

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

March 25, 2013

Council Chamber, 8th Floor

CONVENE: 6:31 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Gladys C. Baisa (out 6:48 p.m., in 6:51 p.m.)
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr.
Councilmember Don S. Guzman

EXCUSED: VOTING MEMBERS:

Councilmember Mike White, Vice-Chair
Councilmember Stacy Crivello

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

Tina Thompson, Executive Assistant, Molokai Council Office (via telephone conference bridge)

Carla Nakata, Legislative Attorney, 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: Bill Greenleaf
Anne K. Masuda
Lloyd Fischel
Rosemary Robbins, Upcountry Oversight and Advisory Committee
Jim Smith
Thomas Croly
Doug Mac Cluer
Dave DeLeon, RELATORS® Association of Maui, Inc.
Warren Watanabe, Executive Director, Maui County Farm Bureau
John Duey
Simon Russell, Vice President/Legislative Chairman, Hawaii Farmers Union United

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Michael Howden
Thomas Kafsack
Others (10)

PRESS: Akaku: Maui Community Television, Inc.
Chris Sugidono, *The Maui News*

CHAIR VICTORINO: . . .(*gavel*). . . The Water Resources Committee for March 25, 2013 will come to order. At this time I would like everyone in the gallery and on the floor to please put your cell phones on silent or a non-noisemaking alert. I'd prefer not to be interrupted. We have a long evening this evening and I want to make sure we're covering all of the items that we need to cover. Let me start by introducing the Committee that is here, the Committee members that are here. First of all I'd like to introduce our representative from East Maui, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR VICTORINO: Good evening. I wish it was still afternoon. Our South Maui representative Mr. Don Couch.

COUNCILMEMBER COUCH: Good evening, Chair.

CHAIR VICTORINO: Good evening. Our representative from the Kahului District, Mr. Don Guzman.

COUNCILMEMBER GUZMAN: Good evening, Chair.

CHAIR VICTORINO: Good evening. And our lovely lady from Upcountry, our Council Chair, Ms. Gladys Baisa.

COUNCILMEMBER BAISA: Good evening, Chair.

CHAIR VICTORINO: Good evening. And just in case somebody doesn't know who I am, I'm the Chair, Mike Victorino. The two non-voting Members that are excused this evening...not non-voting but two Members that are excused is Mr. Mike White, the Vice-Chair and also Stacy Crivello. Both are excused for this evening's meeting. And our two non-voting Members are not present. If they do come then I will introduce them. At this time I'd like to introduce the Administration. Our Director of Water Supply Mr. Dave Taylor.

MR. TAYLOR: Good evening, Chair.

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

MR. KUSHI: Good evening.

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CHAIR VICTORINO: Right on cue, Ed, thank you. You're right on cue. Our Committee Staff, our Legislative Analyst, Ms. Kim Willenbrink and --

MS. WILLENBRINK: Good evening.

CHAIR VICTORINO: --our Committee Secretary Ms. Yvette Bouthillier. Thank you very much for being here, and thank, everyone, for taking their time off on this evening to be here to give testimony. I'd like now to check with our District Offices to make sure that they are online and ready to get started. Dawn Lono from our Hana Office, are you there, Dawn?

MS. LONO: Good evening, Chair. This is Dawn Lono in the Hana Office.

CHAIR VICTORINO: Thank you, Dawn. Good evening. Ms. Carla Nakata at our Lanai Office. Carla, are you there?

MS. NAKATA: Good evening, Chair. This is Carla Nakata at the Lanai Senior Center.

CHAIR VICTORINO: Thank you. And Ella...is Ella there?

UNIDENTIFIED SPEAKER: Tina.

CHAIR VICTORINO: Tina, right? Yeah, this says Ella here.

UNIDENTIFIED SPEAKER: I'm sorry.

CHAIR VICTORINO: I think, yeah, Ella is not available but Tina Thompson is at our Molokai Office. Tina, are you there?

MS. THOMPSON: Good evening, Chair. This is Tina Thompson at the Molokai Office.

CHAIR VICTORINO: Mahalo, ladies, for being there. Thank you very much. Okay. I normally would start with public testimony at this time, but I have checked with the OIP, Office of Information Practices and I was advised that if we so desire to start off with a presentation by the Director and then go into public testimony, that that was fine. So without objections, Chair...Committee members, I'd like to give the Director an opportunity to give us a presentation and then we will go into public testimony. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you. And again, ladies and gentlemen, we're only going to be speaking about WR-18, Water Usage During Water Shortage Declaration. And this is the only subject matter that we're going to be speaking to tonight. And I've received a lot of public testimony via e-mail, and I want to thank the public for sending the e-mail. Some of the testifiers or some of the people who sent us e-mails are in the audience tonight so I know they'll be testifying on their

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e-mails. So without any objection, I'm going to call for a few minute recess, maybe three minutes to bring the screen down and get the presentation started. So this meeting of the Water Resources Committee is now in recess. . . .(gavel). . .

RECESS: 6:35 p.m.
RECONVENE: 6:38 p.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resources Committee meeting will come back to order. Mr. Taylor, if you would begin your presentation.

MR. TAYLOR: Thank you, Mr. Chair. My name is Dave Taylor. I'm the Director of the Department of Water Supply. Tonight we have a very short presentation. It's probably only about five minutes just to walk through the Water Shortage Bill, associated actions, what it is and what it isn't. There's been a lot of discussion on this bill in the community, and I think if we just go through this five-minute presentation we'll all see what we're trying to do, how it fits into the big picture, and again, mostly what it isn't along with what it is. So tonight we're going to have a quick description of the water system, a schematic explanation of water supply versus demand, and a specific discussion of the intent of the Water Shortage Bill that's before you. Our system...let me refocus this, I think it's a little off. Is that better? Okay. So our system includes about 40 groundwater sources, wells, 145 storage tanks, 6 treatment plants, operate 750 miles of pipeline with 24/7 service. Okay. So this is the water system. Schematically, we take from the environment through either wells or treatment plants to tanks, to pipelines, and then to the community. So when there isn't enough water, when either there's not enough in nature or certain parts of the system are not functioning correctly, the people who need water, there isn't enough, and that's what this bill is meant to deal with is these short-term issues that affect demand where there isn't enough water for very short durations. Our system, you can see colored where it is. In Central, Upcountry, and West Maui we have a mixture of surface water and groundwater. When you have surface water, meaning stream flow that's diverted, we are very susceptible to drought. In both Hana and Molokai, although it's all groundwater, the systems are very small so there's very little redundancy, so also susceptible to system failures which can limit our water supply. Very simply, water supply demand, when we have groundwater with wells we have a constant output. The wells just give a constant output. Except for when they fail this output drops to zero. Surface water that comes from streams goes up and down with rain flow, and demand for water goes up and down with rain flow. When there's a lot of rain people don't need water but we have a lot, when there isn't a lot of rain people need it and we don't have as much. Okay. So the big picture in any water system, ours, anyone else's, is the supply of water in yellow goes up and down. It's raining a lot, we have lots of water, it's raining a little, we don't. Sometimes there can be periods of large drought or mechanical systems can be failed for one reason and we have very little. Demand goes opposite of that. When it's raining and we have a lot of water, that's when people don't want it. As it isn't raining, demand goes up. So you have supply and demand. When these hatched areas happen, when the demand exceeds the supply, this hatched area, when this happens some people will turn on their taps and nothing will come out. This shows that there can...regardless of your

