

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

March 13, 2013

Council Chamber 8th, Floor

CONVENE: 9:02 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Mike White, Vice-Chair (in 9:10 a.m.)
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember Stacy Crivello
Councilmember Don S. Guzman

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

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: David Taylor, Director, Department of Water Supply
Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: James Smith
George Kaimiola
Carver Wilson, President, Maui County Farm Bureau
Rosemary Robbins
Others (3)

PRESS: Akaku: Maui Community Television, Inc.
Melissa Tanji, *The Maui News*

CHAIR VICTORINO: Good morning, and welcome to the March 13, 2013 Water Resources Committee. I'm the Chair, Michael Victorino. I want to welcome everyone. I'll call this meeting to order, and before we get started with introductions, I would ask everyone in the gallery and Members also--make sure I turn mine off, you know, you tell everybody else and you forget yours, right, how embarrassing--to please turn off their cell phones or put it on a silent mode, yeah? Decorum will be followed in the Chamber, please. This morning, voting Members

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of our Committee that are present, right now, Mr. White, our Vice-Chair, will be here shortly so he's excused. Our lovely young lady from Upcountry, our Council Chair, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. Our East Maui representative, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: Good morning. Our South Maui representative, Mr. Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR VICTORINO: Our wonderful lady from the island of Molokai, Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Morning, Chair.

CHAIR VICTORINO: Good morning. And of course, our young man from Kahului, Mr. Don Guzman.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: Good morning. From the Administration, we have Mr. David Taylor, Director of Water Supply.

MR. TAYLOR: Good morning, Chair.

CHAIR VICTORINO: Good morning. And Mr. Ed Kushi, First Deputy, Corporation Counsel.

MR. KUSHI: Morning.

CHAIR VICTORINO: And, our Staff, of course, invaluable in all what they do for us. Ms. Kim Willenbrink, our Legislative Analyst –

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: -- and Yvette Bouthillier, our Committee Secretary.

MS. BOUTHILLIER: Good morning.

CHAIR VICTORINO: Good morning. I would like also now, to verify and make sure our district offices are ready for public testimony. I will start with the Hana Office. Good morning, Dawn, are you there?

MS. LONO: Good morning, Chair, this is Dawn Lono at the Hana Office.

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CHAIR VICTORINO: Good morning, Dawn. Also, Denise Fernandez from the Lanai Office. Are you there, Denise?

MS. FERNANDEZ: Good morning, Chair, this is Denise Fernandez at the Lanai Office.

CHAIR VICTORINO: Good morning. And then our lovely young lady from Molokai Office, Ella Alcon. Ella, are you there?

MS. ALCON: Good morning, Chair. This is Ella on Molokai.

CHAIR VICTORINO: Good morning. So, all our district offices are online, not online, are on for public testimony. Okay, public testimony will be limited to today's item, agenda item, and our agenda item today, and I should read that first, so that we can make sure everybody's knowing what we're doing. The agenda item today is a Bill for an Ordinance Amending Chapter 14.06, Maui County Code, Relating to the Declaration of Water Shortage [*sic*]. So that's the only matter that we will be discussing today. Okay, continuing, if you wish to testify, please sign up at the desk located on the 8th floor, or at any one of our district offices listed on the agenda. Testimony will be limited to three minutes, and upon request, you can wrap up in one minute. So, at three minutes, the light will turn yellow, and the light will start blinking red at four minutes. If you are still talking after four minutes, I will kindly ask you to stop. When testifying, please state your name, and if you are representing yourself or any organization. We've also established connections with our district offices, and to be fair, I will try to rotate it. But what we're going to do today, with their okay, is I will do the first testifier here in the Chamber, I will ask the district offices if they have anyone who wants to testify, if they do not have, they've assured us that they will e-mail us, anybody who would come in. And then at the end of all the testimony, here in the Chamber, I will again ask the district offices if they have anyone who wants to testify. Is that okay with Lanai? Denise?

MS. FERNANDEZ: Yes, that's fine.

CHAIR VICTORINO: Okay. Dawn in Hana?

MS. LONO: Yes, that's fine.

CHAIR VICTORINO: And, of course, Ella in Molokai.

MS. ALCON: Yes, that's fine.

CHAIR VICTORINO: Okay, just so that everybody understands the procedure today. Okay? Now, testifiers, I have at this time ... one, two, three. So, if you don't mind, I'm going to start with our district offices, just to make a little change. Let me start with the Hana office. Dawn, do you have anyone who wants to testify?

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MS. LONO: There's no one waiting in the Hana Office to testify.

CHAIR VICTORINO: Thank you. Denise is there anyone waiting to testify in the Lanai Office?

MS. FERNANDEZ: There's no one waiting to testify in the Lanai Office.

CHAIR VICTORINO: Thank you. Ella, is there anyone wanting to testify in the Molokai Office?

MS. ALCON: No, there's no one here on Molokai waiting for, to give testimony.

CHAIR VICTORINO: Okay, so when I'm done with the testifiers here, I will come back, or if you have anyone that comes in, please e-mail us. Thank you, ladies. Our first testifier today, Mr. Jim Smith. And Jim Smith, is again, speaking on our item WR-18. Mr. Smith?

...BEGIN PUBLIC TESTIMONY...

MR. SMITH: Chairperson Victorino ... Chairperson Victorino, Members of the Council, representatives from the Administration, my name is Jim Smith. I'm so glad that this Council decided to recommit this bill. Because I think now we have a chance to put things into a proper order. Disorder causes confusion in my world, and confusion leads to arbitrariness. Okay, and that usually injures dignity. In law, arbitrariness comes from ambiguity. Okay, and right now we are steeped in ambiguity with regard to what is happening. Okay? Mr., the Director of Water Supply, on January 30th, came forward represented to the Council what the Board did. And he said, the Board really wanted me to personally have discretion, or at least a number. Okay? But, the Board sent you a letter that said it wanted a provision of law, it wanted something in writing. So, it's clear the Director doesn't distinguish between those two things. But you have to. Okay? All we have is words. Okay? Our political system is made up of words. The meaning has to be understood. There's ambiguity, it goes to arbitrary power. What we have now is a embrace of ambiguity. We need to separate this. The word "demand" is used in two different ways by the Director; "demand for water service", "demand for water". Consumer, all of this confusion because words don't seem to have the same value. Words seem to be energizing or used for a purpose, but not for meaning. And that's political. The Mayor says the Sunshine Law is posing a challenge, because of these emergency circumstances we can't have the Board, but the Sunshine Law at 92-8 has a provision for emergency standards. The Charter has this. So, this flux. Clearly, you have two bills in front of you as one. You have a water shortage bill that has to do with emergencies, and you have a water management plan that has to do with ambiguity. Okay? You need to separate those two if I'm to be protected. You need to separate the management act, management plan act, from the water shortage concerns, and then you'll proceed. The idea that you should set policy in a budget, regarding hardship, creates confusion. We need to avoid that. The Water Use ... the priority list has a provision in it regarding hardship, it sets standards. It says at 16.106.08, Waiver of Modification, and it tells you the standards. And you could put that in a plan, but not in a budget. So I'd ask you to separate these two. I'd go to the provision, but my time is up, and there are significant parts of that, that say, basically,

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you'll never use the money in a budget, based upon the provisions the Director has to come up with in between the time this bill is adopted and the time the budget expires. So it's best to separate them, forget about the budget, and get it done right. I would appreciate your consideration of these thoughts.

CHAIR VICTORINO: Thank you, Mr. Smith. Questions for the testifier? Seeing none, thank you, Mr. Smith for providing your testimony. Next testifier is Mr. George Kaimiola.

