

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

November 26, 2012

Council Chamber, 8th floor

CONVENE: 1:35 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember G. Riki Hokama
Councilmember Mike B. White (in 1:41 p.m.)

EXCUSED: VOTING MEMBERS:

Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Robert Carroll

STAFF: Kimberley Willenbrink, Legislative Analyst
Regina Gormley, Legislative Attorney
Yvette Bouthillier, Committee Secretary

ADMIN.: Alan M. Arakawa, Mayor
Dave Taylor, Director, Department of Water Supply
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation
Counsel

Seated in the gallery:

Paul Meyer, Deputy Director, Department of Water Supply

OTHERS: Basil Millan
Doug MacClure
Rosemary Robbins
Carver Wilson, President, Farm Bureau
Others (5)

PRESS: Akaku: Maui Community Television, Inc.
Nanea Kalani, *The Maui News*

CHAIR VICTORINO: ...*(gavel)*... Good afternoon. The November 26, 2012 Water Resources Committee meeting will come to order. It's a little different to have an afternoon meeting. I'm so used to to the mornings, but let's see how this works out. First of all, I'd like to introduce the

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Members that are present. I am the Chair of the Committee, Mike Victorino. I have, Members present, the lovely lady from Upcountry, Gladys Baisa.

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR VICTORINO: Good afternoon. And the young lady from West Maui, Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR VICTORINO: Good afternoon. Our Lanai representative, Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: . . . *(Inaudible)* . . .

CHAIR VICTORINO: And at this time, excused is Mr. Mike White and Mr. Bob Carroll and also Joseph Pontanilla, the Vice-Chair of the Council and the Committee. I don't see any non-voting Members, okay. From the Administration, we are honored today to have our Mayor, Mayor Alan Arakawa. Thank you for being here, sir.

MAYOR ARAKAWA: Good afternoon.

CHAIR VICTORINO: Thank you. And, also, the Director of Water Supply, Mr. Dave Taylor.

MR. TAYLOR: Good afternoon.

CHAIR VICTORINO: And representing Corporation Counsel, Mr. Ed Kushi.

MR. KUSHI: Good afternoon.

CHAIR VICTORINO: Thank you. Our Staff, we have Gina Gormley, who's standing in and I guess getting some training. Welcome, Gina. And Kim Willenbrink, our Legislative Analyst.

MS. WILLENBRINK: Good afternoon.

CHAIR VICTORINO: And Yvette Bouthillier, our Committee Secretary. So good afternoon, ladies. You know, without them, a lot of our work wouldn't get done. We just have one item on today's agenda, WR-18, Water Use *[sic]* During Water Shortage Declaration. Before we go into public testimony, with the consent of the public, I would like to give the Mayor an opportunity to speak first, 'cause he may answer some questions or some statements that you may be making, if that is allowable with you and the Committee? Committee, would we...will you be agreeable to allow the Mayor to speak first?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections? Okay. So we have just one item, WR-18, Water Use *[sic]* During Water Shortage Declaration. This is County Communication 12-217, from the Director

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of Water Supply, transmitting a proposed bill entitled, A Bill for an Ordinance Amending Chapter 14.06, Maui County Code, Relating to the Declaration of Water Shortages. The purpose of the proposed bill are to 1) authorize the Director of Water Supply, with the approval of the Mayor, to declare a water shortage when water supply has become inadequate in any area of the County; 2) establish stages of water shortage based on the severity of the shortage; and 3) clarify the Director's authority to control water use during a water shortage. The Staff has handed out in...the version of the bill, with my request, exempting properties that are receiving agricultural water rates. I would like to discuss that revision a little bit later. But before we go on, I would like to allow the Mayor and the Department to at least give an intro to what we are working on today. And then right after that, I will, with your permission, go into public testimony and then we'll go from there. So with no objections, I will let the Mayor start.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Mr. Mayor?

MAYOR ARAKAWA: Thank you very much, Chair, Council members and members of the public. One of the things that I have been trying to do, pretty much most of my life, is to try and get control of the water system Upcountry and to be able to find some mechanism by which we can deliver water to as many of the residents as possible. Now, this has been a pretty long trek because we had to get through a lot of the myths and inaccuracies that were created over time. 'Cause for the longest time, people believed we just didn't have water. For the longest time, people didn't even know what quantities of water were available or not available. For the longest of times, you know, we were finding one thing or another thing as a reason not to be able to deliver water to people Upcountry. All the time that we were doing this, we essentially were ignoring the one major factor, which was cost. And that cost item is something that needs to be discussed, but that should never have been the reason to prevent people Upcountry from having adequate water supply. And for years and years and years, we have provided inadequate water supply, because we've been unwilling to deal with the real issues. Now the bill before you today is part of a three-part package that we presented. And what we are trying to do with this particular bill is really just re-establish the fact that if there is a water shortage, the Director and the Mayor—Director has the best information possible coming from the Department, being able to track it, and our office—which we'll be able to make very quick decisions to be able to establish water levels that we have to be able to maintain. And if we try to do this any other way, legislatively for instance, we come into a lot of challenges with the Sunshine Law, a lot of notification challenges that may take much, much longer to be able to react to severe situations than we have time to be able to react to it. Now, many times, what we're doing is we're asking the public to conserve water, to be able to go into different kinds of restricted use; because we're...what we're really trying to do is we're trying to make sure that, ultimately, the price that we're charging for water doesn't become excessive. Now, we could start pumps a lot earlier and we could pump a lot of times when we really didn't need to; but if we're going to be able to be judicious about how we're going to be able to have the public afford the use of water, we have to use common-sense decision making and, looking at all the data, be able to calculate where are the optimum positions that we're going to be able to work with even though they're not cut in stone. So what we're asking for is the flexibility that former Water Directors had and former

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Administrations had, no more, no less. It's just that if you allow us to be able to make these decisions in times where we have a critical need to make quick decisions, it'll allow it to be...happen as it should. Now, I can't ever remember a time where the Water Director or the Mayor didn't make the decision as to whether we're gonna declare a drought or not. You know, this is something that's always, to my knowledge, been left up to the Director and the Mayor, because they have the most current information and can react in the best time. To my knowledge, one of the things that we worked with, and I was looking at Councilmember Victorino's revision, I will point out that I'm not really...I don't think that that may be the best thing to do. Having been a farmer myself, now, farmers tend to use majority of water and can use huge quantities of water. If they are not subject to some kind of controls as well, you will not have control over the availability of water in the Upcountry system; and most farmers do understand this. So when you look at almost half of the water in the Upcountry area go to farms, if you don't have any controls, you're exempting that group, it may be very problematic to being able to deliver water to all customers during times when you're really short. And I remember...when we're really short, it's usually one or two months of the year at most so we're trying to get people to conserve during those times and be able to cut back. With unrestricted...if you don't have restrictions on the farmers, I can tell you that as a former farmer, I was watering over 20 acres. And if you go ahead and you just keep doing that throughout all the dry period and all the farmers do that, you can literally drain the entire system very, very quickly. So the biggest users need to have some of the harsher controls just to make sure that you don't drain the system when you're really at a challenged period; that's from practical experience on my part. And we used to fill our reservoirs, we used to try and do things to prevent. I've even hauled water in tanker trucks to try and save crops. But trust me when I say, if you don't have some kind of a way to limit the farmers and they're just taking from the existing system, they'll very, very quickly dry out the entire system. Other than that, what we're trying to do is, we're trying to make sure that we can react very quickly to emergency situations. So I ask all of you to please support this. We're asking for no more than what used to transpire by every other water director and mayor whereby the control of declaring emergency situation comes with those that have the ability to have that information in the most timely manner. Thank you.

CHAIR VICTORINO: Thank you, Mr. Mayor. I don't think they'll be any questions from...I think it's pretty clear cut what the Mayor has said already so unless there's any burning question for the Mayor, I would like to allow the public testimony to go on.

COUNCILMEMBER COCHRAN: Chair?

CHAIR VICTORINO: Seeing none...

COUNCILMEMBER COCHRAN: Chair, sorry.

CHAIR VICTORINO: Yes, you have a question, Mr. [sic] Cochran?

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COUNCILMEMBER COCHRAN: Yes, I do, Chair, thank you. So I heard you reiterate that this would...you're looking to get an opportunity to react quickly to emergency situations. And one of the main things in here is in regards to the notification process.

MAYOR ARAKAWA: Yes.

COUNCILMEMBER COCHRAN: So that won't hinder you in just, you know, making a decision right then and there, something occurs, you know, catastrophe occurs?