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planning, regardless of how much systems you have, what you've built, what you've planned for, there can come times that your demand is more than your supply. This bill, the Water Shortage Bill is meant to deal with these situations only. The deep valleys in supply, water shortages are driven by either drought, mechanical malfunctions, natural disasters, et cetera. There's a number of things beyond our control regardless of how much we build, regardless of how much we planned, these events can still happen. Now we're always trying to add capacity to raise the supply curve, to move this whole yellow curve up. The budget that you got from the Mayor this morning, there are projects to try to do that. Trying to do storage improvements to also decrease the valleys, also there's money for that. Things like Waikamoi Flume, there's a lot going on for this. This bill is not intended to be instead of these improvements. You'll see as you folks go through the Mayor's Budget we are pushing more and more of improvements. What this bill is meant for is to deal with these situations. When these things happen, and you'll see this all across the country, when your demand exceeds supply you have no choice but to limit the demand peaks with some sort of regulations. The current Drought Bill--which is what it's called, 14.06--actually gives the Director almost limitless authority to limit the peaks with regulation. It allows the Director to say well we're going to have a 10 percent decrease for everyone and if you don't follow it we're going to pull your meters. It allows the Director to say we're only going to allow you to water two days a week and if you violate that we're going to pull your meter. That's the existing ordinance, and it's been in place for decades. It gives such unfettered authority to the Director that myself and my predecessors haven't used it because it's too much authority, and I don't think anyone's ever been comfortable with a Water Director using that kind of authority that's written into the ordinance. So the Water Shortage Bill we're talking about today is meant to address only this, and it's meant to do it by having Council pass--what I'll get into in the next slide--these Stage 1 and Stage 2 water shortage rates that give a very specific, defined, Council-approved tool where the only authority the Water Director has is when to use the tool. What it would be is this, an explanation of what we're talking about. These are the normal rates. Single-family dwelling, as you use more water your rates go up, general use, agriculture use. In yellow are the standard rates, that's what in place right now. What this bill does is it establishes what we call a Stage 1 and a Stage 2 water shortage. Stage 1 is defined as when supply is beneath demand by up to 20 percent, and Stage 2 is when...I'm sorry, when demand is projected to outpace supply by up to 20 percent, and Stage 2 is when demand is expected to outpace supply by more than 20 percent. So that's how Stage 1 and Stage 2 are defined, and essentially what this bill does is it allows there to be in the County budget where rates and fees are scheduled to allow two new columns, a Stage 1 rate and a Stage 2 rate which has a numerical value for the Stage 1 and Stage 2 rates. The bill in front of you does not establish what the rates are, it solely allows there to be Stage 1 and Stage 2 rates inserted in the budget. The actual numbers are not included in this bill, and they have to be approved through the budget process. In red, I know it's hard to read the red, but essentially what you'll see in the budget that you received this morning from the Mayor is what we're proposing is the first, the lower tiers don't change, whether it's Stage 1 or Stage 2. So whatever your rate is in your first lower tiers of use for single family, they don't just change in Stage 1 or Stage 2. In the upper two tiers they would go up, and they go up more significantly in the second stage. What this is saying philosophically is if you're using a low amount of water, no matter how bad the shortage gets, you don't have to change. Right now, today, under the existing policies that have been in

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place for a couple decades, when we have these 10 percent mandatory cutbacks, everybody has to cut back, even the people who have been using very little. This methodology identifies that if people have already been very wise with their water use, they wouldn't have to be punished anymore, they shouldn't cut back any more, they're already doing what they can. So it targets the higher water users to cut back during water shortages, and same with general use and agricultural use. And again, these numbers are up to the Council in budget. All this bill does, all we're proposing is that there be a Stage 1 and Stage 2 definition, an allowance for there to be Stage 1 and Stage 2 rates. If, for example, you want these to be very aggressive, these numbers could be very high. If we don't, if we want a certain category not have them change at all, you can leave those numbers the same. Those are decisions you can make in budget when you choose the numbers. So, again, all this does is establish that there are allowed to be rates, it doesn't say what the rates are. So we talked about the system, a schematic explanation, and specifically what we're trying to do with the Water Shortage Bill. It is not meant to solve all of our problems. It's something that during our analysis we found that the County is lacking. We have no solid way to deal with an event where we are just short of water, and so we feel this is necessary, we feel it's vital. We believe that most of the major utilities across the country have something just like this, and it's built so that there is a preexisting methodology approved by the Council. The only decision the Water Director and the Mayor would make is does it meet the 20 percent criteria for implementation? So we wouldn't be making anything up, we'd have a very precise methodology preapproved by the Council that's only used during those events. So, Mr. Chair, I thank you for the opportunity to explain what this is trying to do, and I hope this provides clarity to the Council and any Members...and any people going to testify.

CHAIR VICTORINO: Thank you, Mr. Taylor. The meeting of the Water Resources Committee will stand in recess. . . .(gavel). . .

RECESS: 6:48 p.m.
RECONVENE: 6:50 p.m.

CHAIR VICTORINO: . . .(gavel). . . The Water Resources Committee for March 25, 2013 will reconvene. We have a number of testifiers, but before I start with the testifiers in the gallery as well as our neighbor and sister island locations, testimony will be taken only relating to WR-18. I repeat, testimony will only be taken on WR-13.

COUNCILMEMBER COUCH: Eighteen.

CHAIR VICTORINO: Eighteen, I should say. Yeah, excuse me. Thank you for the correction, Mr. Couch, 18. I want the public to understand that we're not here to discuss water rates and all that other stuff, that is not part of this Committee's meeting. We're just discussing WR-18. We'll...I give everyone three minutes with one minute to conclude. The lighting system will lead you. If you exceed your fourth minute I will ask you to wrap it up, and if you do not comply I will ask you to stop. Okay. We have a lot of testifiers and I want to give everybody a fair opportunity, an equal chance to voice their manao. I will start this evening a little different,

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I'm going to start with our first testifier, and I'm going to go to our sister locations. So I'm going to start with Hana. Dawn, is there anyone there to testify?

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

CHAIR VICTORINO: Mahalo. Lanai, is there anyone there to testify?

MS. NAKATA: The Lanai Senior Center has no one waiting to testify, Chair.

CHAIR VICTORINO: Mahalo, Carla. Tina, is there anyone in Molokai wanting to testify?

MS. THOMPSON: The Molokai Office has no one waiting to testify, Chair.

CHAIR VICTORINO: Thank you. I will do about four or five here in Maui and then return to you folks to verify if anyone has come in since this last opportunity. Okay. Then we'll start with those here in the gallery. We'll start with Mr. Greenly [*sic*], Bill Greenly [*sic*]. Yeah. Yeah, Mr. Bill Greenly [*sic*] followed by Anne Matsuda [*sic*].

...BEGIN PUBLIC TESTIMONY...

