as it regards to this, so you'll...we'll have an additional amendment to Section 18, Chapter 18?

MR. KUSHI: Yes. The current bill before you would be revised to add another section and reference amendment to Section 18.20.180 of the Code. So the title of the bill will need to be amended, 'cause it's not only amending the water availability, it's amending a Subdivision Code section.

COUNCILMEMBER HOKAMA: Okay. This would also waive the requirement of any bonding or security requirements also then? Or that would still be in place?

MR. KUSHI: It, it was...it wouldn't affect the bonding.

COUNCILMEMBER HOKAMA: Okay. That would still be our requirement?

MR. KUSHI: If they choose so, yeah.

COUNCILMEMBER HOKAMA: Okay. Chairman, you know, I don't want to stop your proceedings, but, you know, I need to read this whole section for myself. So if you want to move forward, Chairman, thank you, I'm going to read this Chapter 18 component. Thank you, Chairman.

CHAIR VICTORINO: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. There's some wording in this paragraph...just asking, Water Department, I thought we do not do water meter reservations? Or, whoever.

CHAIR VICTORINO: We can...we...as, as far as that is concerned, at this time they're not taking reservations but in the future they may.

COUNCILMEMBER COCHRAN: Okay.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: So we've included the language to protect ourselves in the future so we don't have to come back and revise the bill. So whether it's water meter or water meter reservations, at this time they're not but the Department has indicated in the future they may, so they thought it was a good idea to put it back in. Is that correct, Mr. Taylor?

MR. TAYLOR: That's correct.

COUNCILMEMBER COCHRAN: Thank you. And the second wording, applicable, I'm just curious because the original wording was just no subdivision, the word applicable was not there, and just curious as to the reasoning. And who deems it applicable or what are the standards of it being non-applicable or applicable?

MR. TAYLOR: I believe that applicable refers back to this ordinance which says which subdivisions are and are not applicable, and I think it, it recognizes that this ordinance itself defines some subdivisions as applicable and others not. So it's really...I think this Council ordinance would determine which are applicable and which aren't.

COUNCILMEMBER COCHRAN: Isn't that in the subdivision definition, the word subdivision itself?

MR. KUSHI: Member Cochran, I know what you're saying, and in my mind it's redundant, but so what? I mean the, the...you either are subject to this bill or you're not, and, and the ordinance speaks to its...speaks for itself. I mean there is the applicability and scope section, there's an exemption section, but again, you know, I don't feel it's a really...

COUNCILMEMBER COCHRAN: Okay. No harm, no foul here.

MR. KUSHI: No harm, no foul, redundant. No harm, no foul.

COUNCILMEMBER COCHRAN: Thank you. Okay.

CHAIR VICTORINO: Okay. Other questions for the Department or...and/or Mr. Kushi? And what I would do is before...Kim, before we complete this...I guess now, Mr. Kushi, what you're saying is then we have to go and also change 18 point...you gave me the number, 18.120.180 [sic]. That's where the change would be?

MR. KUSHI: Yes. Through...just for your, an insertion in reference to Section 14.12.040.

CHAIR VICTORINO: Okay. My question to you just so that we, you know, we can either proceed or stop at this point, is that substantial changes that I'd have to take

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

another meeting and redo all of this and, you know, or that can be done here and now? Your, your, your response, Mr. Kushi.

MR. KUSHI: Mr. Chair, you're in Committee, there's now first reading...it's not a situation between first and second reading, so it doesn't apply.

CHAIR VICTORINO: Okay. Thank you. Just wanted that clarification so... 'cause I could see some people in the audience starting to say whether this was substantial, but I'm glad you clarified that point for us, okay. So at this point with those changes and again we'll have to put up the language for 18.120.180 *[sic]*. Mr. Kushi, I can move to approve this area with subject to change with the other one, with the other part of the Code?

MR. KUSHI: It's that you're the Chair.

CHAIR VICTORINO: Yes, please.

MR. KUSHI: Based on what the Committee decides.

CHAIR VICTORINO: Okay. Guess it's back in our hands, gang. My recommendation is to approve the...

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Oh, I'm sorry. Go ahead.

VICE-CHAIR PONTANILLA: Yeah. Before you make your recommendation, you know, can you read off A again so I get clear in my mind what the hell we vote...what we voting on? Sorry.

CHAIR VICTORINO: That's okay. You know what? Well, we take a five minute break. I would like that typed out and, and if you can and print it out for them --

MS. WILLENBRINK: Okay.

CHAIR VICTORINO: --so that we can actually see it. I think that's what they're asking and Mr. Kushi, maybe the other part too, the 18 point. . .well, let's get that in front of them so that they can better understand, and we can make some copies for the public too so that they can understand what we're doing here. So we'll take a five minute recess, hopefully we. . .by. . .no later than 11:25. And, Members, please come back. I mean that's the biggest challenge I have. We're ready to go and then we don't have enough for quorum, okay. So reconvene at 11:25. . . *(gavel)*.

..

RECESS: 11:14 a.m.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

RECONVENE: 11:23 a.m.

CHAIR VICTORINO: . . .(*gavel*). . . The Water Resources Committee meeting of December 13th will reconvene. Have you had a chance to pass that out, Ms. Willenbrink, to all the Members?

MS. WILLENBRINK: Oh...

CHAIR VICTORINO: Oh, she didn't.

MS. WILLENBRINK: It's in the printer.

CHAIR VICTORINO: She left in the printer. I am sorry. It's like, all great plans have these challenges. Okay.

COUNCILMEMBER HOKAMA: So we in recess?

CHAIR VICTORINO: No, no, no. It's on, but here on the board itself. This is 14.12.040. Isn't this the corrected one, Mr. Kushi, if I'm not mistaken? We have...

MR. KUSHI: On the third, third line it's kind of duplicate. . .the director shall provide, has provided. It should read "the director has provided".