MAYOR ARAKAWA: The decision that we have to make has to be able to remain fairly quickly. We do have to notify the public about what those decisions are. So there has to be PR going out, and we have to notify all of the members of the public. Otherwise, we won't be asking them to cooperate with us. But that should be an ongoing process as we have more challenges with the water system.

COUNCILMEMBER COCHRAN: Okay. So the step that they...

MAYOR ARAKAWA: So I'm not looking at that as a real hindrance, something that we have to do anyway.

COUNCILMEMBER COCHRAN: Okay. Thank you, Mayor.

MAYOR ARAKAWA: Thank you.

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR VICTORINO: Alright. Yes, Mr. White?

COUNCILMEMBER WHITE: Mr. Mayor, so your position is that you would not support exempting farmers or agricultural water users?

MAYOR ARAKAWA: Council member, again, let me reiterate, as a farmer, the farmers can use huge quantities of water. My farm where we had 40 acres, if we turned on all of our sprinklers, we could easily drain a tank overnight, so if you continue...if you don't have any controls over the farmers and they have the ability to use large quantities without any kind of...being subjected to any kind of controls, I can see that being very, very problematic. Again, I'll point out that the farmers have always been cooperative working with the Department during times of shortage, 'cause they understand that.

COUNCILMEMBER WHITE: Right.

MAYOR ARAKAWA: But I would not exempt it, because if you have...I'll give you a...well, I had 40 acres. If you have larger farmers or farmers that are using a lot of water, they can really drain systems very quickly, I'll just point that out.

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COUNCILMEMBER WHITE: Okay, thank you.

MAYOR ARAKAWA: That's my fear.

COUNCILMEMBER WHITE: Thank you, Chair.

CHAIR VICTORINO: Okay, thank you. Anybody else? Seeing none, thank you, Mr. Mayor, for being here, I do appreciate that.

MAYOR ARAKAWA: Okay, thank you very much. If you need me, I'll be in my office. I have a 2 o'clock. Thank you.

CHAIR VICTORINO: Alright, thank you. Thank you, Mr. Mayor. Okay. So let us go right to the public testimony if we may. I have three testifiers signed up. If anybody else so desires to testify, please sign up in the back. The desk is open. First one is Basil Millan, and I guess he's speaking on his behalf, followed by Doug MacClure.

...BEGIN PUBLIC TESTIMONY...

MR. MILLAN: Hello, your Honorable Chair, Honorable Council.

CHAIR VICTORINO: Can you raise the mic a little so that we...

MR. MILLAN: I'll lower myself.

CHAIR VICTORINO: No, no, no, no.

MR. MILLAN: Your Honorable Chair, Honorable Council, I am here to ask you to possibly expedite the ordinance to allow for expedience on the waiting list. I have been on that list for many, many years. Some of my friends died waiting on that list. And I understand that a lot of the officials from Washington to Honolulu, they talking about how the middle class and...but they're too far away from us to help middle class in Upcountry. But you are holding the key to help the middle class by a stronger pen. Give us some meters to get us water, and then can create taxation, you create employment. And a lot of the owners Upcountry are family-owned land and it's definitely middle class and definitely will help. And I'd like to know what we can do, as citizens, to help you expedite that. Thank you.

CHAIR VICTORINO: Thank you. Questions for the testifier? Seeing none, thank you, Mr. Millan. Doug MacClure? And he's speaking on his behalf, he's a retired farmer; followed by Rosemary Robbins.

MR. MACCLURE: Chairman and Members of the Council, I'm Doug MacClure, and I'm a retired farmer. You can't retire as a farmer. I still work, but I'm semi-retired. And I think Dave Taylor should have all the power to regulate his water system. He knows what's best for the County.

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And he knows what the reservoir levels are and what the pumps' conditions are, and I think we should at least give him the power. And the other thing I'm gonna talk about is we, we that are old, remember when we were self-sufficient in food. And now we're importing 85 percent of it, and that's a crime. And we need to protect ag. And however we do it...I remember when there were multiple slaughterhouses, we all had gardens, we fed each other and we had multiple piggeries and multiple egg farms. And we can feed ourselves, but we have to protect ag. And our cost is astronomical growing a crop, because the transportation to the main market in Honolulu is prohibitive and all of our fertilizer is imported from the mainland, and the Matson rates are...well you know what the Matson rates are. And the Governor says, we have lots of money and the...Inouye says, we have lots of money for reservoirs, storage, ag water; why don't we use this money? We have 2 percent bond money that was...that the Governor offered, and so we have to use that money. And Dudley Kubo did a great study on storm water reclamation for ag purposes, and that was a great study; it's gone nowhere. So I think we need to protect local ag. Thank you.

CHAIR VICTORINO: Thank you, Doug. Questions for Mr. MacClure? Seeing none, thank you. Next testifier is Rosemary Robbins, followed by Carver Wilson.

MS. ROBBINS: Attacked by a wreath there. It does seem strange to be here in the afternoon. Greetings, everybody, hope you had a wonderful Thanksgiving. Shortage of time for that meeting today; gave me less time than I'd like to have had up at the seventh floor going over the call to meeting and the materials that were there. But one thing I would just start out with, backing up what I just heard about water reclamation, yay, we should be doing that. And a clarification Mayor Arakawa mentioned that nothing had particularly changed in terms of the request for the process on this. And I just reread upstairs that that document that you've been given clearly states that the Board of Water Supply had been involved in previous declarations of water shortage, and this document is recommending that the board be not involved in that. And certainly, Elle, and what you said about the timing for the notification, there would be time to do that with the board. I would recommend that the board be in it with Dave and with the Mayor. The word "shortage", "water shortage", has replaced the word "drought". You'll see it in the bracket and then the underlinings of that. And in the process of that, it specifies a deletion of the consultation with the Board of Water Supply that I just mentioned. It also says that it can be put into practice for a number of reasons; it's not just a shortage of rainfall, for example. We're talking here about mechanical malfunction, that phrase is in there; human error is in there as being viable causes to have a declaration of a water shortage, the term that's being used now instead of drought. I'm nervous about that. A drought is a drought and part of the systems of water that come within the planet. Malfunctions of materials that have not been kept up and of human error are not in those same categories as far as I'm concerned. I'm very leery about that. So even the fact that we are paying the \$5.1 million settlement with the EPA, at this point, which is less than what we would pay if the thing had gone to court for repeated violations of the Clean Air Act, makes those of us who are really concerned about ecology hesitant. Good news is, in that folder that you have, it talks about reservoirs Upcountry being recommended by a number of people. I'm quoting from the Upcountry Water Forum at Kalama last month. And dams and water storage were repeatedly recommended. These are all in green ink on my paper 'cause you got good feedback from the community in here. Repair and replacement of leaky County

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infrastructures, the Upcountry Oversight Water Committee repeatedly, repeatedly recommended that. And then there was a curious one that I read in there, and I'm going to think about this, that the County buy EMI system and sell the water back to EMI. Somebody took the care to write that in as a recommendation up at that Upcountry Water Forum, it was not I. Sounds like a good thought. So please check out on those bewares before you would pass anything today, short order. Thank you.

CHAIR VICTORINO: Thank you, Ms. Robbins. Questions for the testifier? Seeing none, thank you very much.

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: Next is Carver Wilson, and he will be representing the Farm Bureau.

MR. WILSON: Good afternoon. I'm Carver Wilson from the Farm Bureau. We've submitted some written testimony and it's before you, and we wanna...one of the things I wanna say is, we wanna support the Director in having the ability to collect all the facts and make a judgment regarding the shortage of water and declare a drought. Also, I wanted to echo what Doug said, Doug MacClure said. Because, you know, we are concerned about self-sufficiency in ag, and water is a key component to us. The Mayor said that the large users could use...drain the system, and I think that one important aspect with that would be strong communication between the Water Department. But I must remind that we use less water now. And in terms of our systems are more conservative, we don't use as much overhead spray, we use drip systems a lot. And, you know, obviously we can pump water. And that's part of the key things, having the reservoirs which, you know, we're supported by Farm Bureau and the USDA, having those full, that's really important. We'd also like to see some kind of positive reinforcement for using less water. We are very...I wanna be really clear that, you know, one of the biggest concerns that we have is that when you have a water shortage for...in a short period of time, that it's very difficult to turn off the spigot that you're feeding your animals with or watering the plants that you've got in the ground. And the water safety issue or the, excuse me, the food safety issue that we talked about, if we really have to restrict that, then we can't wash our crops because those food security...food security systems are very explicit. Anyway, we look forward to working with you closely on this, and thank you for your time.

