

# WATER RESOURCES COMMITTEE

Council of the County of Maui

## MINUTES

February 19, 2014

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 9:02 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair  
Councilmember Mike White, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Donald G. Couch, Jr.  
Councilmember Stacy Crivello  
Councilmember Don S. Guzman

**EXCUSED:** VOTING MEMBERS:

Councilmember Robert Carroll

**STAFF:**

Regina Gormley, Legislative Attorney  
Erin Fleming, Legislative Attorney  
Tammy Frias, 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 S. Taylor, Director, Department of Water Supply  
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel  
Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel  
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:**

John V. Duey, Board Member, Hui o Na Wai Eha  
Irene Bowie, Executive Director, Maui Tomorrow Foundation, Inc.  
Rosemary Robbins  
Mercer "Chubby" Vicens  
Additional attendees (5)

**PRESS:** *Akaku--Maui County Community Television, Inc.*

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CHAIR VICTORINO: . . .(*gavel*). . . Good morning, the meeting of the Water Resources Committee, February 19, 2014, will convene. At this time before we get started, I'd ask everyone to turn off their cell phones or put it on silent. Decorum will be enforced in the Chamber. May I introduce

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the Members that are here this morning. First of all, I'd like to introduce Member Mike White, the Vice-Chair of the Committee.

VICE-CHAIR WHITE: Morning, Chair.

CHAIR VICTORINO: Good morning. Our Chair of the Council, Ms. Gladys Baisa from Upcountry.

COUNCILMEMBER BAISA: Good morning.

CHAIR VICTORINO: Good morning. This morning, Robert Carroll, our Vice-Chair is excused...from South Maui, our esteemed colleague, Mr. Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR VICTORINO: From Molokai, the lovely lady Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Morning, Chair.

CHAIR VICTORINO: Good morning. And our young, but dynamic colleague from Kahului, Mr. Don Guzman.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: And I'm the Chair, Mike Victorino, just in case anybody missed that one. I don't see any of the non-voting Members here at this time. If they do step in, I will introduce them...from the Department of Water Supply, our Director Dave Taylor.

MR. TAYLOR: Morning, Chair.

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

MR. KUSHI: Morning.

CHAIR VICTORINO: Our Committee Staff is, our Legislative Attorney is Gina Gormley and Committee Secretary Tammy Frias. Good morning, ladies. Of course we can never do anything without these ladies. Our Staff is very, very invulnerable -- invaluable. Hoo, this morning the tongue's twisted a little. Must be last night, Don, must be last night.

COUNCILMEMBER BAISA: Well, we don't want to know.

CHAIR VICTORINO: And also, I guess, Erin, I should introduce you because -- will Erin be our, Erin's going to be our, your replacement eventually right? No? Erin, oh, you just sitting in just to...

MS. FLEMING: ...*(Inaudible)*....

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CHAIR VICTORINO: Okay, Erin. Thank you. Oh, oh and of course, Corporation Counsel Jennifer Oana. Sorry, Jennifer, I did not see you there.

MS. OANA: Good morning.

CHAIR VICTORINO: Good morning. Okay. So these are the Staff that are here this morning. Let me check with our District Offices to see if they are available for public testimony. Dawn Lono from our Hana Office. Dawn, are you there?

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

CHAIR VICTORINO: Good morning. Denise Fernandez from our Lanai Office. Denise, are you there?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR VICTORINO: Good morning, and of course, Ella Alcon of our Molokai Office. Ella, are you there?

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

CHAIR VICTORINO: Okay. Thank you, ladies and good morning to all of you. At this time, we would like to -- we only have one item this morning and this item is WR-10, Na Wai Eha and East Maui Water Resources. The Committee is in receipt of County Communication 14-36 from Councilmember Mike Victorino, referring the matter of Na Wai Eha and the East Maui Water Resources. This is the only agenda item we have this morning.

***...BEGIN PUBLIC TESTIMONY...***

CHAIR VICTORINO: So I'll start with public testimony. Testimony will only be limited to the item on the agenda this morning. If you wish to testify, please sign up at the desk on the eighth floor in the lobby or at one of our District Offices listed on the agenda. Testimony will be limited to three minutes and upon request, one minute to conclude. At the three minute, the light will turn yellow and at four minutes, the blinking red light will start. If you are still talking after four minutes, I may ask you to kindly conclude at that time. When testifying, please state your name and who you are representing, if anyone. We have established limited communication as you can see in our District Offices and to be fair, I will try to rotate each side. So with no objections, ladies and gentlemen, I will open up for public testimony.