CHAIR VICTORINO: The director has provided. Yeah, I think we made. . .yeah. Yeah. Okay. Okay. You're absolutely correct.

MR. KUSHI: Otherwise it looks okay.

CHAIR VICTORINO: Yeah. So the only, only change is on line number three, 18.20.180 of this Code, the director has provided--right, they take out "shall provide" right?--has provided the written verification for either (a)...and then...right? So we're striking out "shall provide". In other words we put in "has" yeah? Okay, any questions with that change? Oh, okay. Mr. Carroll, I'll wait a few seconds for you, sir.

COUNCILMEMBER CARROLL: Thank you, Chair.

CHAIR VICTORINO: Not a problem, Chair. Okay. And Ms. Willenbrink will pass out the corrections. Is that...that's the 18 one, right?

MS. WILLENBRINK: Yes, it is.

CHAIR VICTORINO: What about the other one? That...is that the one on the board? That's what you wanted to show?

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

VICE-CHAIR PONTANILLA: Thank you. Oh, okay.

CHAIR VICTORINO: Yeah. Okay. Okay, wait. Okay. So just so that we get one thing at a time. Ms. Willenbrink --

MS. WILLENBRINK: Yes.

CHAIR VICTORINO: --can you bracket out "shall provide" on line number three, 'cause it was...the thing should read, after 18.20.180 of this Code, the Director "has provided a written", not "shall". Yeah. Okay. So that is the corrected amendment for this 14.12.040. Okay. Also you received the change recommended by Mr. Kushi on 18.20.180 which he inserted after 18.20.170, and section of 14.12.040 of this Code, the divider and then the subdivider and then on and continue. That was the change that you made, right, Mr. Kushi?

MR. KUSHI: Yes.

CHAIR VICTORINO: Okay. That's what we will change today. That's the insertion we will put in today. Okay. So how would you like to do, do this one first and then approve that? Well this one on 18.20.180 I'm going to ask for a motion on this one to make this amendment change. But before we do that, are we okay, Mr. Goode and Mr. Taylor, with this revision of 18.20.180?

MR. GOODE: Yes, we are.

CHAIR VICTORINO: Mr. Taylor.

MR. TAYLOR: Yes.

CHAIR VICTORINO: Okay, I just want to make sure. Mr. Pontanilla, you have a question?

VICE-CHAIR PONTANILLA: Thank you. For Mr. Kushi, you know, because we talking about 14.12, Maui County Code, is it appropriate to take action on 18.20.180 today?

MR. KUSHI: Yes, because they, they...one makes reference to the other.

VICE-CHAIR PONTANILLA: Okay. Thank you.

CHAIR VICTORINO: Okay. Are we clear that we are allowed to do that? Because one making reference to the other. So just to make it concurrent, yeah. So I'm, I'm in need of a motion to approve the change as provided on 18.20.180.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

VICE-CHAIR PONTANILLA: So move.

COUNCILMEMBER WHITE: Second.

CHAIR VICTORINO: It was moved by Vice-Chair Pontanilla and seconded by Member White. Any more discussion on this particular change? Seeing none, all those in favor, say aye.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record read six ayes, one excused, Ms. Baisa.

VOTE:	AYES:	Chair Victorino, Vice-Chair Pontanilla, and Councilmembers Carroll, Cochran, Hokama, and White.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Baisa.

MOTION CARRIED.

ACTION: APPROVE.

CHAIR VICTORINO: Okay. Now we go back. Because of all of that I will also recommend a motion to approve 14.12.040 as amended on the board.

VICE-CHAIR PONTANILLA: You're looking for a motion?

COUNCILMEMBER HOKAMA: Chairman.

CHAIR VICTORINO: Yeah, I'm looking for a motion, yes. Go ahead, you can make the motion, we can discuss it.

VICE-CHAIR PONTANILLA: Oh, okay, so move.

COUNCILMEMBER WHITE: Second.

CHAIR VICTORINO: Okay, it's been moved by Mr. Pontanilla, seconded by Mr. White. Mr. Hokama.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER HOKAMA: My only question, Chairman, is shouldn't we take consideration of your proposed revision to Chapter 18 since that is part of this whole revision to Chapter 14 which is before us?

CHAIR VICTORINO: Mr. Kushi, the question is...then you're asking me or asking us to change all of Chapter 18 or just...

COUNCILMEMBER HOKAMA: Just the portion that is, is going to be referenced as part of this Chapter 14 revision, Chairman.

CHAIR VICTORINO: We just did.

COUNCILMEMBER HOKAMA: I thought we did the...

CHAIR VICTORINO: Yeah, we did that. That was the first one we just did.

COUNCILMEMBER HOKAMA: Oh, this one. Okay. Thank you. Thank you, Chairman.

CHAIR VICTORINO: Okay, no problem. Okay. Now discussion on 14.12.040, does there...is there any questions in this particular area? Seeing none, all those in favor, say aye.

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: Opposed? Let the record show five. . .yeah, five ayes and two excused at this time, Mr. White and Ms. Baisa. Okay.

VOTE:	AYES:	Chair Victorino, Vice-Chair Pontanilla, and Councilmembers Carroll, Cochran, and Hokama.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Baisa and White.

MOTION CARRIED.

ACTION: APPROVE.

CHAIR VICTORINO: Now moving along we come to 14.12.050. You have that up there, Ms. Willenbrink? So that the public can see. 14.12.050, Director's comments on engineering reports. The director shall review and comment on engineer reports during the Department's [sic] of Health's inter-agency review period. In reviewing and commenting on, on any engineering report, the director

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

shall consider any of the following applicable factors. The change, we inserted “shall”, “any”, and “applicable factors”. Those were the changes that were pointed...put in. Okay. And if you look below, Mr. Hokama, ‘cause you were asking some question about reliability and other factors, under L there are some of those questions you were asking, gives specific answers for which the State looks at 90 percent of sustainable yield, inflow...instream flow standards, and interim instream flow standards. And there’s a whole bunch of others, but, you know, you were asking some of this. There are specifics in this area that are part of the approval process, so it’s not an instantaneous, boom. There’s a whole list, groundwater discharges...I mean there’s a whole item and there’s what, 15 I think items in this area that are applicable to any approval of water, any water wells or water sources, I should say, excuse me, water sources, yeah.