CHAIR VICTORINO: Thank you, Mr. Wilson. And let me say this before I open up questions for the Committee. You know, one of the things that I have been sensitive to is the fact that you guys have come before us in the area of water many times, and you have proven to us—or at least to me and to many Members in the...of this Committee—that you've taken many steps to, you know, use water in a very prudent manner. And so that's why my whole thrust, because many of you have called me and said, hey, you can't cut us off like you might cut off a house or you might slow down somebody in a home. You know, maybe they can't water the lawn, they can't do this, they can't do that, they can't wash their car; but crops still need water, animals need water. And if we're gonna ever have any semblance of self-sufficiency in food and livestock, this is all part of it. So, you know, although I don't disagree with the Mayor that, you know, controls have to be there, you as farmers need to be exempt. And especially if it's short periods

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of time, I don't see the real harm 'cause you're prudent. And you see if there's a shortage, you're not gonna just pump like crazy and have fun, you're gonna do it as expedient as possible 'cause you wanna protect that source. Am I correct in saying that?

MR. WILSON: Yeah, that's right. Yeah, thank you. And, you know, it's true. And I mean we look at the bottom line in terms of how much money we're spending on water.

CHAIR VICTORINO: Yeah.

MR. WILSON: It's an important component of our business.

CHAIR VICTORINO: So I'm relatively confident, and we'll discuss it further. But we need to make sure our farmers and our livestock, our ranchers, are protected during these water shortages. Other questions from the...yes, Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. And thank you, Mr. Wilson, for being here.

MR. WILSON: Uh-huh.

COUNCILMEMBER BAISA: Just wanna make sure that I have this right. We've heard couple things here already. We have a suggestion by the Chair to exempt those that in ag water meter, and the Mayor feels that that's probably not a good thing. You're saying that it is a good thing that we should exempt the water. I'm just trying to get straight on who's on what side.

MR. WILSON: Well I think the Farm Bureau would prefer to...if there's possible to have an exemption for penalties for water use that would be great.

COUNCILMEMBER BAISA: And when you say "penalties", you mean...

MR. WILSON: Well when the water shortage is declared, one of the plans is to increase the rates.

COUNCILMEMBER BAISA: Correct.

MR. WILSON: I'm saying that that'd be great if we could be...have a reduced...have no penalties.

COUNCILMEMBER BAISA: And on top of that, there is a penalty for people who violate this law. So are you talking about that, also?

MR. WILSON: Yes.

COUNCILMEMBER BAISA: Okay. I just wanna be sure that we know who's where, 'cause I have a real concern about causing any harm to agriculture.

MR. WILSON: Thank you.

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COUNCILMEMBER BAISA: Thank you.

MR. WILSON: Okay.

CHAIR VICTORINO: Thank you, Ms. Baisa. Any other questions for Mr. Carver? Seeing none, thank you, sir.

MR. WILSON: Thank you.

CHAIR VICTORINO: Mr. Carver was the last testifier signed up. I'll give anyone in the audience an opportunity if you have not signed up to come forward. Seeing no rush to the podium, with no objections, I'll close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

**ITEM NO. 18: WATER USAGE DURING WATER SHORTAGE
DECLARATION (CC 12-217)**

CHAIR VICTORINO: Okay, moving right along. Again, I've already read what we're here to work on today. And at this time, I will let the Department...Mr. Taylor, I will let you chime in first and...then let the Members ask questions in regards to this bill.

MR. TAYLOR: Thank you, Mr. Chair. I don't know that I really have any more to say than what I've said to this Committee previously during our big presentation a couple of months ago. We explained how this would work in the...when there were water shortages for any reason, why we needed to control that from a supply, demand standpoint; that hasn't changed. I think the biggest issue the testifiers were talking about today was this issue about agriculture; clearly, that's understood. In the other ordinance, the one that's in Budget and Finance Committee, you'll see that the proposed rates for those water shortage conditions, the increases are much, much less for agriculture. So we clearly understood that agriculture has some special needs. From the big picture, at over-simplifying the math, what we showed you before is that we found approximately 1.75 million gallons of water that we have most of the time, but we don't have that water during those short duration events. So the question is, how many meters could we give under what circumstances? If one class, whether it be agricultural or some other group, is left out of the drought measures, then clearly there won't be as much water to give away for meters. And that is really probably the biggest issue that the Council needs to wrestle with which is one of our major policy issues. Should we use this found water for one group versus another; how should we balance it? We can't use it for both. So the more demographics that are left out of the restrictions, the less meters obviously that we can give away 'cause then we'll be

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saving that water for a drought. And that's a pure policy question. So as a Department, you've heard what the Mayor said. Whatever the Council decides we'll certainly be willing to follow. But just be aware, as these bills are modified or watered down or those kinda things, the number of meters will of course decrease. So just keep that in mind and we will obviously try to help you in any way understand the situation, and we'll certainly follow whatever policy lead the Council wants to take in this. Thank you.

CHAIR VICTORINO: Thank you. Mr. Kushi, do you have anything you'd like to add before we get...open the floor to questions?

MR. KUSHI: No, Mr. Chairman.

CHAIR VICTORINO: Okay, thank you. I'll open up the floor to questions. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. We've had some lively discussion in our house about this measure. I'm sure my husband is watching this show. There's charge that the purpose of this drought rate is to make money. And my understanding of this rate...of this proposal is not to make money, but this proposal is to conserve water. Is that correct?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: Yes, that is correct. And as far as the...all of the issues we brought up having to do with the rates and fees over the past year and a half, the Council approved our request to change the basic structure of rates and fees. Last year in budget, what we called a conservation-based rate structure, these drought...these water-shortage provisions would be short duration even more intense financial repercussions for even more restrictions. We recognized a long time ago that the idea of, you know, Tuesday, Thursday watering and only use this kind of hose, that that's just not gonna work. The only way we're gonna control people's behavior with how much water they use is through a feedback mechanism of cost. So whether it's the rate structure or these drought rates, we're recognizing that our goal is to get people to seriously change their behavior under certain circumstances, and the only way we feel we can do that is with money. We don't want more money, we want different behavior. But I think we've seen that there is just no practical way to get that behavior with, you know, lists of things people are and are not allowed to do with having us try to be the water police for thousands of people scattered around the island. So I want to assure everyone, we are not trying to use any of these methodologies, whether it be these droughts, whether these water shortage rates or even the higher tiers in the standard rate structure, they're not about generating more revenue, they're about getting people to take seriously behavioral changes we feel are necessary with water use.

COUNCILMEMBER BAISA: Thank you. The companion to that, though, is I'm also told, well, the people who can afford to pay water bills, high water bills, this isn't gonna modify their behavior at all, because they're gonna continue to use whatever they want to because they can afford to pay whatever we charge them; whereas, it will affect the people who are less able to pay. Any comment on that?

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MR. TAYLOR: I think that in a...getting big picture in our political system, I would say in a capitalistic system, that's always going to be correct. I would say the other side to that is, as we ratchet up the higher and higher tiers, when these people choose to do that, at least we'll have more money to build more source for the other people. So that will always be true; and at least we'll be getting money from them to help everyone else.

COUNCILMEMBER BAISA: Okay. That was, you know, one of the subjects we talked about. The other was, the idea that when you...when does this drought rate actually kick in? And the question was, say we're in a 60-day billing period and in the first five weeks I am very careful and I'm doing okay and I'm getting my water at the lower rate. In the sixth week you declare the drought and the rates go into effect, are you gonna affect my water use for the whole 60-day billing period? That's not fair because, you know, you didn't have the drought in effect for the first five weeks of that billing period. We had a very intense discussion about this.

MR. TAYLOR: I'm glad I don't go to your house for dinner.

COUNCILMEMBER BAISA: Sometimes, I don't wanna be at my house for dinner, depending on what's going on during the day.

MR. TAYLOR: Okay. The answer to your question is, it depends on what's written in the companion bill that's in the Budget and Finance Committee. The bill in front of you, what it really does is empower that rate structure. Alone, if this bill is passed, but nothing is passed in the budget, no budget amendment, there are no drought rates. This just empowers there to be those—I suppose we're calling it water-shortage rates—it allows them to exist if they exist in the budget. But this bill itself doesn't make them so. So the language you're talking about would be specific language in the proposed budget ordinance. And if you look at that, what it says...is it says, those days will be averaged over the whole period. Now, that's something that could be changed, for example. So but whatever ends up happening will be based on the language in the budget ordinance in that other bill which is a budget amendment bill. So the answer can be anything you, the Council, wants it to be as long as it's written into that bill; but that's how that bill's drafted right now, it just averages it over the whole time period.