MR. GREENLEAF: Thank you, Chair. Evening, Council members. My name is Bill Greenleaf, and I'm a small-scale farmer. And when I heard about this bill I was a little bit confused. I thank you for having that presentation, that was terrific. I want to tell you one quick story. When we had that big rain, we had about 12 inches, and I really couldn't sleep at night 'cause we'd taken a lot of our beds apart and we had replanted and that's a really bad time to have a rain like that. But the next morning I went outside and we had no erosion, no damage whatsoever, and I wanted to make that point 'cause I wanted the Council to realize how hard farmers work to use the water efficiently. And I would ask that as you go forward with this bill, the thing that really concerned me the most and I'm not sure what I heard, if it changed it, but I think that as the Water Commissioner [*sic*], Mr. Taylor spoke and said that no one's ever felt comfortable using the authority. I think that it would be really helpful if it was spelled out, like the different categories that would be looked at. It seemed to me like it was going to be based on usage, and if that's good enough then I would be okay with that. But if it's going to be where you're going to come to a farmer or to someone that's got a business and they're going to get singled out for their water meter usage, I think there must be some way of prioritizing it so that later Directors have a really clear idea. You know is it, I'd always heard it was the hotels that first had to cut back, and I've gone down to the hotels during times of drought and I watch them hose everything down at night and it didn't seem like they were conserving any water. And it seems to me like that somewhere along the line we could get the whole County really in the spirit of conserving water. And I know the Water Department tries to do that really hard. And I'd certainly feel better in this bill if it was spelled out that where farmers were, where industrial groups were, where growing grass was on the priority list, and where hotels and spraying down driveways and tables and things were. Okay. Well thank you very much for taking care of this.

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CHAIR VICTORINO: Thank you, Mr. Greenly [*sic*]. Any questions for the testifier? And I would like the questions dealing with this issue and this issue only. I will also tell the Council members that. Okay. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Mr. Greenleaf, for being here. Just a clarification of sort of on the testimony, you know, you say you're a small-scale farmer, do you fall above the 15,000 gallons a month when, in your normal use in farming?

MR. GREENLEAF: Fifteen thousand gallons a month, yes.

COUNCILMEMBER COUCH: You fall above that --

MR. GREENLEAF: Yes.

COUNCILMEMBER COUCH: --in most case when you farm?

MR. GREENLEAF: Yes.

COUNCILMEMBER COUCH: Do you have an average of where you are? I mean if we needed to change that number, would that be...

MR. GREENLEAF: Can I e-mail it to you?

COUNCILMEMBER COUCH: Sure.

MR. GREENLEAF: Okay.

COUNCILMEMBER COUCH: Run it to the Chair. I mean that might be something to help determine --

MR. GREENLEAF: I understand what...

COUNCILMEMBER COUCH: --what the average usage is. What we're trying to do is cut excessive use.

MR. GREENLEAF: I understand.

COUNCILMEMBER COUCH: Okay.

MR. GREENLEAF: Terrific. I'll, and I'll consult some of my other farmers, too, and try to find out some other numbers.

COUNCILMEMBER COUCH: Thank you.

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MR. GREENLEAF: Thank you. Thank you.

COUNCILMEMBER COUCH: Thank you, Chair.

CHAIR VICTORINO: Any other questions for the testifier? Seeing none, thank you Mr. Greenly [sic].

MR. GREENLEAF: Okay, thank you.

CHAIR VICTORINO: Okay. Next testifier, Ann Masuda, and she will be followed by Lloyd Fischel.

UNIDENTIFIED SPEAKER: Mike? Mike?

MS. MASUDA: Good evening.

CHAIR VICTORINO: Can I...before you start, Ms. Masuda, can I ask those in the gallery if you're going to be speaking if you would step outside of the Chamber, because, you know, when you talk we can hear the echo. This Chamber kind of really does echo other conversations, so I will ask anyone that needs to speak, if you'd step out in the outside lobby area I'd appreciate that. Thank you very much. Ms. Masuda, go ahead. Sorry.

MS. MASUDA: Okay. With a shortage of water in any area of any island, all areas should conserve water, be affected by water usage control and be subject to limitations. Why should only people from a historically drought-stricken area be subject to limitations and penalties? At an informational meeting of a plan for a Hawaii Statewide water plan, it was noted that Maui has enough water for everyone. I also have a question that what has the Department of Water Supply done in the 20 years since 1993 when the County found that it had insufficient water supply in Upcountry, Maui? There is already a lot of work traffic from Haiku and Haleakala Highway, and more lots and homes are planned in, from that area. Adequate and clean water should be made available to all citizens, no matter where they reside. And with the mega mall in Kihei and hundreds of house slots in Haliimaile and Kula, those that drill their own water sources may eventually deplete Maui's underground water, the way I see it. And what will happen then? So if you impose any limitations, it should be for everyone, even if the drought is only in Kula or Upcountry. Water distribution is the responsibility of the County as well as all the individuals on Maui, not just a few. If the residents in all areas practice water conservation at all times, including during Upcountry's water shortage, we might avoid future water problems. We're only going to be growing in population, it's not going to be decreasing, so we have to look towards the future, too. And in Part B of the control of water usage, is this the number of gallons used? How would we know if we are over the limit? There isn't any gauge that we as, you know, homeowners can look at so we can stop using water or hold back on water usage. If we go over the usage limit we'll pay the higher rate but will we be penalized for it or just we pay the higher rate? And how will you determine that you'll take away our water meter? I mean people who have money will gladly pay the higher amount. Maui Electric sends me a letter telling me of my electric usage, how I compare to my neighbors in the community. I don't know if the

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Water Department would do something like that, but if you have someone reading the meter you would be able to do something that tells the household if they're average use or high use or under average. I think it's...when I got that letter I was pleasantly surprised that I fell in the lower end of electric usage because I am frugal, so I am the same way with water.

MS. WILLENBRINK: Four minutes.

CHAIR VICTORINO: Thank you, Ms. Masuda. Any questions for the testifier? Seeing none, thank you very much, Ms. Masuda, for coming this evening.

MS. MASUDA: Thank you.

CHAIR VICTORINO: The next testifier is Lloyd Fischel, and Lloyd will be followed by Rosemary Robbins.

MR. FISCHEL: Good evening, Chair --

CHAIR VICTORINO: Good evening.

MR. FISCHEL: --and all the members of the Council. My name's Lloyd Fischel and I operate Fragrant Orchards of Maui, a commercial orchard nursery. Our firm sits on two...our farm sits on two acres where I designed an aquaculture teaching facility built under the aegis of the USDA and the State of Hawaii. The 55,000 gallon fish-breeding pond gets rainwater from channeling off the roof of the commercial greenhouse. The water system teaches biologic filtration, and dozens of schools have visited at no charge to learn about ecologically friendly, low-maintenance water catchment and fish breeding practices. From time to time for a variety of reasons we must use County water supplied through a garden hose or two. After many years in operation we continue to get notices from the Department of Water Supply that we must have a leak problem because we've used more water in a month than a prior period. This notice here received in February establishes that the Water Department does not see or care about people, only numbers. The Director cannot be trusted with having the power to call a shortage. Please consider two things to help make this bill pono. Number one, those businesses and persons who conserve water should be rewarded. There are a number of ways to do this, and other counties in the United States have become very akamai and their water departments teach conservation and catchment practices and reward conservation. We don't see this in Maui. Number two, farmers small and large need to be protected and not discouraged but encouraged to use water to grow food. Ag communities around the world recognize that good soil means less water evaporation, and with soil that conserve water, plants are stronger to ward off disease. Many people here know that this to be true, is true. It makes no sense to penalize farmers who use more water in paradise when a drought hits or the Director wakes up one morning anticipating there will be a drought. Frankly I believe the national media could pick up this story if it is not cured. As first president of the Maui Farmers Union, a long time board member of Maui's renowned Orchard Society, and the 2010 Hawaii Hero of Agriculture in Education, I've met people from around the world concerned about water issues. Virtually everyone agrees that simply based on the certain rise in