COUNCILMEMBER HOKAMA: And, Chairman --

CHAIR VICTORINO: Sure, go ahead.

COUNCILMEMBER HOKAMA: --you know thank you for your, your comments, I appreciate it very much. And again, yeah, for Lanai, again, what the Water Commission has recommended regarding our unique aquifer situation, you know, 90 percent, you know, the State Water Commission and I’m sure people like myself or whoever takes my seat in the future, you know, we’re going to make sure that way before 90 percent we are going to be reviewing and making sure that what we provide for the island of Lanai is going to be of good quality and of long-term availability to deliver the drinking water to our community and island. I’m open to this, Chairman, and again because I want the County to have a say as it regards to Lanai’s private for public water system. And I, and I say that because, again, before this...whether or not this proposal ever reaches to a litigation situation or not, you know, I wanna be...I make it a point to ensure that I can tell my community that the County will have a say or comment to the final decision-makers whether it be Commission on Water Resource or Health Department. That they should take into account certain components that we are very much aware of...prior to their final decision-making. I cannot make an error on Lanai, Chairman. I don’t have other sources currently unless we’re going to look at things that are going to raise our water bill tremendously because of the type of technology that may or may not be utilized. But if I had, you know, 100 aquifers, that’s a different situation. I got a unique aquifer with two subcomponents or subzones. I will not take a chance and risk by being too...by, by reducing my conservatism to ensure that there is that drinking water for our island. And again, you know, I wish, you know, eventually mister, you know, Mateo would help us under the Molokai unique situation. Because only for Lanai, Chairman, you well aware--and I appreciate your knowledge--there’s no other system provider. Yeah, Molokai has Hawaiian Homes, there is the County’s --

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: And the private.

COUNCILMEMBER HOKAMA: --and they have the private.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: So there's other systems available for...to rely on for temporary support. On Lanai, I only have one and I cannot have that in any way jeopardized. Thank you, Chairman.

CHAIR VICTORINO: And your concerns are, are, are well founded, and I'm glad you put that on the record. I mean you're not...Lanai is a very unique situation and we've always been aware of that, and we want to preserve the wellbeing for the people of Lanai. You know and the Lanai company, you know, I'd hope they're, they're listening today. I know some of them are in the audience, so your message is being sent and received. And as far as Molokai, yeah, we understand Molokai has really three distinct systems, private, Hawaiian Homes, and our County system. And I think our County system doesn't amount to a lot over there. It's not a big portion of the, of the water use so.

COUNCILMEMBER HOKAMA: I believe the smallest of the three.

CHAIR VICTORINO: I think...yeah and I'd have to agree with you. I don't know all the percentages right off the top of my head but I believe it is one of the smaller ones. Okay. Any questions for this one? Mr. Pontanilla, yes, go ahead, I'm sorry.

VICE-CHAIR PONTANILLA: Thank you. You know, I agree with my colleague, but earlier we heard that the...from the Director that some of these are so redundant, because there's other entities that look at different...well, have their own regulation. I, I just want to have the Director comment on what was basically just said by my colleague from Lanai. Before, you know, I know you were doing G and you were doing M, and, and the comment that you made, the rest were, you know, kind of redundant.

CHAIR VICTORINO: Mr. Taylor.

MR. TAYLOR: Again, I won't repeat my comments, and we certainly agree with Member Hokama's point that Lanai has some unique challenges, it has to be looked at. That is the State Water Commission's job, it's Department of Health's job, it's Public Utilities Commission's job. Even the Planning Department has a role when they're approving projects to look at the approved Water Use Development Plan. There are levels of review. I'm wondering whether this language which sort of directs the Department of Water Supply to sort of, you know, elbow its way in to an existing review process with no real authority helps

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

or hinders it. And, and it's interesting that, that, Member Pontanilla, you brought it up, being the Chair of Budget, the Council has...and let's follow the money a little bit, the Council has for a long time wanted Department of Water Supply to be solely funded by its customers and use those funds to serve its customers --

VICE-CHAIR PONTANILLA: Right.

MR. TAYLOR: --and its future customers. Any man hours put into this aren't for our customers, so we're using now customer money for non-customer needs. That's fine, but if that's a direction of the Council that we're going to get out of just the water service, you know, business and we're going to start being a...sort of a regulatory agency of non-County things, are you recommending that, that, that we also put in General Fund requests to pay for those man hours or do you want us using customer money to pay for non-customer services? So we're open to, to where the Council wants to go with our, you know, with the direction of our Department. I just want to be really clear and consistent that what we're doing is, is the policy of the Council.

VICE-CHAIR PONTANILLA: Well to answer your question, I would rather have the ratepayers pay for those costs rather than the total general public. But again, if it's going to hinder your operations or add more cost, that's something that we gotta decide.

MR. TAYLOR: Again, these are man hours.

VICE-CHAIR PONTANILLA: Yeah.

MR. TAYLOR: This is time --

VICE-CHAIR PONTANILLA: Yeah.

MR. TAYLOR: --that staff is going to have to do that again all that staff is paid for by, by our customers. And so that is staff time that's now going to be spent on non...on people who aren't customers, who are by definition never going to be customers. And I'm wondering, does that, does that really kind of get out of the, the main theory of how the Council has wanted our, our revenue and expenditures to be structured. Is it okay with the Council? And, you know, if you consider it so small that you're like look, it's no big deal, that's not a big deal to me, I just want to make sure that the Council understands that that's what we will be doing and that's your, you're sort of directed by this thing, we shall.