COUNCILMEMBER COUCH: No objection.

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CHAIR VICTORINO: Thank you. Let us change it a little. Let me start with the District Offices first and then I'll go to the testifiers in the Chamber, if you don't mind. Let's start with Hana. Dawn, do you have anyone there to testify?

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

CHAIR VICTORINO: Lanai, Denise, do you have anyone there to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR VICTORINO: And Ella in Molokai, is there anyone waiting to testify?

MS. ALCON: There is no one on Molokai waiting to testify.

CHAIR VICTORINO: So I will conclude the testifiers here in the Chamber and return to you ladies to see if anyone has made an appearance and would like to testify. So our first testifier here in the Chamber is Mr. John Duey and he's with Hui o Na Wai Eha. He's a Board Member.

MR. DUEY: Morning, Chair.

CHAIR VICTORINO: Good morning.

MR. DUEY: Morning, Members. My name is John Duey, a resident of Iao Valley. I think you've seen me before over here a couple times. I'm just here to, I have some working knowledge of what's happened to Na Wai Eha since October of 2003, and I'm here to bring you up-to-date on what's happening with the Na Wai Eha contested case. I think a short history about the long-term project is in order. I have a seven-page timeline of events on water on Maui. I'm not going to read that so don't get excited. But I will go over quickly what's happened in Na Wai Eha case. First, I'll try to make this quick. The Hui was organized in October, 2003. In June 25, 2004, Earthjustice had filed a petition on the behalf of Hui o Na Wai Eha and Maui Tomorrow to amend the instream flow standards of the four streams. Two-and-a-half, three-and-a-half years later, a contested case hearing was started December 3, 2007. It lasted 23 days, 600 exhibits, 77 witnesses, 11 attorneys in the same room at the same time and that was fun. It lasted 'til March of the next year. Actually, it was open for one day in October of 2008 because of HC&S had some additional testimony they wanted to put in. After that, it took a year-and-a-half for the Hearings Officer to come up with the recommendations, that was April 9, 2009. At that point, he recommended 34½ million gallons be restored to the four streams. All the Commissioners voted on June 10, '10, a year later. They voted for 12½ million gallons to be restored to the four streams. The next month, July 14, '10, we filed an appeal, Notice of Appeal. On August 10<sup>th</sup>, Wailuku Water Company and HC&S did release the water that was required from the D&O, the Decision Order. 6/23/2011, Hawaii State Supreme Court agreed to hear our appeal and 6/7 a year later, 2012, Supreme Court heard oral arguments and then August 15, '12, they vacated the Decision, the D&O, the Decision Order from CWRM, the Commission on Water Resource Management, of 2010 and remand -- vacated and remanded it. The remand hearings will start on

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March 10, 2014. So this has been 10 years, almost 11 in the making. From the start, we have had only one issue and asking, that is asking for the Water Code 174C to be upheld. It is the law. Which in our case is, basically, is mauka to makai stream flow and enough water to satisfy traditional customary Hawaiian practice throughout Na Wai Eha. In reinstating stream flow in Iao Stream, it would greatly increase -- enhance, rather, the Iao Aquifer as Iao loses 6.3 million gallons a day on its way to the ocean if it's allowed to flow. As you know, water is a public trust since 1973, the McBryde Robinson case on Kauai, water is owned by the public, not owned or controlled -- should not be controlled by any private entity, which it is now. In doing the remand, there were six things that Supreme Court addressed in the remand. One was the T&C or Traditional and Customary practice for Na Wai Eha. Another was HC&S pumping Well 7, which they are now doing at 18.5 million gallons a day, which they said they couldn't afford to do. Another was the use of recycled water, which I understand is being looked into at this stage. Another was waste in the diverted systems. To Wailuku Water's credit, they have in their briefs, they have said they've addressed that issue somewhat. Our intent is not to restrict the 1.088 million gallons a day of service water that DWS is currently buying from WWC, or Wailuku Water --that is from the monthly report-- nor to restrict the 3.2 million gallons a day that DWS has an agreement with Wailuku Water to buy in the future. There is a pending Water Use Permit Application for that water which won't happen 'til after this decision of Na Wai Eha, after the remand is completed.