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petroleum prices, food security will depend on locally produced vegetables and fruit. We all know that success growing food is wholly dependent on water, but the Director of Water Supply and Corporation Counsel want to convict people if they use more water while there is little being done to increase water conservation or education in this bill or any serious implementation of measures that will help grow soil. In terms of constitutionality, the new law will mean the Mayor will be the sole arbitrator of who gets water and for what purposes, this is wrong because our political system ensures equality. In our political system it is the law that is the arbitrator, not the Mayor. The unfairness in the law could bring unwanted, unintended consequences. We must keep in mind that locally grown food in the near future is likely to be less costly than imported food, and more and more people will be farming. Our company deals with large retail markets daily and they are demanding locally grown food, especially if it is grown without poisons. I thank the Chair for working to improve a flawed bill that needs to stay in Committee where the issues can be fully discussed from a multitude of angles.

CHAIR VICTORINO: Thank you, Mr. Fischel.

MR. FISCHEL: Thank you. Thank you.

CHAIR VICTORINO: Questions for the testifier? Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Mr. Fischel, for being here. Same question to you, is your average water use, is it...does it go above the 15,000 gallons?

MR. FISCHEL: The orchard nursery uses far more than that, about 40,000 gallons.

COUNCILMEMBER COUCH: Of County water as opposed to your catchment water?

MR. FISCHEL: Well the combined.

COUNCILMEMBER COUCH: So do you know how much of County water?

MR. FISCHEL: If we have to add water for like I said many reasons, it could be...according to this we added, according to this it went from 40,000 gallons in December to 132,000 gallons in January.

COUNCILMEMBER COUCH: Okay.

MR. FISCHEL: Yeah, just as an example. Now that included both facilities. So according to the law, this bill, if we have this change which many farmers go through, especially if there's a drought, there's a chance that people can lose their meter. And I appreciate Mr. Greenleaf for mentioning, we need really specifics in this bill to protect people.

COUNCILMEMBER COUCH: Okay, thank you.

MR. FISCHEL: Yeah.

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COUNCILMEMBER COUCH: Thank you, Mr. Chair.

MR. FISCHEL: Thank you.

CHAIR VICTORINO: Mr. Fischel, I have a question for you before anybody else, and I'll recognize anyone else. January, was it a dry month Upcountry? I mean in Haiku?

MR. FISCHEL: I think...

CHAIR VICTORINO: It just seems an enormous amount and I don't recall us being that dry.

MR. FISCHEL: Well it's not about dry or wet, it's about what we need to do the job and at the same time...

CHAIR VICTORINO: Okay, okay.

MR. FISCHEL: And often throughout the year we must replenish the water, we must change the water in the pond, for example. Or if we have certain kinds of plants growing in the orchard nursery and if we have to add water, it happens.

CHAIR VICTORINO: Okay, okay.

MR. FISCHEL: I mean farming is not an exact science, I mean that's just the way it is, and we have to make sure that the farmers are protected.

CHAIR VICTORINO: Right.

MR. FISCHEL: This bill does nothing, says nothing about farmers, and that's what the danger is.

CHAIR VICTORINO: No, understood. And I tried to, if you remember, originally tried to put exemptions for the farmers and unfortunately was lost in Committee, but it is something that's still alive. And I will be bringing something forward.

MR. FISCHEL: Thank you, sir.

CHAIR VICTORINO: All right. Thank you. Other questions for Mr. Fischel? Seeing none, thank you. Next testifier is Rosemary Robbins, followed by Jim Smith.

MS. ROBBINS: Good evening, everybody. I came in this afternoon to do some homework on the seventh floor...

CHAIR VICTORINO: Can you get a little...yeah, please.

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MS. ROBBINS: I came in this...

CHAIR VICTORINO: There you go.

MS. ROBBINS: Oh, yeah. Thank you.

CHAIR VICTORINO: Thank you.

MS. ROBBINS: I came in this afternoon to do some homework on the seventh floor. There were three people who had submitted written testimony, and I understand that there was a lot of other testimony that came in that wasn't in that folder yet. So I'm going to be speaking on behalf of what you've heard before in some cases, what I picked up from this afternoon. And one of those people who sent in testimony was the previous to Dave Water Director. He's not here tonight. I would just like to quote with this. He says I would like to comment first on the proposal to charge higher water consumption as a result of the Water Department experiencing a mechanical function or making human error. And I saw that in that presentation that we had beginning tonight's session that came from the Water Department that drought got shuffled up before the human error and before the mechanical malfunctions. That's a step in the right direction. Thank you. He says--I don't get this--since when should a public utility be allowed to shirk its responsibilities to operate and maintain its facilities responsibly and be allowed to pass on its failures in the form of higher water consumption rates to the consumer? An annual operating budget, contingencies are included for unusual or emergency events and should already be factored in; therefore, the request for emergency rates for the aforementioned causes, the human error and the facility malfunctioning shouldn't be needed. And he says that if the County's water consumption rates were regulated by an outside regulatory agency such as the State Public Utilities Commission, most likely this proposal would be vehemently disallowed. We need to think about that. He spent some time, years working with this, and he was recruited into that position 'cause he knew what he was doing to begin with, and so I'm glad that he's staying on with that. There was a second one, written testimony that was submitted by a woman from Upcountry, and she says, leave in after consultation with the board, that the Board of Water Supply should not be out of the loop on this. And when you take a look at what's been going on in the news, the Board of Water Supply in Honolulu is doing a lot to be able to sacrifice some of the stuff for themselves in order to keep the greater efficiency in what they're doing, in order to keep the rates from being out of whack on the balance to have the public pick up on that. So the community is asking here, they're asking me, so what is the Water Department doing to cut back on its inefficiencies? I'm not too sure what those would be, but that question is out there. And the third one, the letter that came in says there exists a climate of distrust involving this water legislation--and it's underscored--by the Committee before it acts upon the merit of the Mayor proposed. It is necessary to make sure that people know the validity of what's being said by the Water Department and the Mayor since they're the two folks that are making the decisions on this. So there really is a lot of distressed going on, and the recommendation that we heard a few minutes ago about let's keep this in Committee, let's not pass this through until those things get ironed out. So a drought is a drought is a drought.

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MS. WILLENBRINK: Four minutes.

MS. ROBBINS: We need to know that that's something that's anticipated and measured...

CHAIR VICTORINO: Ms. Robinson [*sic*], are you concluded, can you conclude, please.

MS. ROBBINS: Okay. So we need to make sure that we don't get lost in any of the other ancillary things that are happening without just coming into the fact that by water all things find life. It needs to be healthy and plentiful in the water.

CHAIR VICTORINO: Thank you, Ms. Robinson [*sic*].

MS. ROBBINS: Thank you.

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

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: Next testifier is Mr. Jim Smith, followed by Thomas Croly.