VICE-CHAIR PONTANILLA: Thank you. We do it already for Solid Waste. We already do it for the golf course so.

CHAIR VICTORINO: Yeah.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. TAYLOR: Solid Waste and Parks both have General Fund support.

VICE-CHAIR PONTANILLA: Yeah.

MR. TAYLOR: Water and Wastewater do not have General Fund support, so it becomes a stickier issue when we're providing services for the general public because we get no General Fund, you know, financial support. So I just want to be very clear, if it's okay with the Council that again you consider this manini, I'm not going to make a big deal about it, I just want to be really clear that we'll be spending, you know, customer paid for resources on non-customers.

VICE-CHAIR PONTANILLA: Okay. Thank you.

CHAIR VICTORINO: Mr. Taylor, one comment I will add to what you've just said, and I will have to humbly disagree, you know, I don't much but I will at this point. When you say it's not systems that we'll ever use, I disagree because we're in litigation with Molokai, we could be for Lanai, and other private systems who for some reason or another all of a sudden turns and says we can't run it, somebody else run it. And who do they coming running to? The County of Maui, to our Department of Water, Mr. Taylor. And so I would like as much as possible your comments in...or whoever they are so that to ensure that if that was to happen we have a more logical, adaptable system than we would if we don't review. On top of that, there are many areas in here that unless we had some comments from your Department and others, those interagency comments were lacking, it could be detrimental for the future of water throughout this County. So although I agree that it's man hours, and, Mr. Taylor, I'm one that likes efficiency, but I'm also saying futuristically and we have Molokai as a prime example of a private system that went under because they didn't want to long...no wanna...no longer want to take care of it because of not getting "their way". We almost got stuck with it and even the DOH and public utilities were saying, oh, let the County take over. Now we had to battle for that, Mr. Taylor. So that's a prime example. If we might get stuck with something later on, best we at least know what we getting, and the way to do it is your review, I really believe that. So we could argue this point back and forth and it's not an arguable point, but you brought yours, I wanted that, so the public's clear that this is just not money we're going to spend, it could be beneficial, it could be beneficial to you, the ratepayer, down the road if that was to happen. Mr. Hokama, I'm sorry, I didn't mean to interrupt you.

COUNCILMEMBER HOKAMA: Chairman, no, I thank you for your comments. And I understand the Director's position and the role he plays as the County's Director of our Department, so I can appreciate his point of view also. However, Chairman, we are working on a policy that will have Countywide impact and implications, and I appreciate your comment about never say never because we had requested a feasibility about acquiring the Lanai water system. And what has

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

occurred is that to our previous Department heads, it has not met the County's standards for consideration of acquisition, because it has been a request by our community to have that consideration whether or not the County of Maui should go and acquire the Lanai water system. So I appreciate your comments. But again, Chairman, I'm coming back to more of the Countywide policy and my concern, because I would hope that we would have only one public policy as it regards to the people's water. That is what I'm trying to work on, not whether it's so and so in West and Central Maui versus the person Upcountry or whether it be Molokai or the Lanai resident. I'm looking at a policy that will be good for the whole County, and that is why I present those questions and those opportunities. I understand the funding mechanisms, you know, and so to be fair I'm going to also review every...scrutinize every grant that the Department gives to landowners that are private, because where does that come from? The ratepayer. Fair is fair then.

CHAIR VICTORINO: Yeah, exactly. Thank you, Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chairman.

CHAIR VICTORINO: You bring up very, very good points. And again, I think we're all around the same page but we have different perspectives we're coming from. So, anyhow. Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Cochran. Thank you, Chair. And this whole thing is so...it's kind of frustrating where, you know, shall versus may, accepted versus approved, and here we got all versus any in this one. So I just want comments of why we're substituting one word for the other and what seems to be the big difference.

CHAIR VICTORINO: Mr. Taylor. She's referring to where it says "consider all" and we're changing it to "consider any of the following applicable factors".

MR. TAYLOR: Okay. I think we had a long discussion on this two --

CHAIR VICTORINO: The last time.

MR. TAYLOR: --weeks ago in this, in this. I see the word shall, shall and all meaning a directive that we have to look at every single one and do every single one for every single project. Where the words may, may and any is leaving some discretion of saying well which ones really apply to this situation, and as you mix those words, I guess there's three so there's nine different combinations. It just has some different strength of direction, so we'll leave that up to the Council to your discretion about how a strong a statement you want to direct us to...do we have to, you know, look at every single one of these in great detail or do you want us to use discretion. And so I think in the, in the practical end of this I don't think

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

it's going to make a lot of difference, but it is a statement from the Council about how strongly you're sort of directing us to, to put effort and man hours into this.

COUNCILMEMBER COCHRAN: Thank you, Director. And, and just a follow-up, Chair. 'Cause the original is "shall consider all of the following", shall consider. That leaves it open, it's your discretion. You will consider whether any of these apply or not if you choose to want to look at 'em. So now we got the shall and the all, and the applicable, and I mean I just don't even see why it's being all twisted. The original language to me fits perfectly, I guess that's my bottom line...comment.

CHAIR VICTORINO: Thank you, Ms. Cochran. Anything else on this particular matter? 'Cause when we discussed this too...

COUNCILMEMBER COCHRAN: Oh, oh, sorry. And then item C, the plan. The plan is in reference to Water Use and Development Plan?

CHAIR VICTORINO: Yes.

COUNCILMEMBER COCHRAN: Should we --

CHAIR VICTORINO: No.

COUNCILMEMBER COCHRAN: --clarify that --

MS. WILLENBRINK: It's defined.

COUNCILMEMBER COCHRAN: --the plan means the...

CHAIR VICTORINO: No.

MS. WILLENBRINK: It's defined.

COUNCILMEMBER COCHRAN: It's in the definition?