CHAIR VICTORINO: Mr. Duey, can you complete in the next 30 seconds, please.

MR. DUEY: I can.

CHAIR VICTORINO: Thank you.

MR. DUEY: This water that we're talking about here is supplied through the Iao tunnel. Another source of good, clean water is the Iao tunnel, where there's 620,000 gallons a day of good, clean water being dumped in the Iao Stream and DWS needs to make a constant effort to get that water when the proceedings are over. I look forward to the remand hearings. Eleven years is enough already, tired. Thank you for listening again.

CHAIR VICTORINO: Thank you, Mr. Duey. Questions for the testifier and let me warn the Committee now. Because it's still a contested case, questions that you may ask, if Corporation Counsel deems it -- what would you like to say, Mr. Kushi -- inappropriate or something that needs to be discussed in executive session, will you intervene at that point to say something?

MR. KUSHI: Yes, I will, depending on the question.

CHAIR VICTORINO: Just so that you're all clear on what we're doing today. It's an update and so just that we won't get into details because we've been asked not to. Questions for the testifier. Seeing none, thank you very much, Mr. Duey. I do appreciate all what you've done and continue to do.

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MR. DUEY: The Members are safe, no questions.

CHAIR VICTORINO: Thank you, Mr. Duey.

MR. DUEY: Thank you.

CHAIR VICTORINO: Next testifier is Irene Bowie and she is testifying on behalf of Maui Tomorrow.

MS. BOWIE: Good morning, Chair Victorino and --

CHAIR VICTORINO: Good morning.

MS. BOWIE: --Committee Members. I'm Irene Bowie, Executive Director of Maui Tomorrow Foundation. And Maui Tomorrow would like to thank the Council for your support of stream restoration and for the funding support for the 2010 USGS Streamflow Study that included Na Wai Eha. This explored seepage flow and the effects of diversions and it is now recognized as the best available science on the subject. We've come a long way in this Na Wai Eha case as Mr. Duey mentioned and are making marked progress. Also as Mr. Duey mentioned, HC&S now states that they can pump 18.5 million gallons a day from Well 7 where originally they said that they could not. To us it's not clear in Department of Water Supply's filings in this second round of the Na Wai Eha case, what position they take on stream restoration, but I hope that this Council and Department of Water Supply remember the importance of the recharge benefits in streamflow restoration, particularly in County wells as recharge significantly mitigates the effects of pumping. Wailuku Water Company claims that it has been losing money and can't make a profit. We hope that this leads the County to consider a transition to managing the resource that both protects streamflow and kuleana users. And I'd like to close in just reminding everyone of the Central Maui Water Use Plan which stated the number one way to go was water reuse and conservation. So I hope we can really, again, really focus on that as it makes so much sense. Thank you.

CHAIR VICTORINO: Thank you, Ms. Bowie. Questions for the testifier? Seeing none, thank you very much. And the last testifier who signed up so far is Ms. Rosemary Robbins and she is a concerned citizen.

MS. ROBBINS: Morning, everybody.

CHAIR VICTORINO: Morning.

MS. ROBBINS: In addition to the capacities that you identified with these folks, they are big-time, concerned citizens, so I would like to not ask questions of them, but to give them a wonderful quiet round of applause for what they have been able to do and the folks that they're working with. One of the concerns I have, yesterday I came down to go through the file, and the only paper that was in the file was Chairman Victorino's call that this meeting would be happening. So when it mentions in this call to the meeting, it mentions County Communication 14-36, it

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wasn't there to be read, so we've got some information again not being available to the public-at-large as to what it is that we're talking about. So that's a hole we need to fill. The idea that water is a public trust, oh, yes, pono, big-time required out of that is the bills that we get fairly frequently now from the Water Department continue to say and were saying back when John was working on some of the water issues and I was working with the Upcountry Oversight Water Committee with the EPA, if water is a public trust, how come people are able to siphon it off...resell perhaps some of that water? I mean that may be a whole industry going on that none of us know. I certainly don't know that, but there's a whole pile of questions going on out there. So I was at some of the meetings back in the year, 2012, when the folks from Honolulu were over and there was a lot of dissent from the people from Paia, which is where the meeting was held. I'm not from there but I certainly heard their disbelief and their angst at some of what has gone on in the past and some. I know I recommended this before, but *Land and Power in Hawaii*, Gavan Daws has a whole series in there on water from all of our islands. If we've read it before, we might do well to read it again. If we haven't read it, it's free at the local libraries. So I just am hopeful to goodness that with the time that has passed in addressing this and the fact that it has gone to the courts, up to the State Supreme Court in order to get addressed, something that's been said in truth eons, a year ago, water is a public trust. So thank you for your attention to cleaning up what needs to be cleaned up and energizing to moving forward indeed with pono. Thank you.