MR. SMITH: Hi, Chair Victorino, members of the Committee. I'm so happy to be here. And thank you, Chair, for being alive and well and keeping us in mind. It's important to note the Upcountry drought watch was just lifted. It was reported in *The Maui News* on March 19th that it was in effect for three years. Okay. Now you're doing what? You're going to allow a Stage 1 drought to be declared from 0 to 20 percent? And then when will it stop? Well to me this notion of water shortage is contrived, and it comes back from 1993 in which the Mayor or the Department of Water Supply had what they called a director's finding that Upcountry water demand exceeded source capacity, an action to forestall a water shortage. Okay. That's the first use of the word water shortage in the game. What the Kula rule did and what this replaced was it managed growth by controlling subdivisions. You had a limited number of services and a subdivision no bigger than three lots, and that's what it did. So what you had was water availability together, okay, with what was happening in terms of water service. And that's what's with this bill, I think the reason there is such suspicion is because you've meshed these two things together. Water usage is not water shortage. You don't say water usage is water shortage, okay, unless you're trying to confuse me. If you're trying to confuse me, you're raising the bar, okay, of arbitrary power. Arbitrary power of a director raises the bar of insult, injury, pain, and that's political power and this is a political place. And it's interesting to note that Mr. Taylor at a hearing, a meeting of this Committee, November 26th, he said so whether it happens by an act of God, an act of man or by human error, it's really the same. Well it isn't the same. An act of God is not the same as an inept director or a Mayor who doesn't care, it's different. So I would ask you to separate the water shortage in 14.06 and leave water availability in 14.010 or 12, whatever it is, and then deal with it. If you want to expand the purpose of water availability and include these mitigations, do it in the right place, don't tell me a water shortage, okay, is anywhere from an anticipated source, not a finding now of potential but anticipated from

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0 to 20, ridiculous. I have submitted written testimony that I hope you will consider. And another thing I would like to request is that you remove criminal action from the bill. The whole thing has been administrative enforcement. Chapter 19 and Chapter 14 were amended in a week in March, and the whole thing at that time was administrative enforcement, nothing about chemical. Remove it from the bill, delete reference to that in the bill. Separate these two bills and we can deal with it, but if you keep 'em together you're going to keep mystery there and that's the invisible hand the Director may be talking about. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Smith. Questions for the testifier? Seeing none, thank you very much, Mr. Smith. We appreciate it. Mr. Croly, before you get started I'm going to check with our sister sites, if you don't mind, please. Hana, Dawn, do you have anyone that wants to testify?

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

CHAIR VICTORINO: Carla, is there anyone in Lanai who would like to testify?

MS. NAKATA: The Lanai Senior Center has no one waiting to testify, Chair.

CHAIR VICTORINO: Tina, is there anyone on Molokai who would like to testify?

MS. THOMPSON: The Molokai Office has no one waiting to testify.

CHAIR VICTORINO: Mahalo. Mr. Croly, if you would. And you will be followed by Mr. Doug Mac Cluer.

MR. CROLY: Thank you, Chair. Thank you, Committee members, for being here tonight to hear public testimony. I like our Water Director, I think that he has explained so many things so clearly to help the people of Maui understand, you know, what the issues are relating to water and why we don't have it when we need it, why we pay the rates that we do. And I want to compliment him for that. I support what this bill is trying to do. It's trying to let the Water Director run a little more lean with how much he lets those reservoirs go dry. Issue a few more water meters out there and so forth, and I appreciate that he wants to do that and I support that 100 percent. I also support giving him the ability to declare these droughts and so forth. I know that Dave will do it very precisely. I know as an engineer he'll figure out how much water use is...will anticipate the needs and not let us get into the position of turning on a faucet and no water coming out. But, however, the reason I'm here to speak is I think that the approach that this bill is taking is fundamentally flawed, and it's fundamentally flawed because we don't have the other part of it and that is what are these rates going to be. Now here's the problem with if you use the tiered system that we currently have. The philosophy here is, if you're staying in Tier 1 or Tier 2, you're not going to have to conserve and you're not going to see any increase in your bill, but if you're in Tier 3 then we need you to conserve and we're going to hit you with a higher rate that you're going to feel if you don't conserve. But here's the problem, the people that are in Tier 3 are not simply there because they're wasting water, there are some people that

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are in Tier 3 simply because a lot of people draw off of that one water meter. I came in and I spoke to you folks at Council because I recognized that at my condominium complex everyone draws off of one, you know, incoming meter, so by the second day of the month we're already into Tier 3. So if we were to declare a drought emergency in the area where my condominium is and raise those rates, we could do everything possible to reduce water usage but we're still going to be in Tier 3, and we would still be paying a penalty as a result of these, this rate structure even though we may have done everything possible to reduce the water usage. And maybe would have accomplished a significant water usage, but because 90 percent of the water usage at my condominium falls in the Tier 3 rates, they'd be hit with this higher rate. So what could you guys do? Well you could make that rate lower but then it wouldn't accomplish the goal, and the goal here is to make it painful to someone if they waste water, which is why this has to go back to the idea of a percentage of your standard, of your historical usage. If someone uses 100,000 gallons of water a month and you ask them to conserve and they reduce that amount down to 80,000 gallons per month, that person has reduced their usage by 20,000 gallons, that's a good thing. We should be rewarding that person by not increasing their rates, but the way this is structured, that guy would get hit with a tremendously higher bill because we would have raised the rates on him. So we have to change the way this is set up. It's unfortunate that we can't discuss the rates in this Committee because that's a Budget item and this is about policy, but without those two pieces of the puzzle we really don't know what the net effect of this is going to be. But I wouldn't encourage moving it forward unless it was based on a historical average of what somebody uses and then them reducing the amount of water they use based on that. Thank you.

CHAIR VICTORINO: Thank you, Mr. Croly. Questions for the testifier? Before I recognize you, Mr. Couch, I want to ask Mr. Taylor a fundamental question 'cause I think I know the answer but I'd like to ask Mr. Taylor. When you're talking reduction and if there was a Stage 1 and you were asking someone to reduce their usage by 15 percent, you're talking on the historic levels that are being used by that particular entity?

MR. TAYLOR: Mr. Chair, I believe my comments were directed at what's happened in the past, not this ordinance, but what's happened in the past when the Department or the Board declared like a 10 percent mandatory cutback where it's exactly what the testifier was talking about where everyone would have to cut back 10 percent of their last 6 months or their average of the year or however it was calculated. And this proposal goes away from that towards a rate only because of the ability of the Department to do that in an automated fashion. It just isn't really practical to go back to 35,000 customers, average their volumes over the last year, and then, you know, tell them here's what your reduction is. And so what you see presented in this bill is really just the closest we can come and still have it be a practical methodology to implement.

CHAIR VICTORINO: Okay, good. So that there's clarification, Mr. Croly. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Mr. Croly, for coming to testify, and I certainly agree with you on the whole condominium thing, and I'm going to bring that up with the, at the next Committee meeting that we talk about. But as far as historic

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percentage, I understand what you're trying to say there, but what would you do...what would you say to somebody who does already conserve and has already cut back and you're asking them to cut back even further? The historic percentage doesn't work there in my opinion.