CHAIR VICTORINO: Yes, it's in the definition. So please read your definitions and that way you'll understand what these different ones mean, please. Okay. So I will call for the question...well, do you want to make a formal motion or do we want to just by consensus?

COUNCILMEMBER COCHRAN: Consensus.

CHAIR VICTORINO: Up to you guys.

COUNCILMEMBER HOKAMA: Consensus, Chairman.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Consensus?

COUNCILMEMBER COCHRAN: Consensus is fine.

CHAIR VICTORINO: All those in favor of, you know, the...and have consensus for these changes, consensus?

COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay. All right, moving right along. We have couple more changes and we will be at the end. Move to 14.12.060, Expiration. The change that was proposed and this is the revision, A, written verification of long-term reliable source of water shall expire or be deemed null and void, unless extended by the Director for good cause. And we deleted "or as part of the water source development agreement" because that's what the first part was anyhow. So I think that's what we came up with, with Mr. Goode and mister...I mean Mr. Taylor, right, Mr. Taylor and Corp. Counsel?

MR. TAYLOR: Yes, I believe that's correct.

CHAIR VICTORINO: Okay. So that was why that change, that was struck because it is the written verification on long-term reliable is the water development agreement. Any questions in that area?

COUNCILMEMBER COCHRAN: Yeah.

CHAIR VICTORINO: Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Again, this is another area I see no reason why the original was ever changed. I would just like clarification, explanation on the added "unless extended by the Director for good cause". What does good cause mean?

CHAIR VICTORINO: Mr. Taylor.

MR. TAYLOR: I would, I would --

COUNCILMEMBER COCHRAN: I think items one --

MR. TAYLOR: --ask the writer of the language to...

COUNCILMEMBER COCHRAN: --and two already says good cause.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MR. TAYLOR: Again, Member...Council Chair Victorino, we didn't ask to have this added, so I, I don't know that I can really say, you know, what the intention of it was. I would, I would ask the, the author of the language to, to say what their intention was.

CHAIR VICTORINO: Okay. Well the intention from, from, from myself--and I thought we were clear on this--is to give you the leeway, because if there was...or any director, that there was good cause because of various economic or other reasons where things have changed that they would have an opportunity, you would have an opportunity to extend that period of time for that particular well or source development. You know so that was giving you a little more...or whoever the director he or she may be in the future, that was giving them that, that opportunity if there was justifiable good cause, you know, and that was language we used, you know, good cause. So that was the rationale.

COUNCILMEMBER COCHRAN: Chair, I'm just looking at items 1 and 2 and it gives the director good cause, authorization, what have you, to make those kind of calls as it is.

CHAIR VICTORINO: So?

COUNCILMEMBER COCHRAN: So for me it seems very redundant, and I think it should just be a if, you know, items 1, 2, and 3. If any of these fall into place, then hey, you know, it's...that's the call. I, I'm just saying that for me, I, I just...it's, it's not needed. I think we're just again adding too many words that don't quite make sense and are redundant. So that's my take, and I cannot agree with that.

CHAIR VICTORINO: So, Mr. Taylor, if we were to remove that and just leave "written verification on long-term reliable source of water shall expire and be null and void for the following" and then 1, 2, 3, would that be...Mr. Kushi, would that be...I guess between the two of you, would that be okay?

MR. TAYLOR: I read the language as good cause if, meaning good cause has to be combined with one of these things, so I don't see a practical difference of how we're going to use this one way or the other. But I'll ask Mr. Kushi for his comments as well.

CHAIR VICTORINO: Yeah, Mr. Kushi, please.

MR. KUSHI: Mr. Chair, I think the Department and my office could live with it either way.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Okay. So I'm open to whichever way you guys want it. You want to eliminate "unless extended by the director for good cause" or leave it in, it's your call to the Committee. Any comments?

COUNCILMEMBER COCHRAN: I just...

CHAIR VICTORINO: You already commented. I would...I'd like to ask other Members, please, if I may? Mr. Pontanilla, any comments?

VICE-CHAIR PONTANILLA: Yeah, I go along with the existing language.

CHAIR VICTORINO: Okay. Mr. White.

COUNCILMEMBER WHITE: Same.

CHAIR VICTORINO: Mr. Hokama.

COUNCILMEMBER HOKAMA: Current language.

CHAIR VICTORINO: Mr. Carroll. No? You like the existing language, no problem? Okay. Ms. Cochran.

COUNCILMEMBER COCHRAN: Current and existing meaning original or what we're seeing here? 'Cause I'm saying original. Original, original.

CHAIR VICTORINO: You want the original, is that what you guys said or what...*(inaudible)*...

VICE-CHAIR PONTANILLA: Yeah.

COUNCILMEMBER COCHRAN: That's just want clarification from my fellow Members --

COUNCILMEMBER HOKAMA: Original.

COUNCILMEMBER COCHRAN: --what that means.

VICE-CHAIR PONTANILLA: It's the original ordinance as read, 14.12.060.

COUNCILMEMBER HOKAMA: Yeah, so we just go with null and void.

COUNCILMEMBER COCHRAN: Yeah. If colon...*(inaudible)*... Is it up there? Yeah. Right, Kim, just the original.

CHAIR VICTORINO: Consensus?

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCIL MEMBERS: Consensus.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR VICTORINO: All right. And the last two is chapter...Section 3, Chapter 1 point...1.4...14.12 of this code amending by adding the new section to read as follows: 14.12.070 Repeal. The Council shall review the Chapter 14.12 of this Code on or before January 11, 2014, and if the chapter is not amended during the review process, it will automatically repeal on January 11, 2015. So in other words, what that basically means is that this cannot be repealed unless there's a review first, and if it's not...or if no changes, if the Council feels is not necessary at that point, then it can be repealed. Questions?

VICE-CHAIR PONTANILLA: I got a question.

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

VICE-CHAIR PONTANILLA: Maybe for the Director. What would be...I'm, I'm thinking about the Island Plan right now and, and how do we plan for that in regards to now we, you know, we going to be providing the resources? The ability of the Department to do that.