MR. KAIMIOLA: Aloha, good morning. My name is George Manulani Kaimiola. And I'm just here as a, well, I should say, upset citizen. I'm upset. First of all, I want to commend Chairman Victorino for sending it back to Committee. That was an honorable thing to do, to take a look at this. What I'm upset about is that the Budget Director is quoted in an e-mail in *The Maui News* says, we appreciate that the Council recognizes the importance of this bill. I will continue to work with them to help resolve any issues. And Water Supply Director Dave Taylor in an e-mail following the meeting, because the water shortage bill requires a designated rate structure in the annual budget, there are no practical impacts of sending the bill back to committee as long as the bill is passed before July 1st when the new budget takes effect." So you know what that tells me? This is not about water conservation as much as it is about raising revenue. That's all it's about. You guys are disguising it. All right, there's some, I looked at my water bills ... 10,000 gallons, I'm charged \$1.75 for the first 10,000 gallons that I use. After that, it's \$3.20. After that, after that next 20,000, it's \$4.60 so you already have things in place. If you're gonna do a water conservation thing, and on my next bill, this current one, I'm being charged \$1.75 for 9,500 gallons. If you're gonna conserve water, just say if you don't use less, we're gonna charge you more. It's already here. You don't have to do this. You're just trying to raise revenue, you know? Stop disguising it. I'm upset. I was walking around the house for three days, kept reading this thing, making sure that I read it correctly. That's all it's trying to do. You know, there's things already in place, where you don't have to go ahead and raise the rates. The County's gonna raise it 3 percent. Like I said, I'm a foster parent. Education in the schools, I was glad to see an article in the newspaper about dealing with schools and teaching the children about water conservation. I'm knocking on the doors. I'm now doing my part, knock -- "eh, get out of the shower, you've been in there too long. There's things that we can do. I even told them how to wash dishes. You wash all the dishes first, then you dry 'em, then rinse 'em all one time. Don't leave the water on and wash the dish. Just like brushing your teeth. All those simple little things, we can conserve water. We don't have to do this. I'm just upset. And, it seems like you guys are trying to sell us oceanfront property in Arizona, or asking us to buy some bridges over into Hana. Thank you.

CHAIR VICTORINO: Thank you, Mr. Kaimiola. Any questions for the testifier? Seeing none, thank you very much --

MR. KAIMIOLA: Mahalo.

CHAIR VICTORINO: -- for your testimony. Next testifier is Mr. Carver Wilson and he is representing the Farm Bureau.

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MR. WILSON: Good morning, everyone, I'm Carver Wilson, President of the Maui County Farm Bureau. And before I start, I just got the newest issue of *Sunset Magazine*. And there's a double-page spread right here that features, it's called, "Edible Maui," and it features highlights of everything from Ulupalakua to Winery, to over to the Kula Botanical Garden, and to Grandma's Café and to Chauncey's and Monden's food stand up in Rice Park area in Kula. I think this is really great; it's emphasizing development of agriculture on Maui. We like that. We, I represent farmers and ranchers in Maui County who are worried about having enough water. As we work toward a common goal of more self-sufficiency in our food supply and horticultural products, we will need more water. When it's raining, we don't need as much as when it's dry. And during summertime and drought periods, we are going to need more. Currently, cowherds are diminished, as pastures have been dry for a long period of time. If we could use some of the water to irrigate the pastures, those herds might not have been sold off, and our stores would have carried more Maui beef, and we would have more jobs. Therefore, we support more source development. Water is an expense. Frankly, it's expensive -- more expensive on Maui than elsewhere -- and we're keenly aware of that. Conservation is important. We support those measures, we would like to see incentives for conservation, and like George, we feel the pain of increased water rates. We want more efficient County government that invests properly and is good at it. We have confidence in the Department of Water to monitor and manage water resources. We do support the concept of the Water Department Director, managing periods of water shortage. Thank you.

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

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you, Mr. Wilson, for being here. You made a comment that I'd just like ... if you could help me understand how to do this. You said we should have incentives for conservation. What's your thoughts on incentives for conservation? Because it's my understanding that this bill is essentially incentives for conservation, more on the ... you know, if you use too much, you're going to get punished side. You know, a previous testifier says, you know, he conserves all the time, which is really good, there's a lot of us that do. But what about those who don't? How do you incentivize them to do that?

MR. WILSON: Well, I think that the bill fundamentally, or what's been presented before has said there's gonna be punishment from using too much water. But the, you know, like in farming, in the past, there's been a lot of usage of overhead sprinklers, which are inherently ... water, you know, they use a lot of water that way. A lot of it goes to evaporation. So if you said, hey look, if you convert to drip irrigation you're gonna lower your, be more efficient, you're gonna lower your water usage, and maybe you should get a discount on your water bill to do that. Or, if you say, "well, we want to do a landscaping at our property or in the County, or whatever, maybe we should focus solely on plants that don't use as much water. And maybe there needs to be some acknowledgement of that. Maybe there needs to just be, maybe it's publicity, maybe it's money, things like that, but I think, those are two examples that I would point out.

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COUNCILMEMBER COUCH: And those are great examples, and Mr. Chair, if I may, the issue is, if we say, oh yeah, we'll give you, you know, notification in the paper, et cetera, that's not a lot of incentive for a lot of people – they don't care. Unless you can help me out, because my only way that I think we can truly incentivize people, is to say look, you will get a break – which is what this says – you will get a break at this level, but once you go over that level you...

MR. WILSON: Well, I think, I think, you know that even though, even though we use, say systems or like drip irrigation, which is more common now than it was 30 years ago, using more of those kinds of methods – that's really important because that reduces the overall demand for water. And so whatever we can do, whether you get a tax benefit, whether you get an acknowledgement, or you get a break in your water bill, that's really important. And that's what we want to have in our community. We want people to employ measures that are gonna use less water. I don't know exactly all the ways that you can design the features, but to me the pocketbook is one way to --

COUNCILMEMBER COUCH: Right. And that --

MR. WILSON: -- to incentivize that.

COUNCILMEMBER COUCH: Okay. That's kinda what I was --

MR. WILSON: Yeah.

COUNCILMEMBER COUCH: -- what I was, seeing if there was another way. But it appears not, it appears the way we're doing it is the way to go.

MR. WILSON: Well, I think, I think also, people need to acknowledge and be educated towards that. I mean think that having acknowledge, public acknowledgement that you're doing the right thing, it makes people proud of what they're doing.

COUNCILMEMBER COUCH: Oh, to people who...

MR. WILSON: Yeah.

COUNCILMEMBER COUCH: Okay. Understood, thank you.

CHAIR VICTORINO: And I think right now, we, you know as far as incentives, I think that, you know, we've talked about it and we've worked on it. And, in fact Mr. Taylor can say we've had some success in the last few years, which has also been a negative in the sense that we saved 3 or 4 million gallons a month and people conserved but then operational costs still rise, so you get this dynamic of, you use less but you get less revenue, but costs go up, now where do you come again.

MR. WILSON: That's a common, you know...

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CHAIR VICTORINO: Yeah, yeah, a common problem in business in general. I know that's, that happens in your business also, sir, so --

MR. WILSON: Yeah.

CHAIR VICTORINO: And it's, but I think right today what we're looking at is, this is a methodology I think the Department wants to have in hand when there are water shortages, that they have some action to ... if you want to use for a less of a better term, and I hate to say it this way, but they want to force people to stop using water or cut back immediately. And I think that's what this whole bill was trying to do. And I think as we move on, I think that's what it's going to come out to be. So, anyhow, any other questions for the testifier? Seeing none, thank you, Mr. Wilson for being here.

MR. WILSON: Thank you.

CHAIR VICTORINO: Appreciate that. The last testifier we have signed up, in the Chamber, is Ms. Rosemary Robbins, and she is a concerned citizen, so please come forward. And if there's anyone in the Chamber that wants to testify, please sign up. I will give you one more opportunity after Ms. Robbins. Good morning, Ms. Robbins.

MS. ROBBINS: Good morning, everybody, good morning. It's unanimous that the community is happy that this got recommitted you're hearing that from everybody here this morning and it's loads of other talk out there. Thank you for having done that. I was going back over some materials the other day, and I found 1982 Maui County Annual Report. Okay, and, there are pictures in here and statements saying, an 8 million gallon per day Kamole Weir Treatment Plant will begin to provide clean -- into -- clean domestic water to the Upcountry area. And that they were seeking a way to provide water for Upcountry areas during droughts and now, are undergoing a study. So, that's 41 [*sic*]years ago for the study to have come to fruition and then, react. But people are not feeling in the community, that the action is taking place. And I was off-island, with a death in the family, for the Kula Community Association meeting, but a multi-generation person Upcountry talked with the Water Director and just said, where's the action? We've been waiting, and waiting and waiting. Valid question, because the actions that are being proposed are nowhere near within the logic and the face fact realities of the people who are living up there. And yesterday, I was talking to a woman when her mail got delivered, now this was certified mail, coming from the Deputy Director of the Water Department and it told this family that they could -- and this is good news -- they could now go ahead and get their water meter. That's the good news end of it. Bad news end of it was that the piping was not up to Code, and that they had 30 days in which to respond. Well the date, I read this, the date of the notification was on the 5th of March. It wasn't mailed until the 11th. She received it on the 12th. So out of her 30 days, one week evaporated. I mean, I read the notice, and I watched her open the envelope. So the math then, there, not good. Another case of just upsetting the folks up there. People are getting pay increases while their family members are getting decreases, it would seem, in pay and yet something as simple as getting the word out to the people who then

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are left to act on it. So we need to do better. We know that. I also found “Emergency Planning and Community Right to Know Act Overview”. For the people who think that this is not a very ... what do I want to say ... open set of information data that comes out to them. This is from the EPA, and it’s very nicely done, so I would hope that people are reading, people in the Department and on the Council are reading those. Also, I found from the *Star-Bulletin* that they talked about the City maintains 2,000 miles of pipes, 1,000 of them are more than 40 years old. That’s got to be kind of true of what we’re dealing with on Maui too. When the oversight advisory committee from the EPA was working on this, they kept talking about the aging pipes. Not a whole lot of stuff done on that. So, we’ve got a model ahead of us and the board of water supply in that county is very active in this. We don’t have any board of supply included in the address, people on this island, so we need to do better. So, one more time, thank you for having recommitted this for us to be there today, there’s also a piece that I think would be helpful, I don’t know if...