MR. CROLY: Thank you for that question. And also to address the Director's concern. The way I would address it is look at the total amount of gallons that they use and essentially put a surcharge on any amount over a certain amount. So the bill would basically be a standard bill and it would have this extra surcharge thing at the bottom of it, and the surcharge would be based on how much did you go over this set amount. Okay. Now if someone's using a very small amount of water, we're also asking them to conserve a very small amount of water. In other words, let's say someone is using the minimal amount of water that they can and they're getting by with 5,000 gallons a month, and then we say cut back by 10 percent. Well that 10 percent is only 500 gallons, that's only a few second shorter shower. It's not a big, big difference. It also wouldn't be a big penalty on that person. Even if they didn't cut back that 10 percent, if their usage was very small to begin with and the penalty was on just that overage amount, it wouldn't amount to that much. It would, you know, maybe they would see a \$2 extra increase in their water bill because of it, but it wouldn't total a large amount. But the larger users that you're asking to cut back a whole lot more on, they're just not going to be able to achieve what's being asked of them to stay out of the penalty situation, if you will.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR VICTORINO: All right, thank you. Any other questions? Seeing none, thank you, Mr. Croly. Next testifier is Doug Mac Cluer, followed by Dave DeLeon.

MR. MAC CLUER: Mr. Chair, members of the Council, thank you for being here to listen to us. It's kind of hard to be an evening meeting. I'm addressing the drought, and the H'poko Wells don't serve the need of a drought Upcountry. They can't be pumped Upcountry readily, because the wells, the surface wells are at about 1,500 feet and the Upcountry system...no, it's 850 feet, H'poko Wells are 850 feet of elevation, and the weir is about 1,200 feet. So they can't be pumped up. The second thing is we support a shorter time period for review rather than the 45 days that is now proposed. I think we should shorten it up to 30 days. And the problem is storage and source, and that's all solved by the storm water reclamation study. And that's a great study but it takes money for the storage and...but the source is Piiholo overflow, and that's great but it takes money. So that's all I have.

CHAIR VICTORINO: Thank you, Mr. Mac Cluer. Questions for the testifier? Seeing none, thank you very much, Doug, for being here this evening. Next testifier is Dave DeLeon, followed by Warren Watanabe. And Dave DeLeon is speaking on behalf of the REALTORS® Association.

MR. DELEON: Good evening.

CHAIR VICTORINO: Good evening.

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MR. DELEON: Thank you for this opportunity to speak in favor of the proposed bill. I'm Dave DeLeon speaking on behalf of the REALTORS® Association of Maui. RAM fully supports the proposed bill. We believe that it absolutely is appropriate that the Mayor and the Director be given the authority to take appropriate, reasonable steps during a water emergency to protect the public's access to limited water supplies and to protect the public water system. The Mayor and the Director are the managers of this public utility. We cannot imagine a properly functioning public utility that would not be given the authority...giving the authority to its managers to take appropriate steps during an emergency. The measures proposed in this bill are obvious and appropriate steps to take during a water shortage emergency. RAM is particularly concerned about the passage of this bill because it was first proposed as part of a package of bills necessary for the extraordinary issuance of long-awaited Upcountry water meters. Its passage was described as, at the time, as prerequisite to the issuance of the potential, of the potentially hundreds of meters. Since the bill's introduction, however, it has morphed into a more general application, and the earlier emphasis on the issuance of Upcountry meters appears to have become a secondary consideration. RAM believes the Upcountry emphasis needs to be renewed. Hundreds of families are waiting. Many have been waiting for decades to get a meter for family land Upcountry. The Water Department has come up with a viable plan to make a major dent in that waiting list, and this bill is a central part of that plan. So on behalf of those families, RAM respectfully asks the Council that the Council pass this measure in a form that will allow for the issuance of Upcountry water meters. There appears to be a degree of concern on the part of some of the community that the proposed emergency rates will never be rescinded and would eventually become the regular rates. While that concern requires a stretch of the imagination, one way to quiet such skepticism would be to limit the duration of the emergency declaration to no longer than, say, three months, after which the emergency would have to be re-declared if it persists. We'd also humbly suggest that the emergency declaration be posted in public places, including on the County's website. Mahalo.

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

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Mr. DeLeon, for being here. You heard a previous testifier talk about situations where there's multi-family homes. Is, has the RAM looked into how to deal with that? Because that seems to be kind of a sticking point, at least in my mind here on, you know, like you said, two days into it they've exceeded the top tier. So has RAM looked in to how to deal with that?

MR. DELEON: No, we'll leave that to better minds.

COUNCILMEMBER COUCH: Well we're looking for those. Thank you.

CHAIR VICTORINO: Good answer, Mr. DeLeon. Good answer. Any other questions for Mr. DeLeon? Seeing none, thank you, sir.

MR. DELEON: Thank you.

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CHAIR VICTORINO: Next testifier is Warren Watanabe, and he is representing the Maui County Farm Bureau, he's the executive director, followed by Mr. John Duey.

MR. WATANABE: Good evening, Chair Victorino and members of the Committee. Again, my name is Warren Watanabe, executive director of the Maui County Farm Bureau. The Maui County Farm Bureau on behalf of our commercial farmers and ranchers extends our appreciation for listening to our concerns as we seek solutions to this ongoing issue. We recognize and understand the need to manage water during water shortage events. Upon reviewing the proposed bill we suggest the following amendments. One, amend Section 14.06.010, Declaration of Water Shortage, Item C. Within 30 days in place of 45 days, and at least 30 days thereafter. After the declaration of a water shortage the Director shall submit a report of findings to the Council. Every day during a declaration is critical for ag operations. Irrigation of crops and water for livestock dictates farm and ranch viability, and our decisions and plans are determined by water availability. The current language does not provide a mechanism to end the declaration period. By requiring a monthly reevaluation and recognizing that availability of water can fluctuate, a monthly assessment seems reasonable to ensure that the declaratory period is not open-ended and ceases at the appropriate time. Two, Section 14.06.02 [sic], Control of Water Usage. We propose adding the following language, and when we...you have a typo, it actually is part of Item A, and it would add to that section, said schedules, restrictions, and rates shall provide specific standards applicable to agricultural users. While some has mentioned it, clarification that agriculture will be included during the development of the administrative rules will facilitate the process. The criteria must clearly set for timely management of our business plans. Participation only after the proposal is completed and out to public hearing may waste critical time to have this process in place. Thank you for your consideration of these amendments, and we look forward to continuing to collaborate on improving our water systems. Thank you.

CHAIR VICTORINO: Thank you. And thank you, Mr. Watanabe, these are some very good suggestions that we will be looking into at our regular meeting, but thank you very much. Questions for the testifier? Seeing none, thank you, Mr. Watanabe.

MR. WATANABE: Thank you.

CHAIR VICTORINO: Next testifier is Mr. John Duey, and he will be followed by Simon Russell.

MR. DUEY: Good evening, Chair, Members. Thank you for being here and taking this evening. My name is John Duey, Iao Valley. I'm a neighbor of Dave and maybe not for long a friend of his but we are neighbors. I'm not in favor of giving the DWS Director, Dave or any other following him this much power. I think in case of a severe drought the facts should be brought to this Committee and then on to the full Council for consideration before any action is taken in that regard. We have elected officers to take care of that, those kinds of problems. I believe there are two ways to alleviate the problem of water shortage. As one of them you know I've talked about and that's raw water storage that would alleviate those ups and down in supply that Dave had in his PowerPoint. Number two is stop approving every large subdivision and industrial thing that

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comes to the Council. For the record, August 25, 2007 was the first time that Central Maui was asked to conserve water and I think it's happened a couple times since then. I know of one kamaaina who says to me every time this comes up, I'm not going to conserve water so somebody else can build, and I think that's repeated throughout the County. It's just not fair to people who have been here for 50 years or born and raised here to have to conserve water so some more houses can be built for somebody who comes from the mainland to live in. So anyway, that's my response. Large raw water storage as Mr. Mac Cluer eluded to, it does take a lot of money. The County at some point is going to have to bite the bullet and build raw water storage. I don't know whether this Council or 20 years from now but it's going to have to have happen. Our past Water Use and Development Plan, Mr. Carl Freedman went through all that and there was some good thought to that. So I'll leave it there, you've heard me before. Thank you for listening.