CHAIR VICTORINO: Mr. Taylor.

MR. TAYLOR: I'm not sure, can you be more specific on your, on your question?

VICE-CHAIR PONTANILLA: Yeah. You know we all talk about the big developers, you know, we don't have to worry about them, but for the small ones, now they, they going to be looking at us for us to provide that resource. So for your Department, how are you going to achieve that?

MR. TAYLOR: I think over the past six months or so in this Committee you've seen a bunch of the engineering work we've done. You've seen a 20 year plan of what it's going to take to keep our infrastructure functioning as is. You saw...you've seen how much that's going to cost. You've seen us quantify the Upcountry water problem with how much that's going to cost. You've seen a bunch of different source options with how much those are going to cost. We can add these together in an infinite number of ways and it's going to be limited by these policy questions we've asked. You know, how much can we raise rates, how much debt can we, can we...how much of the GO bond float can we dedicate to Department of Water Supply? And somehow, I know the Council's going to have to weigh that against all the other departments and needs and rates and fees, et cetera, and

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

make some decisions in budget every year, in the General Plan. We have some more engineering work we're going to do in this area about optimizing the system. As we get that, we'll give that to you, but I think 80 percent of all the information we're really are going to get we've already shared with you. So how you folks balance that, I think that's really the tough part of your job and I think practically Chapter 8 and Chapter 9 of the Maui Island Plan . . . *(inaudible)* . . .

VICE-CHAIR PONTANILLA: Yeah, yeah, you gave us all the costs and the plans that you guys have, but really looking at priorities, I'm sure you guys get the priorities already set where the priorities are going to be. But here we are looking at Central Maui and West Maui. You know we get other places that we gotta deal with. So the...it becomes a priority issue. You know, where do we look first in order to provide this new resource?

MR. TAYLOR: I think we're...we have a bunch of work that would support that, and I think frankly we're sort of in a little bit of a holding pattern waiting to see what you folks come up with with the Maui Island Plan. Because the growth boundaries, the directed growth strategies, we are going to pay very close attention to those, and whatever the Council decides, we are going to take all of our options and mold to your, you know, to your, your choices. So right now I think, I think with that being a little...still a little unclear, we're working on being ready for those decisions so we have enough options that we can apply to whatever those decisions are. So that's how we're trying to integrate with, with what you folks are hopefully going to do early next year.

VICE-CHAIR PONTANILLA: Okay. Thanks for your comments. Not easy.

CHAIR VICTORINO: No, no, no, no.

VICE-CHAIR PONTANILLA: Not easy.

CHAIR VICTORINO: No. And I think, I think we all know that the Island Plan and the General Plan that we've been working on now, this is going to be our third, third year working on the plan. And then obviously that is where directive growth was going to be coming from very shortly, where the boundaries are going to be drawn, where we know development will be, and where we probably not going have development. So that I think is going to incorporate a lot...our Water Use and Development Plans, all of these things that we've worked on are going to be incorporated into that. But that's the overarching one, and then we still gotta go down to the community plans, right?

VICE-CHAIR PONTANILLA: No, I agree with you, Chairman. You know by proper planning, we, we can provide resources, but it's a matter of funding. Are we ready to raise rates? Are we ready to do, you know, those tough decisions that we need to make? We gotta really consider that.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: Yeah. And that's right, and next year's an election year, let's call a spade a spade. You know some people in this room don't have to worry about it but there's others that do, and I don't care what you tell me, it's a part of what we look with...look at every day. And the other part of this whole equation is we don't want to wait like Oahu is being forced now to raise rates just to keep their system running, both sewer and as well as water. So do we want to wait 'til then or do we do it now? But again, now I'm going off on a tangent and I apologize, I'll bring it back to what we're supposed to be talking about. I apologize to all the Committee. Go ahead, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: No, I agree. And, you know, we've had many discussions ever since I've been here --

CHAIR VICTORINO: Yeah.

VICE-CHAIR PONTANILLA: --and guess what? You know we always side with the people that we represent --

CHAIR VICTORINO: Right.

VICE-CHAIR PONTANILLA: --you know, trying to keep those rates down. So now we're--you know, I see that smile on David's face--we're like, you know, catch-up mode, and, and in order for us to do all of these things that we say we're going to do, we're looking at, I don't know, rates that maybe increase 50 to 100 percent. You know that's something that we really gotta consider going forward. Thank you.

CHAIR VICTORINO: Thank you. Other discussion on the matter?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yes.

COUNCILMEMBER HOKAMA: I am in support of having a definite review of this policy for this ordinance if it moves to, to that status. I am not one at this point in time going to support automatic repeal of this ordinance, Chairman. Thank you.

CHAIR VICTORINO: Okay. Other, other discussion? Yes.

COUNCILMEMBER COCHRAN: I think...oh, Mr. White had his hand up.

CHAIR VICTORINO: Did...your hand up?

COUNCILMEMBER WHITE: No, go ahead.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER COCHRAN: Yeah...oh, thank you. Yeah, I, I concur with what Mr. Hokama just stated. I think as times change there is a reason for going back and reviewing, but to repeal and just get rid of for me is, is really unacceptable after knowing we don't have an articulated comprehensive plan, funding costs, and just the whole science behind our water. We, we don't have a definite, you know, number to be basing if we can keep this or not, so it...for me that, that's a scary proposition. You know when this bill was originated, our Department of Water Supply says the water situation was dire at the time, that's why this even came about. So many years later we have continued damaged watersheds, we have, you know, continued use of a potential supply that we don't even know really how much we have. So but my question is here, if...I just need kind of clarity on the, on the verbiage here. Does it mean that when we revisit and we don't make any changes, then the bill is completely gone? Is that what it's saying?

CHAIR VICTORINO: Mr. Kushi, would you like to comment on that, please.