CHAIR VICTORINO: Ms. Robbins, can you conclude please?

MS. ROBBINS: Yeah. On the nonpoint source program and grants guidelines for the states in the United States and the territories, they’re telling us how to get the money for this. So, there’s the title of it “Nonpoint Source Program and Grants, Guidelines for States and Territories” let’s take advantage of that.

CHAIR VICTORINO: Okay. Thank you, Ms. Robbins. Questions for the testifier? Seeing none, thank you. And I would like to take this moment, and I humbly apologize, the Vice-Chair, Mr. White has entered the room and I forgot to introduce you a few minutes ago, and I apologize.

VICE-CHAIR WHITE: No problem, Chair. Good morning.

CHAIR VICTORINO: Okay, any more testifiers in the gallery, anyone who’d like to testify in the gallery? One more chance. Seeing none, then I will go to the outlying districts. First of all, I’ll start with Hana. Dawn, do you have anyone who would like to testify?

MS. LONO: The Hana Office has no one waiting to testify.

CHAIR VICTORINO: Mahalo. Denise, do you have anyone in the Lanai Office who would like to testify?

MS. FERNANDEZ: The Lanai Office has no one waiting to testify.

CHAIR VICTORINO: Mahalo. Ella, anyone in the Molokai Office who would like to give testimony?

MS. ALCON: No one’s here waiting to testify on Molokai.

CHAIR VICTORINO: Thank you, ladies. And with no objections, I will ask the Committee to, if I have your permission to close public testimony.

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COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

**ITEM NO. WR-18: WATER USAGE DURING WATER SHORTAGE
DECLARATION (Bill 13 (2013))**

CHAIR VICTORINO: Thank you. Alrighty. Okay. As you well know, I, last week or two weeks ago this past, this coming Friday, asked for this bill to be re-committed, and there's a lot of revisions and a lot of changes that I will be proposing. So if you will indulge me, I'd like to go over and encapsulate the changes and ... do they have the newest revision yet? You haven't sent out the newest revision from Mr. Kushi?

MS. WILLENBRINK: Chair, that will be handed out.

CHAIR VICTORINO: After I, we get to that point? Okay. I was giving instructions and I'm jumping ahead of my instructions. Sorry. Okay. Members, again, as you are aware, at the Council Meeting of March 1st, I requested that Bill 13 entitled, A Bill for an Ordinance Amending Chapter 14.06, Maui County Code, Relating to the Declaration of Water Shortages be recommitted. After considering all testimony that we have received and hearing the serious concerns of many of our constituents, I transmitted a correspondence dated March 7, 2013, attaching a revised version of the bill for the Committee's consideration. The revisions are meant to clarify provisions in the bill, provide accountability for decisions made by the Director, and clarifying the violations section. Mr. Kushi has suggested further revisions, especially to the violations section, which I will hand out later in the form of a floor amendment. Today, because of such important measure, and because the matter has come back to the Committee twice, I will be asking for a motion for any amendment to the proposed bill. I think it is important that we have clarity stated for the record. I will begin by entertaining a main motion to initiate discussion and then, with your indulgence and patience, I would like to explain all the revisions that I have proposed. Next, I would like to submit the floor amendment based on input from Corporation Counsel, and after all of that is taken care of, I will open up the floor for discussion with your permission. No objections? To this point, no objections. Okay. So I will start by this, Mr. White, I will entertain a motion to recommend the passage on second and final reading of the bill designated on today's agenda as "Bill 13, Draft 1".

VICE-CHAIR WHITE: So moved, Mr. Chair.

COUNCILMEMBER COUCH: Second.

CHAIR VICTORINO: Thank you. We have a motion by Councilman White and seconded by Councilman Couch. Now, I'm going to repeat the motion. . .okay. Why would I have to repeat

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the motion? Okay. That's what the script said so I don't think I have to do that, moving right along. Thank you.

VICE-CHAIR WHITE: Chair, point, point of clarification.

COUNCILMEMBER COUCH: Yeah.

VICE-CHAIR WHITE: Do we. . .is this. . .are we working off the bill that's...

CHAIR VICTORINO: I know that was gonna come up and let me be, let me assure you I'm gonna go down through this on the bill you have in front of you right now and then, I will then ask for a motion to amend, and then I can pass out the second, or the amendment that Mr. Kushi has proposed. I, I know this is. . .but I'm following --

VICE-CHAIR WHITE: But --

CHAIR VICTORINO: --the script that I was instructed to follow.

VICE-CHAIR WHITE: --I'm just wondering if we can. . .since we don't have the bill, the amendment that you're gonna pass out, can we take a recess and read through it or how. . .I don't know how long it is but.

CHAIR VICTORINO: I don't know. I'm gonna take a recess at this point anyhow. Thank you.

VICE-CHAIR WHITE: Okay.

CHAIR VICTORINO: Two minute recess.

RECESS: 9:31 a.m.
RECONVENE: 9:34 a.m.

CHAIR VICTORINO: . . .(gavel). . . The Water Resources Committee meeting of March 13th will reconvene. Members, I've passed out the floor amendments for which we are going to be proposing, but I would like to continue reading the script I have so that we are clear in what exact steps are being taken. I know this is somewhat unorthodox, but we want to make sure that both the public and yourselves are clear on what we're attempting to do...okay? Now, first of all, Members, if you will turn to, your attention to the bill attached to my March 7th correspondence, I will walk you through my proposed revisions. I am not asking you for acceptance or for your revisions yet. Subsection 010(A), which includes the words "County water systems", to clarify that water shortages could affect an entire water system or just one area served by the water system. I also thought it is very important to distinguish between mechanical and infrastructure failure. So that's what that one was first of all in Section 010(A). In Subsection 010(B), I added the language stating that the consumer affected by a Stage 1 water shortage may be subject to the provisions of Chapter, of this Chapter, but the consumer affected

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in Stage 2 of the water shortage emergency shall be subject to the provisions of the Chapter. That was 010(B). Now, I added in Section 010(C), to require the Director to report back to the Council. And this was very important in my mind, that, although I have the utmost confidence in Mr. Taylor. But I think the Council should be notified when the water shortage has been declared, what remedies, you know because you not only talking about droughts, you're talking other issues, and what remedies and what steps are being taken to mitigate the issue. So, I think that's why I wanted the report back to the Council. In Section 030(B), I revised the notice and publication requirement to make, to be made weekly rather than bi-monthly. These were the revisions that I proposed. Now, Ms. Willenbrink already has handed out the proposed floor amendments. And at this time, I would ask Ms. Willenbrink to read the floor amendments that were presented by Mr. Kushi, and the rest...and then, we can start into the discussion as far as the rationale of these. So, Ms. Willenbrink, would you read the floor amendments that Mr. Kushi has brought forward for us?

MS. WILLENBRINK: I can, Chair. Can you first make a motion and then I'll move into that?

CHAIR VICTORINO: Oh, I apologize again. You need, we need motions to do these things. I will, in Draft 1 of the bill, wait, where am I now? I would like to make a motion to accept the amendment as summarized in...okay. I'm sorry.

COUNCILMEMBER COUCH: Mr. Chair, point of order. Can we have...

CHAIR VICTORINO: No, just hang on, hang on. I'm gonna take another recess. . . .(gavel). . .

RECESS: 9:37 a.m.
RECONVENE: 9:46 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resources Committee of March 13th will reconvene. Thank you for that short recess. And moving on, I would now like to make a motion to revise Section 14.06.02 to strike out the first words use "may" and to insert the phrase "is authorized to" and to place and revise Section 14.060.040 to, by striking existing content in its entirety and insert the following, and Ms. Willenbrink, would you read the following measure as far as the. . .well, if I could have motion and then we will then read the whole motion.

MS. WILLENBRINK: Chair, I can read it and then you can move...

CHAIR VICTORINO: Okay, go ahead, please.