COUNCILMEMBER BAISA: This makes it difficult because we're not looking at both things together. So, you know, I don't have that bill or its rates in front of me as we're looking at this.

MR. TAYLOR: One thing for the Members to keep in mind is, regardless of...even if you pass this bill, like I said, if you don't pass the other bill, then there are no water-shortage rates. You need both bills to pass. So it's not one or the other, it's "and". So you can pass this and then never pass that and there will be no water-shortage rates.

COUNCILMEMBER BAISA: Okay, third and last question and I'll be done, Chair. The last one is, we have a water rate structure already that we follow. Wouldn't it make sense that we would just add to this and make these rates, you know, the categories, smaller so that the higher rate would kick in sooner? And we leave it that way all the time, and then we would have people using less all the time?

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MR. TAYLOR: The Council's free to do that if you wish. Essentially, you could take these water-shortage rates and you could just put them into the budget all the time. And essentially, you'd just be taking the existing tiers and just jacking them up. If that's what you choose to do, and I guarantee that will make people use a lot less water, we are not proposing that because we think that's far more extreme than is necessary right now. It certainly could come a day in the future, if for example, there's long-term droughts, there's no more sources developed, population skyrockets; and we need everyone to use half as much water as they're using right now, that may be the only way to do it at some, you know, point in the future. I have no idea. But, again, we're not trying to raise money, we're trying to match our availability of water with how much money we need to operate. And we're not trying to use these water-shortage rates to generate revenue. But if you really wanna conserve a lot, if you wanna get rather than 5 or 10 percent conservation; you wanna push for, you know, 40 percent conservation by next year, what you're suggesting would probably be the best way to do it.

COUNCILMEMBER BAISA: Thank you, Chair. For now, that's it, thanks.

CHAIR VICTORINO: Mr. Taylor, give me, in a simplistic manner...I'll make it maybe just so everyone to understand. What you're trying to say—and correct me if I'm wrong—what you want is the ability to declare a water shortage. And just like if I was to put a policeman right in the middle of the road and say, okay, speeders, come on down. You're gonna...the notice is there, they know it's there; and unless you can afford to pay the fine, you're gonna conserve water. More or less, is that what we're trying to do here? We're not trying to charge them more. 'Cause I think that's what the misnomer out there is, like we're trying to make money; but it's really to make people think a lot harder before they do something and waste water.

MR. TAYLOR: I would say you're analogy is really close. I would just add that if there was an event to where, you know, it got really cold and the Haleakala Highway iced up to where it's not safe to drive 55 miles an hour and you really need people to slow down to 35 like right now, you would put those police officers there. Have an emergency speed limit that they could, you know, put under effect immediately and say, look, we're really, really serious. We need you to slow down to 35, it is not safe; otherwise, you're getting a \$1,000 ticket for every mile over the speed limit. I think that analogy would be close. It's a special circumstance you don't want to set all the time, but you need an ability to put it into effect very quickly when you need it under these circumstances. And you don't want to put it into effect all the time, because you don't need it all the time. So I think your analogy is pretty close to what we're trying to do.

CHAIR VICTORINO: Okay, so that...and if Haleakala Highway was to ice up, I'm moving. That's all I got to say about that. Okay, other questions from the Members. Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And so I just...I'll just jump to this section that I still have a tough time kind of accepting or trying to figure how this is gonna work and will...I don't wanna put any of us in harm's way or Department especially, and it's the whole seven calendar days notification. So because, number one, perhaps that can cause people to unnecessarily start hoarding and saying, oh my God, you know, we're gonna be under this

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water-shortage situation. You know, that could happen with our farmers down to just everyday households. Families with kids, oh no, how are we gonna flush the toilet, how are we gonna bathe them, you know. And so I'm just not wanting these types of unintended consequences, perhaps...I don't know if it was discussed in Department in regards to, you know, having some type of exemption for this notification. That was my line of questioning to the Mayor just now is, in case of emergency, emergency, unforeseen circumstances type things that you're able to say, hey, it's happening right here, people. Yeah, press releases are going out, it's blasted over the airwaves, what have you, you know; but are we gonna be in violation of this seven-day notice thing that's written in this bill?

MR. TAYLOR: Member Cochran, what you're asking is probably the item that we discussed internally the most before you saw this, 'cause we really struggled with this. We had lot of discussion with our Department, with Corporation Counsel. From an operational standpoint, you're exactly right. If something happens tomorrow and we just don't have enough water...what we'd like to do is instantaneously, just like you're saying, media blitz, as of noon today, you know, by the time you're hearing this, these rates are already in effect. Operationally, that's the best way to get people's attention. From a policy standpoint, what you folks think is fair, how much notification is it okay? You know, somebody didn't hear those notifications, their radio wasn't on for four days and they didn't realize they're getting charged all this. It's that tough balance. From a Department standpoint, we would like these to instantaneously go into effect. And if we had some sort of methodology where at everyone's faucet, you know, we had a little screen that could say, you know, red light, high rates are in effect, we would love to have that; but there is no way to do that. So the question is, what is a fair notification time? At this point...at that point, you know, Corporation Counsel, we talked to them about what is a reasonable time frame for notification. Obviously, probably from a legal standpoint, they would like to have it be, you know, 60 days in advance and we'd like to have it be 60 seconds in advance. So I don't know how to answer that other than, it's a tough call about fair notification, advance notification with the ability to react quickly. And, you know, Mr. Kushi may wanna weigh in on any legal issues. But there's no easy answer to your question.

COUNCILMEMBER COCHRAN: Thank you. So if I can add, some type of exemption to this type of notification in...you know, if it's like public safety, welfare, some, again, emergency, emergency where it just has to be done, could there be possibly a little, you know, side note here in the bill somewhere to say such kinda language?

CHAIR VICTORINO: Maybe this is where Mr. --

COUNCILMEMBER COCHRAN: Mr. Kushi?

CHAIR VICTORINO: -- Kushi could chime in.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: And I would...if your question is for emergency purposes, these are not shortages of water over a long period of time. This is like the main broke or tank collapsed,

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whatever, that's what you're referring to, that kinds of emergency: immediate, profound. This is what you're not...you're want to...

COUNCILMEMBER COCHRAN: Well it's any type of water shortage, but this water shortage is creating some type of health, welfare, sorta impact, negative impact to safety and things of this community and people --

MR. TAYLOR: Mr. Chair...

COUNCILMEMBER COCHRAN: --then by golly, you need to say it right then and there, not do this seven-day prolonged thing.

MR. TAYLOR: Mr. Chair, before Mr. Kushi answer, could I just give a couple scenarios that I think will --

CHAIR VICTORINO: Go ahead, Mister...

MR. TAYLOR: --illustrate exactly what Member Cochran's talking about?

CHAIR VICTORINO: Yeah, go ahead.

MR. TAYLOR: Okay. So let's take what happened a few weeks ago, is where we had a general drought Upcountry. We saw that coming a month before. The reservoir levels were dropping every day. The Wailoa Ditch was dropping every day. Demand started increasing as it got dryer. We saw that coming weeks before. So for something like that, we would probably know seven days before. Hey, you know, there's no rain on the horizon, we're seven days out so that's that situation. The situation, I think, Member Cochran's talking about is, let's take somewhere like Molokai—remember this isn't just for Upcountry, this is everywhere—Molokai only has a couple wells. So let's say both fail at the same time and we've got a third, small backup well that's just puttering along trying to give a little bit of water, there's a situation that was completely unpredictable. We went to bed and everything was fine, and we woke up and there's a shortage that we estimate's gonna be two weeks and we barely have any water to...for two weeks. So those are two scenarios. One very predictable, seven days out; the other just came up on us, and if people don't conserve immediately, the whole system's, say, gonna go dry by noon. So there are two very different scenarios. One, predictable, seven days out; one completely unpredictable, you know, even seven minutes out. So I think those are the two scenarios that are fundamentally different from each other.

COUNCILMEMBER COCHRAN: Right. So I guess, Chair, yes. I mean, emergency case, that would definitely be justified as emergency case so...

CHAIR VICTORINO: But I think that would be two different issues at this point. You know, if you're talking emergency, he has the right to declare an emergency. That's like when we have tsunami, you shut down the water and you declare...we've shut down the water, we shut down the sewer, there's no water, there's no sewer, you have no choice at that point in time. So, again, the seven

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days, I don't know, that's, you know, I will let Mr. Kushi...Mr. Kushi, why don't you weigh in on that, what that really is entailing --

COUNCILMEMBER COCHRAN: Thank you, Chair.