MR. KUSHI: I believe the language, although sort of fractured, is the intent was to say that you will review this on or before a specific date, January 11, 2014, and if there's...if the chapter is not amended then it shall be...it sunsets or repealed. For the Council's reference, in the Workforce Housing Bill...Ordinance, there is a mandatory review for every two years. It doesn't have an automatic sunset provision, but again, that's for your reference.

COUNCILMEMBER COCHRAN: Thank you, Mr. Kushi.

CHAIR VICTORINO: Okay. Yes, Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. I'm comfortable with the language as presented because I think the Council at that time will have the ability to make changes if changes are appropriate, discuss with the director whether we've gotten to a point where these...some of these recommendations or some of the provisions of this bill have changed. And so I, I think what you've presented here makes some sense, and I think it's good to have a repeal there as, as something that gives us a reason to go back and change things if necessary. Or if things have changed to the point where the Department of Water is able to take care of the responsibilities in such a way that we can do without the, the Water Availability Bill, then so be it. So I, I support the, the change.

CHAIR VICTORINO: Other comments? Seeing none --

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: --I'm going to make recommend...

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

COUNCILMEMBER COCHRAN: Oh, sorry. I mean that's what we're doing here today, we're addressing this bill again, and so why can we not just do this again and again, as Mr. Kushi mentioned the Workforce --

CHAIR VICTORINO: I'm going to...

COUNCILMEMBER COCHRAN: --Housing...okay, I'll, I'll wait for your recommendation, Chair.

CHAIR VICTORINO: Recommendation is as all these amendments and changes have been made, I'm going to move to approve the changes and including the repeal in 2015. That is my recommendation. All the changes, all the amendments including the repeal of 2015.

COUNCILMEMBER WHITE: So moved.

(note: silence)

CHAIR VICTORINO: Okay, we don't have a second.

COUNCILMEMBER CARROLL: Second.

CHAIR VICTORINO: Oh, it's been moved and seconded, okay.

MS. WILLENBRINK: Who made the motion?

CHAIR VICTORINO: The motion was made by Mr. White, seconded by Mr. Carroll. Okay. All those in favor, say...

COUNCILMEMBER HOKAMA: So, Chair...

CHAIR VICTORINO: Oh, yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: So, Chairman, this is to move it out of Committee?

CHAIR VICTORINO: Yes, to move it out of Committee.

COUNCILMEMBER HOKAMA: Okay.

CHAIR VICTORINO: Exactly.

COUNCILMEMBER HOKAMA: Then, Chairman, I'm gonna not support the motion. I think this needs time. I would like to hear from Molokai. I would like a deferral instead. I would like to ask my people on the Lanai Water Company what this

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

means in their interpretation of this proposal, as well as I still think Mr. Kushi may have a point and I think this maybe potentially just gonna end up in court as a litigation matter. And I think we should take the time to really think about this before we move it to Council, since we know Mr. Mateo and other Members do not like to do Committee work at the Council. I prefer a deferral at this time. Thank you, Chairman.

CHAIR VICTORINO: Okay. We have a motion and it's been seconded so...

COUNCILMEMBER HOKAMA: Yeah, no, I understand.

CHAIR VICTORINO: Okay. You know so at this point I cannot change that.

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: I'm going to have to vote on that. Yes?

MS. WILLENBRINK: Did you wanna move to file the County Communication also?

CHAIR VICTORINO: Yeah. Okay, I'm sorry, and including the filing of the County Communication. Excuse me. Sorry. Okay.

COUNCILMEMBER COCHRAN: Chair? Just real quickly. I concur with Mr. Hokama.

CHAIR VICTORINO: Thank you.

COUNCILMEMBER COCHRAN: Deferral.

CHAIR VICTORINO: All those in favor of the amended ordinance, signify by saying aye.

COUNCILMEMBER WHITE: Aye.

COUNCILMEMBER CARROLL: Aye.

CHAIR VICTORINO: All those opposed?

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER COCHRAN: No.

VICE-CHAIR PONTANILLA: No.

CHAIR VICTORINO: Okay, roll call count, please.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MS. WILLENBRINK: Mr. Carroll.

COUNCILMEMBER CARROLL: Aye.

MS. WILLENBRINK: Ms. Cochran.

COUNCILMEMBER COCHRAN: No.

MS. WILLENBRINK: Mr. Hokama.

COUNCILMEMBER HOKAMA: No.

MS. WILLENBRINK: Mr. White.

COUNCILMEMBER WHITE: Aye.

MS. WILLENBRINK: And Mr. Pontanilla.

VICE-CHAIR PONTANILLA: No.

MS. WILLENBRINK: Mr. Victorino.

CHAIR VICTORINO: Aye.

VOTE:	AYES:	Chair Victorino, and Councilmembers Carroll, and White.
	NOES:	Vice-Chair Pontanilla, Cochran, and Hokama.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Baisa.

MOTION FAILED.

CHAIR VICTORINO: So three-three yeah? Yeah. Okay. Well the thing has been defeated and so we will keep everything the same. This meeting for December 3rd [sic], 2011 will --

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: --I'm sorry, two thousand...thirteen...I'm sorry, excuse me?

MS. WILLENBRINK: Defer?

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

CHAIR VICTORINO: No. It's the, it's the Chair's decision not to defer this matter. Okay.

COUNCILMEMBER HOKAMA: It still stays in Committee then. Yeah, it still stays in Committee.

COUNCILMEMBER COCHRAN: So it's deferred.

CHAIR VICTORINO: But I'm not deferring it, okay. It's been defeated, right? And if it's defeated, it's done and we revert back to the original bill, isn't that correct?

COUNCILMEMBER HOKAMA: No.

COUNCILMEMBER COCHRAN: What?

MS. WILLENBRINK: Chair, I would need to ask our attorney.