MS. WILLENBRINK: To finish the Chair's motion, and insert the following in its place:

- A. Any consumer violating the schedules, restrictions or measures established by the Director, pursuant to this chapter, may be charged with a violation and upon conviction thereof, shall be subject to a fine of not more than \$500 for each violation.

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- B. The water meter of any consumer who has been convicted in accordance with section A above, and has subsequently been charged with another violation of any schedule, restriction, or measure established by the Director pursuant to this chapter, may be removed by the Director, subject to the opportunity to appeal such water meter removal to the board pursuant to Chapter 14.11 of this Code.
- C. Any water meter removed pursuant to this chapter and thereafter reinstalled shall be subject to a \$100 reinstallation fee.

CHAIR VICTORINO: Okay, that's the motion.

VICE-CHAIR WHITE: So moved, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR VICTORINO: Okay, it's been moved by Councilman White and seconded by Councilmember Couch. Okay, moving along. The reason, okay, let me go with the reason. The revisions in Section 14.06.020 is necessary to be in accordance to Section 14.06.010 relating to the Director's authority to declare Stage 1 or Stage 2 of water shortage. So, that was the rationale for that amendment. The revision of 14.06.040 also necessary for the following reasons. One, requiring a prior conviction prior to water meter being removed indefinitely establish the violation has occurred. Two, the requirement of the Director to prove violations has occurred for seven consecutive days was not feasible, so that was removed. And three, for fairness and efficiency, the violator is provided with an opportunity to come into compliance with Chapter 14.06 prior to the removal of the water meter. So, that was the rationale for that amendment. At this time, I would like Mr. Kushi, I will allow Mr. Kushi now to give some statements on this, and then Mr. Taylor, and then I will open it up to questions from the Members. Mr. Kushi?

MR. KUSHI: Yes, Mr. Chair, Members. We've had lot of discussion on the revisions to the bill, specifically the one that, your, Mr. Chair and the Staff just read. After reviewing the initial bill, that was attached to the Chair's March 7th transmittal, our office had lot of concerns. Again, let me kind of highlight the differences in the March 7th attachment and the one you had handed out today. First of all, the difference ministerially requires the Director to after the fact, report back to the Council. For what it's worth, I think it's an administrative duty. And I think you have the right to know what happened and the violations that occurred. We haven't talked to staff yet, Water Supply staff, but I'm sure he'll comply. Secondly, the differences in the Stage 1 declaration and the Stage 2 declaration. Stage 1 declaration, which is based on a calculated percentage of demand and supply, if that occurs then the Director may impose restrictions, measures, schedules as well as implement the higher rates. If it's Stage 2, which is over 20 percent demand and supply then this new bill calls for a mandatory imposition by the Director to impose such fines, schedules and/or fines and restrictions. That's for your Committee to digest and decide. It does impose a duty on the Director, if that's the case. The other big difference, well, a couple. The March 7th version, as far as publication is concerned, had a provision that in cases of drought, there must be a seven-day prior notice period. In all other cases, there was a five-day weekly publication that caused some concerns in terms of if it's not for a drought

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reason, can you publish after the fact? So we cleared it, cleaned that up and just said basically, publish weekly for the duration of the water shortage period. In all cases, an advance notice in all cases. The last provision, amendment had to deal with penalties and violations. The March 7th version, in our mind, was very confusing in that it called for a, before the Director could impose any violations or sanctions, a consumer had to violate the schedules or measures for seven consecutive days. Question became, what if he violated for six? You mean to say, I could violate something for six days, and no harm, no foul? Or six days, I rest one day and I'll do it another six days? It caused for, it may create the scenario of a serial violator, so that didn't work out. The other situation was after being given a notice of violation, the consumer had 48 hours to comply. Why even give him a notice then? You know, a violation is a violation. There's no compliance. You got caught. So we took all that stuff out. However, because of the harshness of a possible meter removal, your Chair and Staff and our office sat down and created a so-called graduated penalty scheme, wherein, if a consumer has violated the schedule – and we're not talking about rates. Because rates will come down the line, you know, you use more, you get charged later on. But let's say the Director has called for no watering during afternoons, from 1:00 to 3:00. And you get caught. Then you'll get a notice of violation. And this notice of violation is taken to the District Court. And if it gets convicted, by the District Court, by a judge, not by the County, unfortunately, we cannot convict anybody, then it's on record. If the person then subsequently, after conviction is charged with another violation, then at that point in time, the Director will have the authority to attempt to remove that meter. That meter removal will be subject to the consumer's right to appeal to the Board. In the worst-case scenario, talking to the Director, if the situation occurs Upcountry, for instance, and we remove the meter, and the person appeals to the Board of Water Supply, the Board confirms the Director's removal, we yank the meter. That person goes back on the waiting list, which at this time, there's no waiting list. Okay, so, that's a drastic measure. But yet, it calls, some instances may call for that kind of provision. In both cases, you notice, it's at the Director's discretion. It's not shall cite, it's not shall remove. It's may remove, may cite. But before you can attempt to remove the meter, he has to be convicted first. Those are the comments, those are the revisions that we submitted to you.

CHAIR VICTORINO: Thank you, Mr. Kushi. Mr. Taylor?

MR. TAYLOR: Thank you, Mr. Chair, I just have a few comments. I'd like the Council to remember that the existing ordinance -- it's on the books now, it's been on the books for a very long time -- has the same issues of penalties and restrictions and Director authority. Our main purpose in presenting this was the Stage 1 and Stage 2 rates. That's really the intention we had of making these changes. We can support the bill in its current proposed format. It still meets the intentions that we intended. So a lot of these issues that Mr. Kushi was talking about, I think still exist under the current ordinance. It's not something new we've proposed, I think these issues have always been floating out there and maybe they were just sort of not looked at very closely. In the big picture, especially in light of some of the public comments, we have tried to take these water issues and show the community and the Council that there's no one thing that has to be done. There's no one ordinance to change that fixes everything. No one project, no one rate increase. There's a couple dozen different things that have to happen in concert to untangle

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these decades-long problems. This bill is not intended to be some great solution. It's just one piece of the puzzle that has to come together. So, it is important that we have some control over management of water during these emergency measures. Without it, it weakens the whole effort. But, it is not meant, to be a general revenue generator. It is not meant to solve everyone's problems. It is just one piece in this, in this overall puzzle. And perhaps, after budget, if this Committee wishes, I can come back with another presentation and try to tie all these pieces again together if that's needed by the community. I realize how complicated it is, it's probably one of the most complicated things this Council has faced is these couple dozen little things that have to come together that are happening in different committees and different time periods and if the Committee wishes me to try to take another stab at tying it all together and explaining it, I'm certainly willing to do so. So, we do support this as written, or as proposed, and I think it still meets the general intentions of the big picture plan that we're trying to move forward with.

CHAIR VICTORINO: Thank you, Mr. Taylor, and thank you, Mr. Kushi. At this time, I'll open the floor up to the Committee members, starting with Mr. White as the Vice-Chair.

MS. WILLENBRINK: Chair, could I?

CHAIR VICTORINO: I'm sorry.

MS. WILLENBRINK: May I interject?

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: At this point, it might be wise to limit the discussion just to the amendment, the floor amendment, because there's a motion on the floor that will need to be voted on, and then you can get back to the full picture after that.

CHAIR VICTORINO: Okay, I think that's a great suggestion. So, let's keep it to the amendment and then we can move to the main motion after that. Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. I think the amendments are responsible and I'm okay with them.

CHAIR VICTORINO: Any other questions from the Members? Seeing ... yes, Mr. Couch?

COUNCILMEMBER COUCH: This has to do with, where it says any consumer violating the schedules, restrictions or measures established by the Director pursuant to this chapter, my question is more of, what schedules, restrictions or measures and is this whatever he decides to do, whatever the Director decides to do is, and without any oversight from anybody? That, I have a little bit of a concern, not necessarily by this Director, but if you get a Director in there that says, okay, we're going to have a water shortage, and these are what I say we're gonna, the restrictions, who has oversight over that?

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CHAIR VICTORINO: Well, that's one of the proposals that and we'll add another amendment to this amendment that would have to, the Director has to come back to the Council. And, you know, tell us exactly what he's doing, how he's doing it--oh, he or she, I should not put gender there--how he or she are doing, and what they were doing to mitigate the problem, et cetera. So, that's another idea that we're going to propose a little bit later. So that, this Council or the Council would have some idea or some methodology to sit there and say, hey, wait a minute that's not right and why.

MR. TAYLOR: Mr. Chair?

CHAIR VICTORINO: Yeah.