CHAIR VICTORINO: Thank you, Ms. Robbinson [sic]. Any questions for the testifier? Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and thank you, Ms. Robbins, for being here. Just a, I want to figure out what you were talking about about a missing document?

MS. ROBBINS: The only...in the binders?

COUNCILMEMBER COUCH: Yes.

MS. ROBBINS: The only piece of paper that was in there for WR-10 yesterday was the Chairperson's call that this meeting would be on today and that this would be, what you got with your agenda.

COUNCILMEMBER COUCH: That's all that there is.

MS. ROBBINS: Period.

COUNCILMEMBER COUCH: That is all that there is. There is no other document.

MS. ROBBINS: How about the 14-36?

COUNCILMEMBER COUCH: That is that document.

MS. ROBBINS: Wasn't there.

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COUNCILMEMBER COUCH: No. The document 14-36 is the letter from the Chair saying can we have this matter.

MS. ROBBINS: So that would be the only thing that would --

COUNCILMEMBER COUCH: That is the only thing.

MS. ROBBINS: --be filed coming out of this?

COUNCILMEMBER COUCH: Yup.

MS. ROBBINS: Thank you for that clarification.

COUNCILMEMBER COUCH: Thank you.

CHAIR VICTORINO: Thank you. Any other questions for the testifier? Seeing none, thank you, Ms. Robbins.

MS. ROBBINS: Welcome.

CHAIR VICTORINO: At this time, I'll check with our District Offices. Again, starting with Hana, Dawn, is there anyone wanting to testify?

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

CHAIR VICTORINO: Lanai, Denise, is there anyone waiting to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR VICTORINO: And finally, Molokai, Ella,, is there anyone waiting to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR VICTORINO: Is there anyone in the gallery that would like to testify? I see somebody running up at this moment in time. He may not run as fast as he used to, but he still run. And we all know Chubby Vicens. I don't have to have a paper to introduce him. Thank you very much, Chubby, for being here. Please proceed.

MR. VICENS: Good morning, Mr. Chair, Members of the Committee. As I sat back there, and I'm speaking as an individual today because we often hear the term, R water reuse, and that is the main thing that I'm speaking of today. Years ago, Mr. Taylor, as the Manager of the Wastewater System, spoke before the GPAC Committee, which I was a Member, explained the cost, the efficiency of the plant when you go from R, from the wastewater that we put out into the ocean

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to a reusable product, R-1 water, as we know it. I can understand the reuse of water for irrigation of parks, for maybe even the plantation's cane. My concern is when we speak of reused water, at the time that it becomes applicable for human consumption, what will be the cost? We know what we pay for water today, but if the statement that Mr. Taylor made several years back still rings true today, then there is a additional cost associated with this water that we're gonna have to purchase. I have never really gotten a clear understanding as to what will that water cost us. Is it going to be blended in the current potable water system? Is it going to be a separate system? But my main concern is cost. And if somebody can answer that as we move through the proceedings in your deliberations, I would be more than happy. As I said, I can understand the reuse of water for irrigation purposes, et cetera, et cetera of landscape, but I'm caught in this dilemma of not knowing what it's gonna be for human consumption. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you very much. Any questions for the testifier? Seeing none, thank you very much for being here, Mr. Vicens.

MR. VICENS: Thank you for allowing me to speak.

CHAIR VICTORINO: Thank you. I'll give one more opportunity, anyone in the gallery wanting to testify, please come forward. Again seeing no one rushing to the podium, with no objections I will close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you, District Offices. Aloha. I hope I didn't break something. Okay.