CHAIR VICTORINO: Mr. Kushi, if changes were made, right, and we, we wanted to amended it but we failed to amend it in Committee, does it not revert back to the original bill? The original...not the original amended bill but the original bill.

MR. KUSHI: Well, let me answer it this way. Until it's approved at the full Council, I meant the original bill stands. As I understand the motion, it was to move it out for first reading.

CHAIR VICTORINO: And I...it's been defeated.

MR. KUSHI: And that was defeated.

CHAIR VICTORINO: Yeah.

MR. KUSHI: The matter is still on your calendar or your agenda, and you, as Chair, you, you have the authority to bring it up again. If you don't, you don't.

CHAIR VICTORINO: Uh-huh.

MR. KUSHI: But it's not off.

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Yes, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. I, I know I'm one of the guys that voted no, and I, I would like for you reconsider this thing because of, you know, as one of

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

the Members had noted, we, we do have an important Member that's not here that represents the island of Molokai and we need to hear from him. The other matter is that what Mr. Kushi had brought forward in regards to rather than repealing, the, the, the possibility of looking at the Workforce Housing Ordinance in regards to reviewing every two years, you know, should be considered. The work that we've done so far, you know, I, I have no complaints about it, yeah.

CHAIR VICTORINO: Uh-huh, uh-huh.

VICE-CHAIR PONTANILLA: But, but as far as I'm concerned, the repealing portion as well as not having a Member that represents an island that does have a private water company, we should listen to that...our Council Chair that represents the island of Molokai.

CHAIR VICTORINO: Okay.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR VICTORINO: Well let, let me, let me address the two questions. Number one, all our Committee meetings are open to all Members, right? And unfortunately mister, Mr. Mateo is not a voting Member but the meetings are open to all Members. Okay. So with that in mind, I cannot demand people to be here unless they want to be here, and if it's important for them then I would hope they would have been here, right, during this discussion. 'Cause this is not the only meeting, right? Secondly, as far as the sunset, I have no problem with that. If you want to take that out, then I would have no problem in removing that. But I cannot continue to extend things every time we need to wait for one Member from an area to be there. I'm not a Member of your Committee, Mr. White, and I...if I have to be there for something for my area, I try to be there. But to say every time we're going to wait until that Member can be available or is available, I don't know if that's fair for the rest of us. Okay? So I, I, I...that's my toss right there. Okay. Mr. Hokama brings up a good point; however, the fact of the matter is I would hope he'd have been here to discuss this matter because it is his community. So I, I don't know, you know, to keep us waiting every time, there's not a real...it's not fair to the people. Okay. We've discussed this, discussed this, discussed it. Okay, Molokai has a unique situation with three systems but he's not here, and do I wait 'til the next one and what if he's not here? Or wait 'til the next one? When do we do it? Right? So...

VICE-CHAIR PONTANILLA: Chairman?

CHAIR VICTORINO: Yes.

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

VICE-CHAIR PONTANILLA: If, if you do have another meeting, you know, it gives you great opportunity to talk to that particular person in regards to his thoughts about this ordinance that we're trying to amend today.

CHAIR VICTORINO: Uh-huh.

VICE-CHAIR PONTANILLA: Get his thoughts and, and, and at least you get a really good feel of what he's thinking about his island that has a private water system.

CHAIR VICTORINO: Uh-huh.

VICE-CHAIR PONTANILLA: Just to say that, you know, hey, this is it, pau, hey, you're the Chairman, you can make that call.

CHAIR VICTORINO: Uh-huh.

VICE-CHAIR PONTANILLA: But this is an important bill that, you know, I, I don't know why we're hurrying up here. That we need to take our time to, to ensure that, you know, we're comfortable, Administration is comfortable in what we decide to do in amending the Show Me the Water Bill. But there's people out there that's uncomfortable, there's people, you know, both uncomfortable and ready to see this thing amended. So all I ask is, you know, give another opportunity, talk to Chairman Mateo what his concerns in regards to this particular bill here. Of course I have concerns that I want to bring forward in regards to removing the sunset and having a two year period to review. Thank you.

CHAIR VICTORINO: Okay. Okay.

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Yes, Ms. Willenbrink.

MS. WILLENBRINK: I did connect briefly with our Legislative Attorney and the options at this point would be to defer the item --

CHAIR VICTORINO: Uh-huh.

MS. WILLENBRINK: --it's not the bill, it's the item in Committee or move to file the communication which would make the bill go away.

(note: silence)

CHAIR VICTORINO: Interesting dynamics, yeah?

WATER RESOURCES COMMITTEE
Council of the County of Maui

December 13, 2011

MS. WILLENBRINK: If you defer the matter, the matter is still alive in Committee.
The bill would still be sitting there --

CHAIR VICTORINO: Uh-huh.

MS. WILLENBRINK: --but also it would be an avenue if someone else wanted to come
forward with a different bill for consideration.

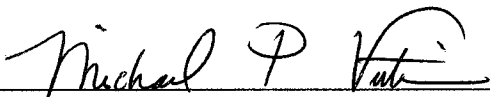
COUNCILMEMBER WHITE: Chair, I, I would recommend that we defer the item. It
keeps the issue alive and we can visit it another day.

(note: silence)

CHAIR VICTORINO: Okay, after careful consideration I will defer it because of the
recommendation by many of the Committee members so. . .and then we'll bring
this out at a future date, and I will also look to take out the sunset clause so that
that will be. And as far as the other Member is concerned, if Mr. Mateo can be
available when this is scheduled then fine, but my intent is to reschedule it next
month and kind of finalize this bill. And for all of you in there, you have a Merry
Christmas. This meeting of the Water Resources Committee of December 13th is
adjourned. . . .(gavel). . .

ADJOURN: 12:12 p.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:111213:ds

Transcribed by: Daniel Schoenbeck

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

December 13, 2011

CERTIFICATE

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

DATED the 4th day of January, 2012, in Haiku, Hawaii



Daniel Schoenbeck