MR. TAYLOR: If I may add, I mean this is the language I was talking about. That's existing language in the existing bill, that's been in there for decades. So, I share the same concerns of, has the Director always had this wide authority to do whatever the Director wants with no oversight? Part of the purpose of this bill is to at least have the Council pass legislation that defines the Stage 1/Stage 2 water shortage rates so that there is absolutely some direction, policy direction from the Council that doesn't just leave it up to the Director's whim.

COUNCILMEMBER COUCH: And again, Mr. Chair. Even though, we're talking about it in the context of this amendment, so but this goes to more of the whole thing, is I thought the whole idea was that the rates were going to be kind of the hammer and if somebody says, I'm fine with spending a lot more, that helps the Department. Or are we going to say, look, you just plain and simple can't use this water, this much water, you have to cut back. There are two separate issues there. There's incentive by you know, pretty drastic rates, and if somebody feels that they can afford the rates and want to still continue to use the water, then more power to them and to the Department because you're going to get more funds to increase the source, potentially. Or is it, hey, we just don't have the water, no, stop, you just can't use more than this much water. Then where does that put our farmers, et cetera? So those are some of the things that I'm not sure what methods you're gonna use. Are you using both of them or where we are with that?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: Mr. Couch's question is something we debated long before you saw this bill. And the bottom line is, we need you to conserve or. . .and what do we fill in after "or". . .or what? Or we charge you more money, or we take your meter. I mean, that's all there is. They're not going to go to jail, it's not going to be a criminal act. It's either going to be take their meter or charge them money, whether it's a fine or a higher rate. Realistically, taking their meter, making their property unusable is a pretty extreme penalty for over water use. So, I think realistically we felt, look, it's gonna be money. It's either gonna be higher water rates, or it's gonna be some fine. And again, if somebody is a billionaire and they want to pay a hundred thousand dollar fine, then it's still money. So, at the end of the day, we felt that all there is, is money, because realistically, are we really as a County going to be saying, well, you watered your lawn on a Tuesday when we said it's illegal, so you know, your house is now worthless because we took your meter. That

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seems pretty unrealistic, so at the end of the day, it's gonna come down to money. It's either gonna be a fine or a higher rate. And if people are really, really wealthy and don't mind paying the fine or the higher rate, I don't know that there's much else we can do.

COUNCILMEMBER COUCH: Yeah, and that's my point. Mr. Chair. And the issue is, that's fine for a family home or whatnot. But we have two other issues, one that I was going to bring up later, but we have our farmers that in times of drought, they don't get the rain, so they need to use more water to continue to grow, or are we saying, you know, you have to pay more to grow your food, that's one. The other we can talk about later, is multi-family units, which is another whole big story. But right now, it's like you say, it's the money. But what happens to the guys that need it the most to sustain folks here.

MR. TAYLOR: Mr. Chair, if I can answer that?

CHAIR VICTORINO: Go ahead.

MR. TAYLOR: Our intention of answering that question is -- and this is where it gets complicated -- is not within this bill. It'll be within the actual shortage rates in the budget. If the Council shares that concern that during drought, you don't want agricultural users to have any increase during Stage 1, you can make the Stage 1 and Stage 2 agricultural rates identical to the normal rates.

COUNCILMEMBER COUCH: Okay.

MR. TAYLOR: You could make them less than the normal rates. So, that's going to affect, you know, our management of how many meters we can give and how much we're allocating, but it was always our intention that, that debate about who should contribute to the solution and by how much, the actual policy within the Stage 1/Stage 2 rate structures themselves. This just enables there to be a rate structure. That discussion really needs to happen when you set those rates.

COUNCILMEMBER COUCH: Okay. He did say something that I, if I could follow up?

CHAIR VICTORINO: Well, make it quickly because other people have questions.

COUNCILMEMBER COUCH: I understand that. You said issue meters. During this Stage 1 or Stage 2, is there going to be a moratorium on issuing meters or are you still going to continue to issue meters?

MR. TAYLOR: The Stage 1/Stage 2 will have nothing to do with meters. I mean, if you think about it, by the time a meter's issued, by the time somebody builds, you know, that water use isn't until a long time later. So this has nothing to do with general meter issuance. For the Upcountry situation, when we put on our big presentation for our solution for Upcountry, there is a unique situation Upcountry where we found that by changing operations, doing some CIP projects, et cetera, we can support a certain amount more of water. That water, as I've explained to the Council, can either be used all for saving for drought, can be used all for meter issuance, 50-50,

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60-40, whatever. So, if, by the time we get through budget, you take, you lessen the force of the water shortage rates and you're essentially, if you essentially tell us, look, you want to save this extra water we can provide for drought protection. Well we're gonna have to down level the number of meters that we can support, because we've decided to use that found water to supply drought water, not to issue meters. So, there is a link that is indirect, but it's real.

COUNCILMEMBER COUCH: Thank you, Chair.

CHAIR VICTORINO: Okay, Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, this is probably one of the most complicated pieces of legislation that I've encountered in my long time here. Not only is it hard for us to comprehend totally, but it gets more confusing every time we discuss it publicly and when we have people send us e-mails, or come and testify, or whatever. They keep presenting a unique situation and so it gets muddier and muddier. But I'm trying to focus. What this bill is about, we believe, is conservation. Okay, if that is the bottom line, and not about money, we have had people come here and comment and express that concern. That, yes, we're talking about conservation, but your real hidden agenda is you want more money. So, let's give ourselves the benefit of the doubt and the bottom line is conservation. Okay, if the bottom line is conservation, then the monetary penalty, in a water shortage, if you continue to use more, or you increase your use or whatever, you're gonna pay. Because we're gonna structure rates so that you pay more. Then comes this issue of a penalty, which would be on top of paying more, if I understand this correctly. Is that correct?

MR. TAYLOR: I think those could be simultaneous, but I don't think it's on top. My understanding, and Mr. Kushi can correct me, if we initiate the Stage 1 or Stage 2 rates, that's it. There's no way to get out of the penalty. ...*(Inaudible)*... . This ordinance also allows us to not do Stage 1 or Stage 2, and let's say it allows the Director to say, no watering lawns on Monday, Wednesday, Friday. That would initiate penalties, as Mr. Kushi explained --

COUNCILMEMBER BAISA: Right.

MR. TAYLOR: --for watering on Monday, Wednesday, Friday. So, there's a number of different things that this allows. One is the shortage rates which have no penalty attached.

COUNCILMEMBER BAISA: Right.

MR. TAYLOR: The other is specific actions, those actions could have a penalty attached.

COUNCILMEMBER BAISA: See, I think that's very important, that we understand that it's not like this, it's like this. And people would have the opportunity, I mean you would have the opportunity as Director, to either go to the shortage rates or possibly incur penalties because you're watering on Tuesday and you're not supposed to. You know we've been down this road before. And I have another question. Just adding to this discussion. In the past, we've had

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Water Directors who issue whatever you want to call it, a temporary rule, or whatever, and they say, okay, you have to cut your water use by 5 percent. You can't water your lawn, you can't wash your car, you can only water on Mondays and Fridays or whatever that is. How much of an impact has that had? I'm trying to remember back to when our former Water Director tried that. And I understand that, initially, there was quite a drop in the amount of usage. What is your take on that?

MR. TAYLOR: I don't know the historical facts of what's happened in the Department, when and how it's ... whether or not it's worked or not. What I do know from our Department is mostly anecdotal. Most of what I know comes from the other cities and towns across the countries that are in the same boat. And there's much, much, much discussion at national conferences like American Water Works Association, and I think I went to a whole half day, in fact I think at the last conference Chair Victorino and I spent the whole last afternoon in a whole session just on this. Our industry struggles with this, because what we really want is something that doesn't exist. We want all of our meters somehow hooked up to a central computer where we could say, look, we're in trouble, you know, squeeze their meter so not as much water comes out. There is no technology to do that. We can't force people to change their behavior. The only way our industry is reacting to this is with money. With carrot and stick. That is where our industry is going because nobody is really having good results trying to have people drive around and be water police. Monday, Wednesday, Friday watering, don't water your lawn, trying to prosecute people for these things, it's just ... it's just not realistic when you have, in our case, 35,000 meters scattered all over the place. There is just no way for us to do this. So, where the country's going is rate structures to use rates to get people's behavior to change.

COUNCILMEMBER BAISA: Okay, wait. Let me follow right there. Based on what you just said that it seems like rates is the way you control this. And this penalty piece would seem to be something that would be used very rarely, because it would be something that was really, really bad.