CHAIR VICTORINO: --as far as the seven days.

MR. KUSHI: Yeah, our office will take the hit for this seven days, because it's...from our standpoint, it's a matter of due process. Because if you don't give 'em advance notice that the rates will go up --

CHAIR VICTORINO: Uh-huh?

MR. KUSHI: --and, or that your meter will be subject to removal if you violate these schedules, how can we justify an after-the-fact revocation or a charge? And I know the consequences about advance notice of pending shortages. Some people will hoard, but you can't avoid that. I'm looking it from the standpoint of enforcing the violations, the penalties that are associated with these mandatory cutbacks. So that's where I'm coming from. Seven days, we've talked about ten days, we came down to seven. Well, I'm not sure, what we started about. But, again, the main issue that the Committee should be understanding is that what you have before you is a rewrite of the existing law which is entitled, Control of Water During Droughts. This rewrite is not only for droughts like that public testifier said. It's about human error, shutdowns, emergencies, et cetera. So it's more than just droughts. Like the Director said, if we were in a period of drought, they know the worst-case scenario or possible shortages so they can plan for it. What we're talking here is about, like, pump failures, well failures. Imagine, not to take away from Upcountry, but let's say Wailuku Shaft 33 goes out, I mean, you know, what are you gonna do? It'll take a while for the other wells to pump the tanks; but at the same time, it may not be immediate. But those things happen. In case of terroristic attacks or contamination, you know, the Water Department can't still go on and do its business. And I know it's immediate problem, but if no more, no more. We'd just shut it down through PR notifications. But if you know it's gonna last for a period of time, then you publish this notice and then you have the public help you voluntarily or not. So that's the intent of this bill. With respect to the water rates: Stage 1, Stage 2, that's the Department said they could care less. But, again, it may deter people from overusing. And as far as the ag users, the exemptions, as far as the water rates can be done in the Budget Committee. But, again, not only the water rates when the Director declares a water shortage, it's these things called restrictions, measures, schedules. And as of now, nobody knows what they are. He may come down in a severe instance that no watering after, you know, a certain time of day, period. And you need to have water cups around. But, again, it's up to the Director in his discretion to establish these restrictions, schedules, and measures, and print...let the public know what these restrictions, measures, and schedules are so that they know they're in violation.

CHAIR VICTORINO: Ms. Cochran?

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COUNCILMEMBER COCHRAN: Thank you, Chair. Yeah, I mean I understand that, emergency, we wanna be instant; but due process as you say, Mr. Kushi, and, you know, as our legal advisor, want...don't wanna have litigation going on here from everywhere. So, again, I'm just trying to...definitely we need this to happen, and just wanna make sure that we are protected from all angles and that we're not gonna be hindered, that this seven-day...seven-calendar-day notification is not gonna hamper Department and whoever to declare when it needs to be. And Lahaina has a really good example, too, as Mr. Taylor knows, in Kanaha Valley. Our Lahaina water source is right there. And landslide, something caves in on that, we are kinda in distress there. So that's not a shortage, that's a complete no water situation until our storages dry up. So, anyways, thank you for the discussion. Did you have comment, Director?

MR. TAYLOR: I would just say that our history in the Department has shown that when you...when we give notice, people will hoard, for a lack of a better term. People will say, look, there's...they're about to declare restrictions or my rates are gonna go up, so I'm just gonna water everything as much as I can right now before that happens. So be aware, you know, this isn't perfect. I mean there's no way to perfectly do this. What I would expect is if we give seven days' notice, that seven days from now, we're gonna have the higher water rates. It will probably, in my opinion, accelerate whatever situation was going to happen because people will use a lot more right away. I mean there's...I don't think there's really any question about that. But, again, Mr. Kushi mentioned due process and that's important, too. So that's just something to keep in mind.

MR. KUSHI: You know, the factual situation, if you give 'em seven days' notice to hoard, they're gonna run up the tab; but then they'll come into the next water rate category, okay. So it works both ways. Mr. Chair, Members --

CHAIR VICTORINO: Yeah, go ahead.

MR. KUSHI: --I need to say this. In terms of, you know, emergency situations. Couple two, three years back, Director Taylor was involved in the sewer side. We went through this exercise on Molokai that the Utility threatened to shut it down and we went through the hearings and et cetera. Fortunately it never happened. But at that point in time, if the Department...if the Utility did in fact shut it down, we had talked to the State and tried to urge the Governor at that time to declare emergency under the State law. Now once a...the Governor declares that, then there's vast powers that the State can delegate to the County in terms of emergency. In that instance, they threatened to shut down, not only water, but sewer. And then, the military can come in. So in that situation, possibly, it might go beyond this bill, okay. And once the Governor declares an emergency, there's no limits, you know. Just...they just publish on the radio; and there's no appeal, they just do it.

CHAIR VICTORINO: Thank you, Mr. Kushi. Questions from the other Members? Mr. White or Mr. Hokama? Mr. White, and then I'll follow up with Mr. Hokama. Go ahead, Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Director, Mrs. Robinson [*sic*] brings up the point that maybe you guys shouldn't be...or we shouldn't be allowing Department to raise extra

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money if the shortage is caused by a failure, a system failure. I think we all can, you know, can accept drought, act of God or, you know, something like sabotage as a unforeseen occurrence or something that's creeping up on us that your Department has no control over, but would you respond to her concerns about system failure?

MR. TAYLOR: I'll say this, we don't want the money from these water-shortage issuance, from these water-shortage rates. We want people to change their behavior. If the Council wants to self-regulate this—while you were talking, an idea came to my mind, didn't get a chance to vet it by anybody, but I'll just come out with it—if you want that money to not go into the Water Special Fund and wanna go it into the General Fund, I don't care, you know. How's that? I don't want the money, we want people to change their behavior. So if you'd like to write it that way --

COUNCILMEMBER WHITE: Yeah, but from...

MR. TAYLOR: --so those rates...I mean that that's what I would say to Ms. Robbins is, I'm that strong about I don't want the money, I want people to change their behavior. So don't give us the money then, keep it in the General Fund, that's fine with me.

COUNCILMEMBER WHITE: Yeah, for me, it's not a matter of you not wanting the money, it's a matter of whether the users should be forced to pay a much higher rate because of system failure.

MR. TAYLOR: Well, my answer to that will be the same answer I give whenever this comes out. We are not a private company. The users are the owners. It's not like we're over here and we're the County and they're these people over there. The users are the owners. We don't make profit, we don't have bonuses. If the people wanna pay enough regular rates to support a strong maintenance and operations situation with backup stuffs so, you know, with lots of staff and things so the...so there aren't human error, extra staff so we have time for training and extra money so we have time for backup equipment and minimize that, that's fine. But a lot of that is out of our control. So whether it happens by act of God, act of man or by human error, it's really the same; and we all, as a community, have to share with it. So I don't know that the reason for it really matters because we're all in this together.

COUNCILMEMBER WHITE: I'm just so surprised you haven't run for office.

MR. TAYLOR: Soon as, as soon as, you know, you guys get covered parking spaces. I'll be there.

CHAIR VICTORINO: I think we're straying a little away from the subject matter again. Can we just get right back to the matter at hand please?

COUNCILMEMBER WHITE: Okay. Sorry, Chair.

CHAIR VICTORINO: Thank you.

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COUNCILMEMBER WHITE: Looking at your proposed rate schedule, I realize that's not under consideration today. But to put it in perspective, the five-eighths inch users at the higher rate, the rates will double in level 1 and they will quadruple in level 2. And in the business category, at the higher rate, it goes up 122 percent so it more than doubles. And at the next level, level 2...I didn't do this calculation, I can't do it in my head; but it's almost five times. And under your proposed schedule, agriculture goes up by about 36 percent in the first level, and about...looks like about 90 percent in the second. What you're...I'm having trouble because I wanna support ag; but at the same time, when we're employing these higher rates, is during a time when you're actually pumping a whole lot more to get water Upcountry. It's benefitting the farmers and everyone else that lives up there. What was the rationale with which you arrived at the 1.10 for farmers going to 1.50 and \$2.00?