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

MR. DUEY: Aloha.

CHAIR VICTORINO: Thank you, Mr. Duey. Next testifier is Mr. Simon Russell, and he was with the Hawaii Farmers...Mr. Russell, I gotta admit I cannot read your writing. The last one is United I think but I don't know what the...okay. If you could, please.

MR. RUSSELL: My apologies, Mr. Chair. Simon Russell, Hawaii Farmers Union United, vice president.

CHAIR VICTORINO: Union, okay. Thank you.

MR. RUSSELL: It's my pleasure to speak before you tonight on water policy and this matter before us for our consideration. The word farmer I didn't really see it in Chapter 14.06 and it disturbs me, because one of the issues that keeps me awake at night is and I'm sure everybody, a lot of people here feel the same, the growing population in Hawaii is going to demand water, and agriculture demands water. And we import almost all of our food, so many of us know that Hawaii imports about 90 percent of its food. Farming's a difficult trade, many farmers are going out of business or choosing to do something that takes, that makes a better income for them and their ohanas. We have to reverse this trend and encourage farming in Hawaii, and on a personal basis I spend a lot of time educating young farmers and reaching out to the community. And we have a monthly meeting in Haiku where everybody's invited to bring their locally grown food and feed each other, and it's a wonderful event, the Maui Farmer's Union United. So we gotta reverse this trend of farmers retiring. The average age of the farmer in Hawaii is 60. I'm a farmer, I'm the son of a farmer and I'm here tonight to ask you to give us farmers a break with regards to the water usage. I saw nothing in the amendments to Chapter 14.06 that protects farmers. And the question for you to consider, please, is do hotels and other industrial activities and non-essential activities have the same value to our society as our food production system? Not to me. And so we, the Hawaii Farmers Union oppose the bill as it's written. The food producers on Maui will be penalized like all the other water users, and I would like to emphasize food producers and not

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all agricultural users. Food producers are of primary importance. In my opinion I think policy should emphasize that, that people who grow food for the residents on Maui should not be limited to the water that they consume. We consider food production essential at Hawaii Farmers Union. We respectfully ask you to amend the language of this County ordinance to reflect the importance of the food production to Maui County and guarantee that family farmers and other producers of food for the local economy, local economy only, will not be penalized for using the water that they need for their crop production. We're equally opposed to farmers having their water meters revoked for exceeding water quotas. Please provide exceptions for the food producing farms on Maui that sell their goods in Hawaii. In conclusion, less we forget the Hawaii State Constitution which a lot of us in this room have sworn to uphold, Section 1 of Article 11 says for the benefit of present and future generations the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals, and natural resources. And we shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self sufficiency of the State. Nothing benefits us more than good, healthy, locally grown food. So, you know, on behalf of the Hawaii Farmers Union, please do the right thing and exempt small food producers on Maui from being penalized for using water during a drought. And that's about all I have to say.

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

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you, Mr. Russell, for being here. Now you said support small food productions? Is that what you wanted to put in there?

MR. RUSSELL: Small or large, I mean anything that happens on Maui is going to be small by Ohio standards, you know. Anything under 1,000 acres is usually called a small farm and then after that it's medium.

COUNCILMEMBER COUCH: So you're okay with any food production if we kind of try to put some wording in?

MR. RUSSELL: Yeah, any food production.

COUNCILMEMBER COUCH: And that includes raising cattle --

MR. RUSSELL: Yeah, cows...

COUNCILMEMBER COUCH: --sheep, goats.

MR. RUSSELL: I don't know if sugar is food but we could think about that.

COUNCILMEMBER COUCH: Okay, thank you.

MR. RUSSELL: Thank you.

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CHAIR VICTORINO: Thank you, Mr. Russell. Next testifier is Mr. Michael Howden, followed by Tom something sack, I don't...is that a W? I guess he'll know who he is when he comes up. I apologize. Sometimes I cannot read your guys writing. I apologize. Okay. Mr. Howden.

MR. HOWDEN: Good evening, Chair Victorino, members of the Committee. What I've got from listening to other people testifying is that the bill is flawed, but I think that what we really need to look at is why it's flawed. We're talking about water shortages which seems to me somewhat specious given that over 200 million gallons a day comes out of the East Maui Watershed to which we have the rights 'cause these are public trust waters. The present Director who would, Dave Taylor who would be given even more authority has told his staff that the memorandum of understanding which has existed since the Cravalho Administrations doesn't have legal standing, that it's not binding to the parties involved. That is patently false. And I'm a little distrustful that someone who holds those views personally and professionally will be given the power to determine what our water rates will be and what our access to water will be, especially when we're dealing with public trust waters. This present Administration, Arakawa II, when Alan was running he made a big point, one of his major points was the use of the eminent domain for the County to take ownership of EMI and also Wailuku Water Company. That rhetoric upon his succeeding again as Mayor has disappeared. But I think these are the foundational issues that we seem to be ignoring again and again, because there's simply not the political will in the County to address even like a few million more gallons a day. We take less than 9 million gallons a day at Kamole Weir. We have the right to between 12 and 15 million gallons a day, taking out of the Weir, and which would not adversely affect the operations of HC&S, and yet we continue to fail to do that. So I would just ask you to, if you really want to deal with water shortage, deal with the access to water. And as John Duey pointed out and Simon Russell, you know, part of that would be creating adequate storage throughout the County in terms of serial reservoirs, et cetera. Thank you.

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

MR. HOWDEN: Thank you, Chair.

CHAIR VICTORINO: And the last testifier to sign up...and I will invite anyone else who would like to come up and testify, please sign up at the lobby table. Thomas, and I'm sorry, Thomas, I'm not sure if that's a W or a U so I don't want to guess.

MR. KAFSACK: Okay. My name is Thomas Kafsack and so...

CHAIR VICTORINO: Kafsack.

MR. KAFSACK: Yeah. It's K-A-F --

CHAIR VICTORINO: It's a K.

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MR. KAFSACK: --like Frank, S-A-C-K.

CHAIR VICTORINO: Okay, K. Thank you very much for the clarification. Kafsack. Okay, go ahead, Mr. Kafsack.