MR. TAYLOR: As I mentioned earlier, the penalty piece was always part of this bill, we didn't propose that. What we proposed is the Stage 1/Stage 2 for the real purpose is as Water Director, I really wouldn't even know how to actually implement the Monday, Wednesday, Friday with penalties. It seems so impossible to implement. If there was no bill, I wouldn't have included that in my proposed bill. But it was already there, and I didn't take it out. It's not my intention to use it because it just seems too hard to use. The whole point of the Stage 1/Stage 2, is that is implementable. So we want to add that because it is our intention to use that as the primary means, and frankly my feeling is if you took the rest out, I don't intend on using it, maybe some other Water Director would. But it looks so complex to try to implement that I have no intention of using it. I would like to use the Stage 1/Stage 2 water shortage rates, because that is implementable.

COUNCILMEMBER BAISA: Good. I can tell you that those other things are not easy to implement. When my husband was at the Water Department he was a water cop, and it was not fun. But the other, of course, would be much easier to implement because you have the records. So, anyway,

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Mr. Chair, this is a tough one and I think we're gonna have to talk about it a lot to understand it. Thank you.

CHAIR VICTORINO: Okay, thank you. Before I go back to you Mr. White, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Thank you, Chair. Just to help me understand, clarify, so if we're talking conservation, in your mind, the only way you can get the consumer to conserve is by rates. And then you mentioned also that we don't have the funds to have the water cops, if you want to call them, or enforcers. But if I understand this Code is, and correct me because I'm not very familiar, if we decide or you decide, you're gonna be the authority in all this. So you are to also be the enforcer and then you will take the consumer to the District Court. Is this how you interpret it?

MR. TAYLOR: The way it works in the County, is, my experience has been, we gather the information, we pass it along to Corporation Counsel, and Corporation Counsel takes that actual legal enforcement action. We don't have ticket writing authority, so it's a, I think they call a civil action where we pass it on to Corp. Counsel and say, there's been a violation and they have to take it from there.

COUNCILMEMBER CRIVELLO: So, Chair, so am I to understand then, with your understanding of having the Stage 1 and Stage 2 that it be very ... it can limit the actual conviction?

MR. TAYLOR: The beauty of the Stage 1/Stage 2 water shortage rates is there's no conviction. You're just getting a bill. And the bill is higher than it would have been if we hadn't called the Stage 1 or Stage 2. If you don't pay your bill, it's just like not paying any other County bill, we have a set action that already happens, whether it's sending you a letter, pulling your meter, you can appeal to the Board, just like if you don't pay your water bill now. So, it leaves out any sort of court action. It is just changing the billing structure. Which we're already built to do that, and so we don't have to change any of the business infrastructure that's already being implemented. You just are notified that if you don't change, you're going to get a higher bill.

COUNCILMEMBER CRIVELLO: And who determines those tiers? Is that set up here or is that going to come up in...

MR. TAYLOR: That you will see when you get the Mayor's Proposed Budget later this month. There is a portion for rates and fees, where the Council sets the rates and fees, all the normal tiers, plus you'll see this year, the Stage 1 and Stage 2 proposed rates for those. So, this body, or the Budget and Finance Committee and ultimately the Council decides that.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR VICTORINO: Thank you. Mr. Guzman?

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COUNCILMEMBER GUZMAN: I think Councilmember White was waiting for his turn. And I'll go after him, I'll yield for Councilmember White.

CHAIR VICTORINO: Okay, whichever. Okay, whoever. Go ahead.

COUNCILMEMBER GUZMAN: Okay. I just have a strong issue in terms of the violation penalty section, and this is just my personal opinion. I don't think that's effective at all. In terms of going to the court system, and upon conviction, to me it's just not effective. I don't think it's practical. I would just recommend maybe not even having that section and maybe just possibly just having an administrative fine or fee, or something like that, not having it go through the District Court system. I just don't see it being practical or even effective, because you have to get a conviction, and then I don't know, that's just my personal opinion, I don't think that section is going to be effective at all. And if anybody who is of common sense reads it, they're gonna see that it has no bite to it, at all. It's just wording that looks scary but it doesn't really, in practicality won't be effective. But...

CHAIR VICTORINO: Mr. Kushi?

COUNCILMEMBER GUZMAN: But, in terms of the Stage 1 and Stage 2, I agree, I think that we do need to start looking at provisions in terms of you know, conservation, but that's my sticking point right there, the violation and penalty section. I don't know what schedules, and restrictions or measures are, so we're giving a lot of discretion to the Director to put something out there that could potentially be you know, a conviction on someone's record, having to go through District Court, blah, blah, blah, that's just a lot of discretion out there and I don't know what schedules, restrictions, and measures are. So, right now, I'm opposed to that violation section. Thank you, Chair.

CHAIR VICTORINO: Mr. Kushi? That presently exists in the existing...not this ordinance, but in what section of our Code?

MR. KUSHI: Yes, it's, basically the same as the existing Code which is Chapter 14.06. It's been there for a while.

COUNCILMEMBER GUZMAN: Yeah. No...

MR. KUSHI: In my experience...

CHAIR VICTORINO: So you're not. . .okay, go ahead, let him finish please.

MR. KUSHI: In my experience, I've never seen it enforced. But not to say it can't.

MR. TAYLOR: Mr. Chair, I do have some experience. in the Environmental Management side, the fats, oils, and grease section about grease traps has similar language, to where it's a court action to do something about it. Now there's much, many, many less people involved. But even in that

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Department, it was difficult to go after enforcement, because again, enforcement was, the Department had to put the facts together, get Corporation Counsel involved, take legal action. You can't do this en masse. I mean, if there's hundreds of people, I mean, Corp. Counsel would no way be able to do this. So again, this is why I just think from a practical standpoint, I think probably no one has done it and why it isn't my intention to use it as a primary methodology, because I don't think there's manpower to actually do this in bulk.

CHAIR VICTORINO: Mr. Kushi.

MR. KUSHI: Yeah, Mr. Chair, one clarification. Because it would involve a violation, in a District Court matter, our office, the Office of Corp. Counsel will process the notice of violation et cetera, but once the person is served, it goes to the Prosecutor's Office. It leaves our office. It's a criminal matter. And again, the idea of setting up a administrative fine in lieu of this criminal matter can be done, but then you would have to set up a whole scheme of appeals, a whole scheme of, you may have to amend the Board of Water Supply Chapter, ordinance.

CHAIR VICTORINO: Thank you. And again, just so that clarification, that's not something that we created, it exists. And it was in concurrency with the present Chapter 19. Just so that you understand, Mr. Guzman, that was not something we brought up, it's already an existing part of the ordinance already. You could take it out of here, but it'd still be there. It's not something that you can take from one and then you say, okay, you'd have to remove it from everything, including Chapter 19.

COUNCILMEMBER GUZMAN: No, but Chair, you can have specific violation and penalties for this particular section. You can separate it out. You can have a different violation and penalties section specific only to this area. And that can be done. And I'd...

CHAIR VICTORINO: It's not my choice to do that.

COUNCILMEMBER GUZMAN: Okay.

CHAIR VICTORINO: Okay. So, that just so you understand, that's not my choice, that would be a choice that the Administration would have to decide on. It's not something we make the choice, they make the choice on that. Mr. Kushi.

MR. KUSHI: Mr. Chair, Members, maybe I should say this at this point in time.

CHAIR VICTORINO: Please.

MR. KUSHI: We're focusing on the violation penalties as harsh as they may seem or may be implemented. And this discussion about conservation. This bill is not a conservation bill, okay? You have another section in the Code that sort of intimates conservation. But this bill and the related penalties and violations are due to a water shortage emergency situation. You try to conserve, but again, it only is implemented if the water shortage declaration is made. So, I

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know, you focus on conservation, but it's not conservation. It's conservation measures due to a water shortage. I think the true conservation is that on a regular, day-to-day basis, which former Councilperson Anderson tried to implement several years ago.

MS. WILLENBRINK: Mr. Chair.

CHAIR VICTORINO: Yes.

MS. WILLENBRINK: May I also just point out that the schedules, restrictions and measures are loosely defined in 14.06.020.

CHAIR VICTORINO: Thank you. And again, I want you to understand this is not an easy task we're trying to, you know, and there's no simple answer. And Mr. Taylor has described that. I'm just trying to get accountability, that was the first thing, that you know, there would be accountability, that no Director had unlimited discretion, just what you said, Mr. Guzman. And secondly, that it's just in concurrence with Chapter 19, I wasn't putting anything new in there, I wasn't trying to create, but I wanted to be sure the rationale or the connection was there so that people would see it, you know? Whether he enforces it or not, I don't think I would like to see that either. It doesn't, in my mind, it's not something I want done. But this, again, is the word Water Shortage, emergency water shortage. Again, we're talking conservation, how it affects our farmers, all of that is very understood. That's a different, a different matter. What we're trying to do is try to give him and the Department the ability when there is a major catastrophe to be able to do what they need to do in a time of asking people to conserve water, to cut back, at that point in time, yeah? So, that's what this is all about. No, Ms. Crivello, I have to recognize Mr. White --

COUNCILMEMBER CRIVELLO: Okay.