MR. TAYLOR: First of all, we recognized that regardless of whether you're an ag user, general business user or customer user, our cost to get you water is the same. So, first, the general rates are much, much lower for agriculture. So, first of all, the ag rates are much lower than they are for the other classes. And then we also wanted to say, we want the water-shortage rates to, as you just mentioned, be a smaller percentage. So when you put all that together, if we are in a water-shortage situation, if you live next door to an agricultural property, the amount during that time that you'll be paying is much, much, much more than your neighbor, the agricultural user is using. They have a lower rate, generally, and they have a lower multiplier. So I think we're showing that even though everyone needs to be part of this, agriculture is less affected by this than any other class. So what we're saying that everybody needs to be cognizant of these problems, everybody needs to share some pain. But their pain as a percentage, as you just noted by your numbers, is much, much less than anyone else is paying. So we tried to balance the importance of ag. And the fact that we heard from testifiers that we knew that ag has difficulty: the animals need water, the plants need water. It's not like your lawn that you can just let it die. So we try to say, look, we understand that and we wanna support that. We're already supporting it as a community with lower rates in general; we also wanna add support by having they're paying during these water-shortage events be a lesser percentage than everyone else's. So the numbers were not calculated by a formula, they were rough guesses about what it might take to get people's behavior to change. Whether or not they're enough or too much or should be changed, we're not married to it, because there is no absolute formula for those numbers. Again, it was just trying to be large enough that people really paid attention to it, that it actually affected behavior; but still try to get the agricultural pain to be less than everyone else's.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

CHAIR VICTORINO: Thank you. Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you. Interesting discussion this afternoon. First, since the language states, in any area of the County, I'm assuming this includes Lanai? Is that a correct understanding on my part of this legislation?

MR. TAYLOR: I believe, and Mr. Kushi can correct me if I'm wrong, but I think...I believe that Chapter 14 only applies to County water systems. So I think if there was a County water system

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on Lanai, it would apply. But I think if there is no County water system in an area, I don't think Chapter 14 applies anyway; but Mr. Kushi can correct me if I'm wrong about that.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR VICTORINO: Mr. White, you have another question?

COUNCILMEMBER WHITE: No.

CHAIR VICTORINO: Oh, I just thought you raised your hand.

COUNCILMEMBER WHITE: No.

CHAIR VICTORINO: Any other questions?

COUNCILMEMBER HOKAMA: Wait, I waiting for my answer --

CHAIR VICTORINO: Oh, I'm sorry.

COUNCILMEMBER HOKAMA: --to my question, Chairman, please.

CHAIR VICTORINO: Oh, excuse me. I thought he answered the question.

COUNCILMEMBER HOKAMA: I waiting for Mr. Kushi.

CHAIR VICTORINO: Oh, okay, I'm sorry. You didn't...Mr. Kushi?

MR. KUSHI: Yes, if the question is that...

CHAIR VICTORINO: I apologize.

MR. KUSHI: If the question is whether this bill applies to the island of Lanai which the County does not operate or maintain any water systems, the answer will be yes, in that, it does not apply to Lanai because we have no control over their water system.

COUNCILMEMBER HOKAMA: Okay. So it doesn't matter, even on this island, if a water system is serving a public purpose under the PUC, those entities do not I guess wouldn't come under this legislative policy, it's only the County's water system that would be impacted?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: Yes. Because, one, the Stage 1, Stage 2 water rates, we have no control --

COUNCILMEMBER HOKAMA: Right.

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MR. KUSHI: --over those, because it's PUC controlled. Two, the regulation of restrictions, measures, it's not our water supply that's being used or be...or trying not to be used, so I think we'd have some jurisdictional problems trying to enforce people who are not on our system to cut back.

COUNCILMEMBER HOKAMA: Uh-huh. Okay. I just bring it up, Chairman, 'cause even if you're a private system, you still pull from the same mountains, the same general aquifers.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER HOKAMA: Okay. It might not be the same well, but, you know, the island gets impacted nonetheless by all the straws that's in the system, that's in the cup, might as well I guess I could illustrate. So it finds it...it puts me in a interesting situation where while we preaching the public health and safety, we only touching one component which we have some justified jurisdiction over, but it's not a policy that applies to anyone that has an interest in that mountain, in that water source and in the delivery of water to a public...from a public purveyor to a public client that the PUC allows. You know, so for me, it's an interesting question on this type of public policy. 'Cause, you know, I thought in general, even if it's not the County system, if Lanai is entering into a difficult situation where the Department is knowledgeable, why wouldn't we exercise our governmental power to protect health and safety on Lanai even if it's a private system; but allowed to provide public service. So, you know, that's the question for me, Chairman, and I had always believed that the County, regardless if it's private or not, if it has public impact, then I don't have a problem with the County using its authority to create and enforce its public policies, because who else will if we don't do it, you know?

CHAIR VICTORINO: Well maybe it's time that, Mr. Hokama, we talk with the State Legislature. Because at this point, from my understanding, it is the PUC and the State Water Resource...the State Water Commission that handles all of these private systems, not us. Am I correct, Mr. Taylor?

MR. TAYLOR: Not only are you correct, Mr. Chair, but Mr. Hokama's concern that when you said, who else would watch that, well who else would be the State Commission on Water Resource Management who have brought authority over exactly the issue you're talking about whether it be our wells or wells on Lanai or surface water on Kauai. If there is some massive drought where there isn't enough water to go around, remember, everyone who has a well and everyone who takes a surface water diversion has authorization to do that from the State Commission on Water Resource Management and they have brought authority to yank that back under various situations. They explained it to me; I can't recall all the details about exactly what their emergency procedures are. But if there were some massive drought that lasted for very, very long and it impacted everyone, the State Water Commission may have to come back to all users and say, cut everyone's usage in half. You know, so that would be something that that Commission would do through whatever their process is. So what you're talking about exists at the State Water Commission level.

COUNCILMEMBER HOKAMA: And, you know, I...you shared what I already know, Director; but my problem is normally, by the time they act, it's three months after the disaster, okay. So

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whoopee for all of us who gotta live through that disaster or emergency. You know, if I had to wait for everything for the State, this County still wouldn't have one ag park. Okay, Chairman, thank you.

CHAIR VICTORINO: Well thank you, Mr. Hokama, and I do agree with you. And, again, and maybe, hey, the time has come that we should ask the Administration and to have talks with the State in regards to maybe this kind of power for which when emergencies or droughts occur and we know of it here, that all these private systems would fall under us on...in that particular period of time. You know, I know other jurisdictions that have that kind of a broad authority that when severe droughts occur or hurricane hits or another type of disaster hits, that all private systems, public, doesn't make difference --

COUNCILMEMBER HOKAMA: Yeah.

CHAIR VICTORINO: --the local municipality gets the control, right? I mean, you know, NACo has shown us that so...

COUNCILMEMBER HOKAMA: Chairman, let me ask you --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER HOKAMA: --maybe you know the answer. Does the Water Use Development Plan that goes through a process that Council reviews --

CHAIR VICTORINO: Uh-huh?

COUNCILMEMBER HOKAMA: --you know, especially, and I know it's about basically our system; but these allocation tables on where the water would go under certain scenarios, I know that's what we worked on for Lanai, is the private systems need to follow the approved or adopted Water Use Development Plans and its allocation parameters, also, Director?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: My understanding is that when the County Council, or any County Council, passes their Water Use Development Plan, essentially, they're recommending it to the State Water Commission.

COUNCILMEMBER HOKAMA: Right.

MR. TAYLOR: And when the State Water Commission adopts it, they're saying it's complete, we understand what you're saying; but it's not necessarily agreeing that that's how they're going to allocate water, it doesn't become law. Each allocation, they vote on how to allocate that water. And the purpose of the Water Use Development Plan coming from the jurisdictions is so there's clarity from home rule about what, in this case, the County Council wants. But that in no way binds the State Water Commission even though they accepted the document to say, okay, we're

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gonna follow that allocation table. So it's still a guidance document even to the State Water Commission and it's not until their ruling; and then when their rulings are, you know, challenged in court and those kinda things, it's those rulings on allocation that ruled, not what's written in the Water Use Development Plan, that's a guideline even to them. And that is my understanding of the overall process.

COUNCILMEMBER HOKAMA: Okay, thank you for that, Director, thank you.

CHAIR VICTORINO: Further questions for the Director? Yes, Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. So, Director, I know last time we spoke about this bill, Board of Water Supply members were here to say that they wanted to be a part of this. And it looks like they were taken out of the section where declaration of the water shortage is to occur. You are on this board, you as Director of Water, is actually a member of the board?

MR. TAYLOR: I am not on the...no one from the Department is on the board. We staff...