MR. KAFSACK: Okay, thank you, Mr. Chair and Council members, to hear a little goat farmer from Kula and his concerns. I'm the owner of Surfing Goat Dairy on Maui, and we are doing business on Maui now since ten years we are open, and we own this land which we bought in '99. And we are one of the biggest goat dairies in the country, in the U.S. meanwhile. With this bill and I had several discussions with the Water Director about this already. He has a problem, he inherited a lot of problems, and one of the problems is that we don't produce enough water. So if we are talking and I see that it's right not to talk about droughts anymore, let's talk about water shortages. So what we have to do is we have to increase our investments to get more water. He assured me several times that we have enough water under this area in Haiku. So we should issue water bonds or whatever and develop new sources as fast as possible. To some of these regulations of this bill, one thing is that we have mechanical failure in there. From the news I hear that we have this mechanical failure in Honolulu nearly every other day, that the line breaks or a pipe doesn't work. I don't see that these customers are punished by higher rates, and we shouldn't do this here on Maui, too. So this should be for sure removed, and if a pump fails here then okay, I have the same problem, we are working with a lot of machines, too, so I have a spare pump which I can use in this and not declare a water shortage for several weeks. Second, there are no regulations for companies like ours in there where we are using lots of water when we cannot cut down this water. So a dairy needs tens of thousands of water to clean the dairy, same as with the slaughterhouse. Yeah. So we have very little chance to conserve water. Where we can conserve water is in irrigation where we do our best since the beginning on here. But we see that the water rates are going up here and for ag, too, and then getting punished by additional Tier 1, Tier 2 or whatever comes after these two tiers. Yeah. So I don't see that farmers and operations like our dairy can stand this. So I agree with all these testifiers before that there should be exemptions for food production. Yeah. And just to answer the question you haven't asked me, Mr. Couch, we are using way over 1 million gallons of water a month. So then you can count how much money this is for us even if it's like I saw in that one sheet, if it's just ten cents in Tier 1 for ag users. Thank you very much.

CHAIR VICTORINO: Thank you, Mr. Kafsack. And thank you for the exact amount. I mean that really does help a lot of us to understand. You know when we ask that question it's because we rather...we need to understand how much water is being used --

MR. KAFSACK: Yeah.

CHAIR VICTORINO: --by the various entities. And that's been one of the challenges, trying to get that kind of information, yeah. So thank you for that clarification. Questions for the testifier? He answered your question so...you beat him to the punch. Thank you, Mr. Kafsack.

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MR. KAFSACK: Okay.

CHAIR VICTORINO: Thank you.

MR. KAFSACK: Thank you very much.

CHAIR VICTORINO: All right. Again, let me check with our sister offices throughout the County. Let me go to Hana. Dawn Lono, do you have anyone there to testify?

MS. LONO: There's no one waiting in Hana to testify, Chair.

CHAIR VICTORINO: Thank you. Carla, is there anyone in Lanai at the Senior Center there to testify?

MS. NAKATA: Mr. Chair, there's no one waiting to testify on Lanai.

CHAIR VICTORINO: Thank you. And Tina Thompson in Molokai, is there anyone there to testify?

MS. THOMPSON: There is no one waiting to testify here at the Molokai Office.

CHAIR VICTORINO: Thank you. I will give one more opportunity for anyone in the gallery who has not signed to testify, I'll give you one more opportunity to come forward and make your testimony, and then you can sign up at the desk. Okay, seeing no mad rush, then I will now call and with the permission of the Committee, I will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you.

...END OF PUBLIC TESTIMONY...

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

CHAIR VICTORINO: I will give you a few more facts, and as I had noted, no action would be taken tonight. This was informational gathering and as well as an opportunity for the public to bring forward their thoughts and their manao to the process. I want to also say we had a number of e-mails and other forms of communication, and with your permission, I'd like to enter this into the record.

COUNCIL MEMBERS: No objections.

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CHAIR VICTORINO: No objection? Thank you very much. So no one who sent us information will be left out. A couple of things were brought up and I wanted some...I went out and found some answers to the question. First of all, golf courses. There was a number of e-mails that said well, you know, golf courses use too much water, we should shut them off and all of that. Well let me say that to the best of my knowledge in verifying with golf courses, all the golf courses that we know of are either using well water, ditch water, or reclaimed water. Kaanapali Golf Course uses almost all reclaimed water. Kapalua uses reclaimed water. Pukalani uses 70 percent well water, 30 percent R1 water, on and on and on. So potable water is not used by golf courses except in maybe their restaurants and restrooms and things of that nature, but the irrigation as best I've told told, as best I've been able to find out, none of the golf courses in Maui County uses potable water. Now if there is a difference and I find something different, I will be more than happy to report that. As far as our parks, which is another large water user, Central Maui, Central District, 75 percent of all water is nonpotable, in other words it's brackish well water. South Maui uses R1 water for Kalama, South Maui Regional Park, and the Kihei Roundabout. West and East Maui parks uses potable water, and so there's another area that maybe we can look upon to help conservation also. But just those are the large water users. I did get a report back from the State and they have made efforts to conserve water in their various facilities, whether they're schools, whether they're parks, whether they're government facilities, and I was told that they have reduced by almost 2 million gallons annually what they've been using in the past. So I think conservation and I think, Mr. Taylor, you could answer this question, I think you've mentioned on a number of occasions that our users have conserved or have been conservative in usage of water, and that we were like I think 2 or 3 million, 2 to 3 million gallons less a month on water usage? I know you've given me these figures a couple other times in other meetings.

MR. TAYLOR: Yes, Mr. Chair. I don't have the figures with me, but looking at water usage over the past decade or so, there has been a noticeable decrease in the past several years.

CHAIR VICTORINO: So I think, you know, again, the public has been very proactive in trying to cut their water usage. I do agree that anything that we come out with, we will be working very closely to protect food production and our agricultural community. I think that's very important to keep them as one of our top priorities. Kuleana usage and other usage is very important also. There's a number of competing entities when it comes to water, ladies and gentlemen, so we understand these, and I think Mr. Taylor and what he's brought forward has great concept but there's more work that needs to be done. And I think this is what this Committee is committed to come up with something that will be fair and that will protect not only our food producers but the public at the large. And I am looking into the issue of condominiums and that, I've already been working on that issue also. So I mean there's nothing that we haven't worked on, I just want the public to understand that we're here to come up so that when we have a water shortage that there is some methodology to protect those who are abusive...you know not protect, to punish those that are abusive. And those who are conserving, then we want to protect them, you know, so we want to make sure everybody's protected in a fair method. So, Mr. Taylor, I want to thank you very much. Do you want to add anything else, sir?

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MR. TAYLOR: No, thank you, Mr. Chair.

CHAIR VICTORINO: Okay, thank you. At this time if there's no other questions from the Committee members?

COUNCILMEMBER COUCH: You're not going for discussion tonight, right?

CHAIR VICTORINO: No.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: Because, again, we're not gonna make any decisions. I just wanted to bring some facts up that were being brought up and were being passed around as misinformation.

COUNCILMEMBER COUCH: Okay, just a quick request of him then if we can get a...

CHAIR VICTORINO: Put it in writing 'cause I asked in the past.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: I mean that would be better.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: And that way we have it in writing and then we can follow up on it, to me and I'll pass it onto Mr. Taylor, please. Any requests, any questions you have please forward it and then I'll make sure we get an answer for Mr. Taylor and Corporation Counsel. Seeing nothing else, ladies and gentlemen, the meeting of the Water Resources Committee for March 25, 2013 is now adjourned. . . .(*gavel*). . .

ACTION: DEFER pending further discussion.

ADJOURN: 7:55 p.m.

WATER RESOURCES COMMITTEE MINUTES
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March 25, 2013

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:min:130325:ds

Transcribed by: Daniel Schoenbeck

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

March 25, 2013

CERTIFICATE

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

DATED the 1st day of April, 2013, in Kula, Hawaii



Daniel Schoenbeck