CHAIR VICTORINO: -- at this time. He's been waiting. I apologize. Mr. White.

VICE-CHAIR WHITE: And this is my first time, I have to point out.

CHAIR VICTORINO: Well I asked you earlier, and you didn't have anything, anything at that point. So—

VICE-CHAIR WHITE: That's true, that's true.

CHAIR VICTORINO: Okay, go ahead Mr. White.

VICE-CHAIR WHITE: I think the thing that makes me comfortable with this revision is that the initial bill that we passed out of Committee earlier that was re-committed, allowed the Director to remove a meter just with a violation. Without a conviction or anything of that sort.

CHAIR VICTORINO: Absolutely.

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VICE-CHAIR WHITE: So, I'm comfortable with this revision. I can't say that I disagree with my legal colleague here, that it's unworkable, but that's precisely why I'm comfortable with it, because the Director can't do anything unless an individual has a prior conviction of a violation, and a subsequent violation, so you know, that gives me a level of comfort, that we can't take somebody's water meter away without significant—

CHAIR VICTORINO: Absolutely.

VICE-CHAIR WHITE: -- action on our part, and significant violation on their part. So, I'm comforted because I don't want to take anybody's water meter away. I want them to conserve water, and I think we've given him enough tools, and as you've mentioned, the rates are a whole other discussion, but that's why I'm comfortable with this amendment as its presented. Because it's tying their hands to the degree that makes me comfortable.

CHAIR VICTORINO: And that was the whole point of the matter. Again, thank you. Again, we've gone in circles, but again, that's what the whole matter was. And when I sat down and I tried to look at this whole thing, I didn't want anybody's meter being yanked just because the Director said, "Oh, I don't think this is, this guy used too much water." So this makes it virtually, not impossible, but very difficult, at best.

VICE-CHAIR WHITE: And if I could point out, you know, we all I think trust Mr. Taylor with being responsible. But what if Mr. Couch became Water Director?

CHAIR VICTORINO: That is a scary thought. Moving right along. Thank you. Ms. Crivello. Mr. Carroll, before I recognize you, Mr. Carroll do you have anything to say? I'm sorry; I've not recognized you and I want to give everybody at least one opportunity for round one. I'm sorry Mr. Carroll. And then you, Ms. Crivello afterwards, okay?

COUNCILMEMBER CARROLL: Thank you, Chair. A very interesting discussion. Our testifiers, I think is what generally what we hear in the community. Even though we only had several people up here, those are the concerns of the community. And that is what we need to be aware of. We're talking about conservation over here; we're talking about all the different things. But the bottom line is, nothing really works unless the community buys into it. And I'm worried about the community's perception of what we're doing, too. When Mr. White said this is rather simple really, but it doesn't come over as simple. Nobody's really sure how, as Mr. Taylor talked about implementation. I don't see any way to really judge how this is really going to work in implementation portion, and that is my concern at this time. Thank you.

CHAIR VICTORINO: Well, again, that was the main concern when we originally pulled the bill back was the exact, you know, so I tried to tailor it, not to Mr. Taylor, but to where it made more sense. And again, it's not an easy situation. Thank you, Mr. Carroll. Ms. Crivello, I'm sorry.

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COUNCILMEMBER CRIVELLO: Thank you, Chair. Thank you, Councilmember Carroll for reminding us of what is the community saying, and what, how it will affect our constituents. I heard Mr. Kushi, as well as you, Chair, saying, "This is not about conservation." I cannot help but when there's a declaration of water shortage, then, we start talking about conservation. So, give me some clarification, as to why we're not talking conservation. So if, Stage 1/Stage 2 is applicable because the consumer failed to conserve, that's how I'm understanding this, then there's the rate charges that's applicable. I also, if I may, Chair, add that I think sometimes when we add some sort of violation and how we convict the alleged consumer or user, is how much more monies will that involve and how drastic do we need to get with ... I have to agree with my colleague Mr. Guzman, yes, it's already there, but I just need to make mention that I think it gets kind of too detailed. And like Mr. Kushi said, most of the time we don't apply it, so why note it?

CHAIR VICTORINO: Well, I think you make note of anything that's important so that someone can't come back later to you – exactly what you just said -- and say, "You didn't say that. It wasn't there." So that was the whole purpose, is redundancy from Chapter 19, so everyone's on the same page. So actually what you're saying is the reason I put it there. And even if it's not applicable, and not enforceable, or more difficult to enforce, if that's what Mr. Guzman is saying, but it's there. No one can say, "you didn't tell me so." And I think that's important, because many times we leave things out and then what happens? Then, they'll use that, saying, "Wait a minute. You guys didn't say that." And so, at least the penalties are there for them to see. Again, the rest is not something that I'm creating; I'm just using what is existing. And trying to make sure everybody's on the same page and knowledgeable on what's going on. So, other discussion? Yes, Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I was just going to ask if it'd be all right, we could have our morning break. This is getting, you know, I think we could all use a moment to think.

CHAIR VICTORINO: Okay. I guess, yeah, I mean, I think, yes, Mr. White?

VICE-CHAIR WHITE: Just a point of clarification.

CHAIR VICTORINO: Yes?

VICE-CHAIR WHITE: We're still discussing just the amendment...

CHAIR VICTORINO: Amendment.

COUNCILMEMBER BAISA: Just the penalty. Just the amendment.

CHAIR VICTORINO: We haven't moved anywhere else.

COUNCILMEMBER BAISA: Yeah.

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CHAIR VICTORINO: I know it's a little more on the other side. So, why don't we reconvene at 10:20, 10:40, 10:40? This meeting stands in recess. . .(gavel). . .

RECESS: 10:33 a.m.
RECONVENE: 10:47 a.m.

CHAIR VICTORINO: . . .(gavel). . . The Water Resources Committee, March 13, 2013 will reconvene. Okay, after much discussion, after much concern, after a bunch of questions have been brought up including others now that have been brought up from other parties, one suggestion was made by one Council member to have a public hearing on this. And I can only ask for a public hearing in the near future, which means running sometime during the budget, okay. So I'm going to have to go to the Chair but I believe that she will grant that under these special circumstances. Madam Chair.

COUNCILMEMBER BAISA: Thank you, very much, Chair Victorino. I think that this matter is of such interest in our community, and such interest to the general public, as well as to ourselves, that it would be a very good thing to do. I think that people need the opportunity to come and you know, express their concerns, and be reassured hopefully but of course in a public hearing, all will be, you know, we'll be receiving their testimony. But I think it's an extra step, but I think that it's a good step because it shows that this Council is willing to listen to the public. So, I will cooperate, I will work with Budget Chair White to see when we can find the time, and I'll work with you. I like it.

CHAIR VICTORINO: Thank you. Thank you, Madam Chair. And again, Budget Chair White I would ask for your indulgence if somehow, some way that could be done.

VICE-CHAIR WHITE: Shouldn't be a problem. Just wanted to clarify that this is an evening meeting, not just a public meeting.

COUNCILMEMBER BAISA: Evening meeting.

CHAIR VICTORINO: Yes, an evening meeting so that the public, we'll get more specific with dates and all of that, but it would be an evening meeting so that the public could attend in bigger numbers. And, we want to try to keep them and try to make sure they're informed that this is not so much about rates, every day rates, but what we're talking about, water shortage and different issues when it involves emergency and water cutbacks. And this is what this bill was supposedly trying to hone in on. So, because so many things have come up, and I appreciate everyone's mana`o, I appreciate the public's information and I want to make sure that something of this profound effect on our community needs to be really vented out as best as possible. And I do not want to make anything arbitrary and capricious then see the ramifications later. If we've given an opportunity to speak, and given them a chance to get this together, and we do a good job, hopefully, this will be legislation that will carry us forward for many years to come. And you know, whenever emergencies do occur, water shortages, whether it's a drought, or infrastructure,

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whatever it might be, we're ready to, you know, with the Director's guidance to take it on and get it corrected as soon as possible. Mr. Carroll --

MR. TAYLOR: Mr. Chair?

CHAIR VICTORINO: -- you wanted to? Wait, let me ask Mr. Carroll, and I'll get back to you. Yes, Mr. Carroll?

COUNCILMEMBER CARROLL: Thank you, Chair. And thank you for your responsiveness to the concerns of the community and the Council Members. I think this is the best way to go to get some legislation out that will be effective and appropriate. And I don't think it'll take time away, because a public hearing should be in the evening anyways, so I don't think it'll adversely affect the budget schedule or anything else. And again, thank you, Chair.