CHAIR VICTORINO: Ex officiate.

MR. TAYLOR: We staff the board, but we're not voting members.

COUNCILMEMBER COCHRAN: Okay.

CHAIR VICTORINO: Public Works and Planning are ex officios of the Board of Water Supply.

COUNCILMEMBER COCHRAN: So I guess I just want reasoning why as the advisory board to your Department that you don't feel the need to alert them or do you or ask, you know, to bring them into the fold of this declaration.

MR. TAYLOR: The timing. They only meet once a month. For example, their October meeting got cancelled due to lack of quorum. And we're talking about these things; just imagine this happens the day after a board meeting or even if they have a Sunshine Law. So even if it happens six days before the board meeting, it's going to be five weeks before they can hear it. So in the same reason that I agree completely with what the Mayor said, although...if there were some expedited methodology to get Council's opinion on it or the board's opinion on it within eight hours, that would be great. But having to schedule that three weeks out is just not practical. So we talked about a number of ways to get either the board or Council in on this, but there is really no methodology to get a body like that that has such long lead times in scheduling to be part of these kind of decision making.

COUNCILMEMBER COCHRAN: Thank you, Chair...Director and Chair.

CHAIR VICTORINO: Thank you. And, again, I think that one I tend to have to say, we've gotta trust the people like the Water Director and the Mayor to make that prudent decision. To run and see all of us and try to get a meeting scheduled and all of that, especially with the Sunshine Laws,

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it's...it makes it a real...the...you're talking about the seven day now, that would even extend it a lot longer just trying to get a meeting together. So I tend to agree with you, Mr. Taylor and the Mayor. If you guys can't make good, rational decisions, then we're in big trouble as it is.

MR. TAYLOR: And a little...to expand on that, if you look at even these issues that come like when we have a tsunami and we bring all our people out, I mean I make that call at, you know, whatever time it is, midnight, and start calling people. The Council has essentially authorized the funding for that in advance. You've authorized premium pay and overtime pay in the budget, and you know that's what it's for. So you know that we have that authority, you've given us enough resources, within some constraints, to do what we need to do to manage. And I foresee this being the same. If we started doing this and got out of control, I could see a future Council saying, look, we have to give more constraints about why and when and those kinda things. In the same way with overtime budgets, but you give us enough resources to do our job and don't ask us the details because the timing's too fast. I don't see this as any different than a tsunami alert where we have to act much, much faster than we could possibly have a board or Council meeting.

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

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. Chair, I don't know if you would prefer to handle this with a brief recess, but I would really like to take a look at the rates that are in that companion bill to this that are in B and F before I make a decision.

CHAIR VICTORINO: I cannot do that because it is not part of our...that it belongs to another Committee, and I cannot be discussing something that's going to another Committee where we are not gonna make a decision on.

COUNCILMEMBER BAISA: It affects this decision for me, though, because I wanna know if we pass this, what effect it has on the next one --

CHAIR VICTORINO: Nothing --

COUNCILMEMBER BAISA: --and it does.

CHAIR VICTORINO: --unless we pass that one.

COUNCILMEMBER BAISA: I...

CHAIR VICTORINO: . . . (*Inaudible*) . . . says...and I'm not gonna argue the point because I've talked with Corp. Counsel and they've said that whatever we do here, those rates have no bearing 'cause we have to pass that entirely differently.

COUNCILMEMBER BAISA: Okay, let me just give you an example. It's in the issue with ag. I am very, very concerned about the ag, and we do have a difference of opinion. We've been...received a recommendation from you and we have a recommendation from the Mayor

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and we have testimony. I just wanna compare and I briefly heard Mr. White mention a couple of rates, but I don't know what those are 'cause I don't have that piece before me. It affects my decision on the ag piece.

CHAIR VICTORINO: We'll take a five-minute break, and then we'll come back with that.
... (gavel) ...

RECESS: 2:50 p.m.

RECONVENE: 2:59 p.m.

CHAIR VICTORINO: ... (gavel) ... The Water Resources Committee meeting will reconvene. Okay, Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. I'm glad that we had that break. I had the opportunity to see the latest version, and it's much better than what numbers that were reported earlier so I'm okay. Thank you.

CHAIR VICTORINO: Okay, thank you. Any other discussion? If not, I will make my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR VICTORINO: Okay. First of all, I'm going to recommend...I going recommend the passage of the ordinance 14.06...a bill that will...for an ordinance amending Chapter 14...excuse me, hold on, my lips got dry. Let me start all over again if I may. I'd like to recommend the passage of A Bill for an Ordinance Amending Chapter 14.06, Maui County Code, Relating to Declaration of Water Shortages as with the amendment of 14.06.040 exemption for the agricultural properties receiving agricultural water rates. That's my recommendation. You got...this is the Draft 5, by the way, if you're looking for Draft 5. That's the one you were...was on your desk when you...the one with the...the one we handed out today --

COUNCILMEMBER HOKAMA: Okay.

CHAIR VICTORINO: --and it had red on top, the red Draft 5. It would've says, 11-26-12 on the bottom --

COUNCILMEMBER HOKAMA: This one?

CHAIR VICTORINO: --from myself.

COUNCILMEMBER HOKAMA: Okay.

CHAIR VICTORINO: It says at the bottom, WR Committee Chair and has the date, 11-26-12.

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COUNCILMEMBER HOKAMA: Got it.

CHAIR VICTORINO: Okay? Do we all have that one so that we know what we...we're discussing?
Okay, so that's my recommendation.

COUNCILMEMBER HOKAMA: Only the purple part, Chairman?

CHAIR VICTORINO: Pardon me?

COUNCILMEMBER HOKAMA: Only the purple colored language?

CHAIR VICTORINO: That's the only amendment, yeah, that I'm making.

MS. WILLENBRINK: There's a nonsubstantive revision in green.

COUNCILMEMBER HOKAMA: Okay.

CHAIR VICTORINO: Yeah, that's nonsubstantive so that's...

COUNCILMEMBER BAISA: Chair, are you ready for a motion?

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: So moved.

CHAIR VICTORINO: Okay. Do I have a second?

COUNCILMEMBER HOKAMA: No, I don't support that.

CHAIR VICTORINO: You seconded, Mr. Hokama?

COUNCILMEMBER HOKAMA: I'll second it for you to continue, Chairman.

CHAIR VICTORINO: Okay. Alright, go ahead. Now...

COUNCILMEMBER HOKAMA: Chairman?

CHAIR VICTORINO: Yes, sir?

COUNCILMEMBER HOKAMA: You know, I have a hard time with this motion. You know, going through our subcommittee for Budget and Finance and then finding out, you know, how much we're already subsidizing the agricultural component in real property taxation, now we're looking at this. You know, for me, I'm at that age already of what is enough and what is too much. For me, the real commercial, agricultural users I think is not the issue for me. I think they understand this policy proposal, they understand the uniqueness that they've had to deal with

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throughout their careers in ag...commercial agriculture. You know, too bad there's not the whole Committee today; but, you know, I'm at a point this afternoon that I'm not ready to support the motion, Chairman, thank you.

CHAIR VICTORINO: Thank you, Mr. Hokama. And, again, my whole thought process was because I had received a number of calls from many of the Upcountry farmers and ranchers who are very concerned, you know. And even with the rates as we've discussed, you know, and we're not gonna go into it, but the lesser rates, they still felt that this would be a heavy burden on them. And, again, we talk about food security, we talk about sustainability, we talk about that. And then when the opportunity to help them in the most critical time is then, you know, not taken, that's fine. I mean, again, if this fails today, then I will still look to put that when we come up to budget. Because and then in budget time, I will make sure that I will try to exempt our farmers from any extreme increases in water rates. There are...eh, these are tough businesses. They are, many times, they just barely make ends meet. I mean real farmers, now, I talking the real farmers. I not talking the guys who have nine-to-five jobs and then do farming in the afternoon. And Ms. Baisa knows, that's her area and you, Mr. White. I know these and I deal with them, they're family and friends. And I'm sorry, but I will do the will of the body 'cause, you know, my opinion is just one and my vote is just one. But it's very important that we don't lose sight of our farmers. And that's...that was the whole purpose. I disagree with the Mayor in the sense that, you know, oh, you know, we giving them special treatment. I believe it's special treatment in a sense they're a special group of people. And without them and if we somehow, during drought, hurt them even further, now what happens? So that's my take on this, ladies and gentlemen, is that I really believe protecting our farmers is very important even during droughts, even during water shortages. Again, these are very important people. And, you know, my yard can go brown. And I may not have to flush the toilet so many time, you know. I use the, if it's golden it's okay, if it's brown you flush it down, you know. Okay, I'm cool with these things, I can live with that; but farmers can't. They need water, they need water. And if animals need to drink, they need to drink. So I mean it's your call. And I'll leave it up to the body's will, but that's my rationale behind this. It is...these are an important group. We talked the talk, now we gotta walk the walk, gang. Ms. Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. Chair, I made the motion with mixed feelings.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: Of course I want to protect ag. I also understand the Mayor's caution about maybe some farms or farmers, you know, not using water as wisely as they could. And I don't know if that's not true, I'm not a farmer so I'm in a poor position to defend that. But I thought it was very important to support your recommendation, you are the Chair. And that this group make a decision as to where we're going. So the best way to bring it is to a vote, and we decide. Thank you.

CHAIR VICTORINO: Okay. Thank you. Mr. White?

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COUNCILMEMBER WHITE: Thank you, Chair. The reason I was quiet was because I, too, wanna protect ag. But I'm not comfortable giving them a complete exemption. And I'm comfortable dealing with the rates when it comes to budget time. And if we feel that the rates are...that are proposed are too high, we can adjust them at that point. But I totally support you bringing this bill forward in every other case, in every other sense because I think it's a very important bill. I think it's gonna do everything that you want it to do. I'm just not comfortable completely exempting the farmers and ranchers at this point. The increases that everyone else are carrying are hugely higher. The increases for ag are 11 cents per thousand gallons and level 2 and 22 cents in level...I'm sorry, 11 cents in Stage 1 and 22 cents in Stage 2. And those are, you know, still very, very high discounts compared to the rates that others will be charged. And I think at this point, I'm comfortable with it; but if it's, you know, if we find ongoing discontent, we can address it during the budget review of these rates.

CHAIR VICTORINO: Well thank you, Mr. White. And, again, you know, you don't get everything you want, you don't get everything you ask for so I understand that; that's the democracy we work in. But, you know, I just want it made known that when it comes to the farmers, this Chair and this Council member will do everything within his reasonable power to protect them and make sure that they're taken care of because they take care of us. They're the ones, when we're hungry, they're gonna feed us, you know. This the beef on our tables, the lamb or rack of lamb and whatever else on our tables is coming and could come from our farmers right here on Maui. We talk about it all the time, and I just don't want it missed. So what I will ask at this point, if someone would make an amendment to remove it if that's what you so desire, then that way we can move on and passed the entire bill without that, without my amendment. I have no problem with that.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Go ahead.

COUNCILMEMBER BAISA: Would you like me to withdraw my motion? I can.

CHAIR VICTORINO: No, you don't have to. You can amend to take it out. You can just take that...take the...

COUNCILMEMBER BAISA: If I withdraw it, it's over. . . . *(Inaudible)* . . .

CHAIR VICTORINO: But we wanna...

COUNCILMEMBER COCHRAN: Withdraw it and re-do it again, yeah.

COUNCILMEMBER BAISA: Why don't I withdraw and we do it over? We gotta take this amendment out, though.

CHAIR VICTORINO: Yeah, that's what I mean. So why not just move to make the amendment out?

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COUNCILMEMBER BAISA: I'll take my first motion back and make another motion to remove the amendment.

CHAIR VICTORINO: Well you...

COUNCILMEMBER BAISA: I think that's what you want.

CHAIR VICTORINO: Well, yeah, but we have the, we have the whole bill on the floor right now so if you just move to remove the amendment...

MS. WILLENBRINK: You can move to amend the main motion.

CHAIR VICTORINO: Yeah. Amend the main motion to remove the amendment.

COUNCILMEMBER BAISA: Okay, I'll do that.

COUNCILMEMBER HOKAMA: Second.

CHAIR VICTORINO: Okay, there you go.

COUNCILMEMBER BAISA: Whatever works.

CHAIR VICTORINO: Yeah, I mean that's the simplest way. Instead of...

COUNCILMEMBER BAISA: I'm easy, whatever works.

CHAIR VICTORINO: Yeah. That's the simplest way, yeah? Okay.

MS. WILLENBRINK: Is there a second?

CHAIR VICTORINO: Yeah, Mr. Hokama.

COUNCILMEMBER COCHRAN: Hokama.

COUNCILMEMBER BAISA: Mr. White.

COUNCILMEMBER COCHRAN: Hokama.

COUNCILMEMBER BAISA: No, Hokama?

COUNCILMEMBER HOKAMA: You know, that's the simplest...

COUNCILMEMBER BAISA: Yeah.

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COUNCILMEMBER HOKAMA: If I may, point of order, Chairman? You normally don't have conflicting amendments to the main motion.

COUNCILMEMBER BAISA: Right.

COUNCILMEMBER HOKAMA: Okay. The main motion is to take care this exemption.

COUNCILMEMBER BAISA: Right.

COUNCILMEMBER HOKAMA: An amendment to a...to an amendment doesn't normally be contrary to it, yeah. So I would say the more followed procedure is withdraw of the original motion and then put the motion to delete in place.

COUNCILMEMBER BAISA: Thank you.

COUNCILMEMBER HOKAMA: Would be my suggestion, Mr. Chairman.

CHAIR VICTORINO: Well now we have, we have the motion and...

COUNCILMEMBER HOKAMA: Yeah, but you can rule that that motion you won't accept, Chairman, by just your ruling from the Chair.

CHAIR VICTORINO: Okay. Eh, I no accept that motion. Would you withdraw your motion?

COUNCILMEMBER BAISA: Yes, sir.

CHAIR VICTORINO: Okay. Now can we have a new motion, I guess, without the exemption for properties receiving ag water rates that would be exempt under these provisions?

COUNCILMEMBER HOKAMA: Yeah, Chairman, I move to delete 14.06.040 Exemptions and its language associated.

COUNCILMEMBER WHITE: Second.

CHAIR VICTORINO: Okay, it's been moved by Mr. Hokama, seconded by Mr. White. Any discussion? All those in favor?

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? No. Me. Okay, so let the record show four "ayes", one "no", two "excused".

VOTE: AYES: Councilmembers Baisa, Cochran, Hokama, and White.

NOES: Chair Victorino.

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ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Vice-Chair Pontanilla, and Councilmember Carroll.**

MOTION CARRIED.

ACTION: APPROVE amendment to main motion.

CHAIR VICTORINO: Okay, now the main motion as --

COUNCILMEMBER WHITE: Amended.

CHAIR VICTORINO: --as amended.

COUNCILMEMBER HOKAMA: The bill as amended.

CHAIR VICTORINO: Okay. All those in favor, say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? No. So let the record show four "ayes" and one...

COUNCILMEMBER HOKAMA: Chairman, you had a main motion to accept? I just was...okay, okay I see the Staff nodding.

CHAIR VICTORINO: Yeah, yeah, we had the...yeah. Okay?

COUNCILMEMBER HOKAMA: And then Staff, Chairman, can...if with no other objections, can we allow you to work with Staff to make the appropriate --

CHAIR VICTORINO: Yeah, substantial, yeah --

COUNCILMEMBER HOKAMA: --non-substantial adjustments --

CHAIR VICTORINO: --non-substantial change. And --

COUNCILMEMBER HOKAMA: --the numberings and whatnot?

CHAIR VICTORINO: --do we have to file this, too? Yeah?

MS. WILLENBRINK: ... *(Inaudible)* ... filing.

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CHAIR VICTORINO: And, also, with no objections, filing of the communication. . .filing of the. . .

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: No objections? Okay.

VOTE: AYES: Councilmembers Baisa, Cochran, Hokama, and White.

NOES: Chair Victorino.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Pontanilla, and Councilmember Carroll.

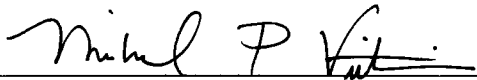
MOTION CARRIED.

ACTION: FIRST READING of revised bill; and FILING of communication by C.R.

CHAIR VICTORINO: Okay, that's it. Ladies and gentlemen, thank you very much. I appreciate all your help, and we got it done. With no other discussion, no other announcements, meeting adjourned. . . . (*gavel*) . . .

ADJOURN: 3:12 p.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:121126

Transcribed by: Raynette Yap

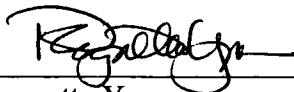
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CERTIFICATE

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

DATED the 12th day of December, 2012, in Kihei, Hawaii.



Raynette Yap