CHAIR VICTORINO: Thank you. And again, I also got to understand that we have public hearings for the budget in March and April, so you know, we'll try to work it out the best we can so that we don't have what I call a "killer day" for us as Council members in its entirety. Mr. Taylor, you wanted to say something? I apologize.

MR. TAYLOR: I had a question. It's good that the Council Chair is here, and the Budget Chair is here, as well as yourself. In anticipation of this bill being passed, because it was already at second reading, the budget is currently being prepared that has Stage 1 and Stage 2 water shortage rates in it. Is it the intention of this body, and the Council as a whole to try to fit in another Water Resource Committee meeting to pass this out of Committee, get it passed by the full Budget, by the full Council, before June 30th? If that's not the case, then I don't know if this portion of the Budget is already being printed, but should I be trying to take out the water shortage rates from the proposed budget and do it as a budget amendment later? Or are we going to try to race June 30th to get this passed by the full Council so that we can talk about the actual rates in budget this year? Because right now, and they may already be printing it, it may already be too late.

CHAIR VICTORINO: Yeah.

MR. TAYLOR: But I'd like some direction on that. I could try to work with the Budget Office to meet those needs.

CHAIR VICTORINO: I think you're too late, according to what Mr. Baz guys' is telling me. But most importantly, it's my intention, and hopefully the committee's intention to try to get this resolved by June 30th. In other words, we'll even have special meeting if we need to, to make sure this is done so that it can get first and second reading to Council. So, that's this Chair's intention, and unless I have objections from the Council Members, I'm not going to ask for comments, just yes or no, will you guys indulge me in trying to get that done so that we can take care of that for Mr. Taylor at his request?

COUNCILMEMBER COUCH: It just depends.

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CHAIR VICTORINO: Well, again, we'll do our best, right? Okay? And that's all I know, at this point, yeah?

MS. WILLENBRINK: Mr. Chair.

CHAIR VICTORINO: Yes?

MS. WILLENBRINK: May I make one clarification for the record?

CHAIR VICTORINO: Yeah.

MS. WILLENBRINK: There are certain provisions in the County Charter that go along with a requirement for public hearing.

CHAIR VICTORINO: Yeah.

MS. WILLENBRINK: I'd just like to clarify that you're going to be calling for a meeting of the Water Resources Committee probably held at night somewhere, and inviting the public out to testify.

CHAIR VICTORINO: That is correct. That is correct. Yes, Mr. Couch.

COUNCILMEMBER COUCH: Just real quickly to help with the timing of this, are the changes in this substantial enough that this has to go back to first reading, or can we still. . .will this be a second reading issue?

CHAIR VICTORINO: I think Mr. Kushi made it very clear to me that this is substantial enough that it would have to go back.

COUNCILMEMBER COUCH: It'll be first--okay that's. . .

CHAIR VICTORINO: Okay, that is where we are at right now and--

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: --you know in fact what I gotta do at this point with your indulgence is ask the maker of the motion to rescind or take back the motion.

MS. WILLENBRINK: Withdraw.

VICE-CHAIR WHITE: Yes, I'm happy to rescind.

CHAIR VICTORINO: Okay, so that, that off the floor--

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VICE-CHAIR WHITE: Or withdraw, I should say.

CHAIR VICTORINO: Yeah, thank you.

COUNCILMEMBER COUCH: Both.

CHAIR VICTORINO: Yeah, okay, yeah we only had one motion.

VICE-CHAIR WHITE: No, we had the . . .main motion--

CHAIR VICTORINO: Oh, yeah, it was both, okay. Okay, so the first one is the amendment. Do I . . .will the maker of the amendment take that back?

VICE-CHAIR WHITE: Yes.

CHAIR VICTORINO: Okay. And then secondly, the maker of the motion for the main motion will you take that back?

VICE-CHAIR WHITE: Yes.

CHAIR VICTORINO: Thank you. Okay, so it's on the record, yeah?

MS. WILLENBRINK: Yes, Chair.

CHAIR VICTORINO: All right so that's the intention right now. A public hearing and try to get this you know, one more Resource Committee meeting, and first and second reading, and be prepared for June 30th. But I also know if push comes to shove and if it doesn't come out, we can always ask for a budget amendment, and come back in that respect also, if I'm not mistaken, right? Mr. Taylor? And Mr. White? As long as we have option, the public really wants, and I want the public to hear this, every one of the Council Members, the Administration, and all of us want to do a good job for you. This is what this is all about. This is not to be punitive, this is not to be where we are going to be water cops. This is not something we were looking for. We are just looking for when there is a challenge, there is a shortage of water, there is an emergency, that we have some methodology to ask people who do not comply, to comply or pay more or get some kind of repercussions. Some kind of consequences. That it's not just, "oh, never mind" and just let it go. So this is what this was all about. This is what we intend to do, to help Mr. Taylor and the Department to move forward in the developing what I call adequate rates for adequate situations. Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And may I ask if we can have a draft two before the next meeting so that we can, with all the—

CHAIR VICTORINO: You're not going to get anything until after the public hearings and then we'll work on that –

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MS. WILLENBRINK: Chair --

CHAIR VICTORINO: --we'll do our best to

MS. WILLENBRINK: --recess?

CHAIR VICTORINO: Re ... oh, recess. Oh, thank you. Recess. . .(gavel). . .

RECESS: 10:55 a.m.
RECONVENE: 11:02 a.m.

CHAIR VICTORINO: . . .(gavel). . . The Water Resources Committee meeting for March 13th will reconvene. Okay, so moving we will have a Water Resource Committee meeting to take public testimony, so that I'm very clear, it's not a public hearing. It's a regular Water Rate [sic] Resources Committee meeting that we will take public testimony and that the existing recommitted bill will be on the agenda and any revisions that had been proposed will be put there also, for review. No action will be taken that evening. It is only to receive public testimony. Have I done that right? Thank you. Okay, without any further, any more questions? Oh, yes, Mr. White?

VICE-CHAIR WHITE: Is it possible, since this is a time for the public to understand what we're doing, is it possible to ask Mr. Taylor to make a presentation—

COUNCILMEMBER BAISA: Yes. Before.

VICE-CHAIR WHITE: --at the beginning of the meeting, prior to taking public testimony so they are understanding what they're addressing? Otherwise, I think we're going to get testimony that's going to be far afield.

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Well, again, the real challenge we have again is because we have our district offices that must be connected, so, we have to make some provision on that. I mean, you understand that provision.

VICE-CHAIR WHITE: If practicable.

CHAIR VICTORINO: When practicable. Thank you.

COUNCILMEMBER COUCH: Plus, they can see Akaku, too, so.

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CHAIR VICTORINO: But you know, again, it's important that we clarify that in the agenda so that they know that in this case, if so said, the presentation will be done before any public testimony will be accepted.

VICE-CHAIR WHITE: Is your thought to hold the public meeting here in the Chambers?

CHAIR VICTORINO: That is my thought, and an evening meeting which will be open to the public. Then we'd have Akaku available here, as well as the seating facility. So, that is my intention at this time. And with the Chair's permission, and working with you, Mr. Chair of Budget and Finance, we are going to do that. Mr. Taylor, you heard the request? Can you be sure that is ready for us?

MR. TAYLOR: I would just ask, is it the intention just to, for myself, or I assume probably myself, just to talk everyone through it or do you want some larger visual presentations you've seen? I'm not exactly sure what the body is asking to be presented. Whatever it is, we can do, I'm just not sure what the intention is.

CHAIR VICTORINO: Okay, why don't we discuss that because I think that's something we can discuss without having that on the meeting. And, any suggestions you have for Mr. Taylor, why don't you guys just email me and we'll go ahead and work on that. David, okay? All right. Any other questions before we. . .okay if not the meeting of the Water...

MS. WILLENBRINK: Chair.

CHAIR VICTORINO: Oh, yes. I heard Chair.

MS. WILLENBRINK: Defer.

CHAIR VICTORINO: Yeah, to defer, yeah. Oh, I'm sorry. With no objections we will defer Item WR-18.

COUNCIL MEMBERS: No objections.

ACTION: DEFER pending further discussion.

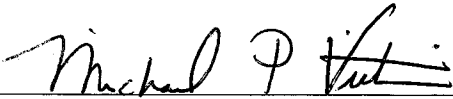
CHAIR VICTORINO: All right. So if nothing else, the meeting of the Water Resource Committee for March 13th will now be adjourned. . . .(gavel). . .

ADJOURN: 11:05 a.m.

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APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:130313:sa

Transcribed by: Shannon Alueta

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CERTIFICATE

I, Shannon Alueta, 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 5th day of April, 2013, in Wailuku, Hawaii.



Shannon Alueta