**...END OF PUBLIC TESTIMONY...**

**ITEM WR-10: NA WAI EHA AND EAST MAUI WATER RESOURCES (CC 14-36)**

CHAIR VICTORINO: So this morning, we have just one item on the agenda, the Na Wai Eha and East Maui Water Resources. I brought this matter forward this morning for an update for you, the Members of the Committee and the public as best I can. The legal battle over the Na Wai Eha streamflow dates back to 2004 when a community group, Hui o Na Wai Eha and Maui Tomorrow Foundation represented by Earthjustice, petitioned the Hawaii Commission on Water Resource Management to restore the streams, the four streams of Na Wai Eha. This morning, Mr. Taylor and Mr. Kushi would like to give us an update. Mr. Kushi, please jump in at any time when you think an executive session is in order. So I will give you the option at this point in time, so I'll ask, between you and Mr. Taylor, for any update you can provide us and the public in this matter. Is there anything you guys would like to say in public that we can and then at the moment you think an executive session is necessitated, I will call for questions and then we will go into executive session. So again, ladies and gentlemen, this is a, the main reason for this is, we're going to go into Budget very shortly and these waters are being used at some, in some areas as sources for the County of Maui. So it's very important for us to understand where we are with

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all of this and how far and hopefully, how close are we to some resolutions, you know. And I cannot speak because I don't know enough to speak in that manner and because I've been asked by Corporation Counsel and the County Administration, the Department of Water, that this update will be done as much in public as we can and then move into executive session so that we can have a what-do-you-call client-attorney privilege opportunity to ask questions. Okay. So Mr. Taylor, would you like to start out or Mr. Kushi, who would like to start out?

MR. TAYLOR: Thank you, Mr. Chair. I'll start out.

CHAIR VICTORINO: Okay, Mr. Taylor, go ahead, please.

MR. TAYLOR: So tentatively at the March 12<sup>th</sup>, Water Resources Committee meeting, we've been working with the Chair about giving you an update on our long-term Capital Improvement Plan as a precursor to Budget to see what we're doing, what our needs are, et cetera. The issues relating to Na Wai Eha and the East Maui, any East Maui water resource development are uncertain, so we want to take this opportunity to just give you some background about why they're currently uncertain, where they are, because essentially when you look at our 20-year plan, there are some guesses, estimates and holes in the plan because of the uncertainty on these situations. So that's why we wanted to talk about this a little bit before that so that you understand why we don't know, you know, everything. So I think we all know that new water source development in Central and South Maui has been a challenge for a long time and there are no easy, fast and inexpensive solutions. Over the years, various people have proposed utilizing additional surface water from Iao Stream or utilizing groundwater from the Haiku Aquifer. So the Council and members of the public may wonder why there is not simply money in the Capital Improvement budget for implementation of these scenarios. So both of these concepts have unique challenges relating to the legal requirements. In the case of the Iao Stream surface water as Mr. Duey pointed out during his testimony, there's an on-going contested case hearing before the State Water Commission which will, among other things, determine how much water has to stay in the streams and how much water the Department of Water Supply is allocated. That is ongoing. So until there is some more certainty in that, it doesn't make sense for the Department to invest large amounts of capital for infrastructure, not knowing if we will be allocated more water or we'll even keep the water that we're currently allocated. In the case of development of groundwater in the Haiku Aquifer in East Maui, this may only be pursued in accordance with a Consent Decree that exists as a settlement with some plaintiffs from an earlier attempt to develop groundwater in East Maui. So any movement to develop any ground water in East Maui has to comply with a specific procedure laid out in this court-authorized Consent Decree. So because of that, we are currently working with Corporation Counsel on both of these and exactly where we are, I think Corporation Counsel may want to talk procedurally, but neither of these cases is as simple as just putting money in the Budget and spending it like other projects because of the unique legal circumstances. So that's why we did want to take this opportunity to have a discussion about where we are and as Chair Victorino said, if it gets more detailed, Corporation Counsel will probably want some of that in executive session, but we'll follow the lead from Corporation Counsel of what they feel is appropriate for open session.

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CHAIR VICTORINO: Jennifer, would you like to say anything?

MS. OANA: Thank you, Mr. Chair. Good morning, Chair and Members of the Committee. I'm Jennifer Oana, Deputy Corporation Counsel assigned to the Water Department. Director Taylor has asked me to come here today to briefly talk about the East Maui Consent Decree, as well as the Na Wai Eha contested case hearing on the petition to amend interim instream flow standards for the Na Wai Eha River and streams. Mr. Taylor gave a wonderful summary of the Consent Decree issue. With regard to that issue, there was a lawsuit filed back in 1993, which challenged the Environmental Impact Study for the Department's East Maui Water Development Plan. Then in 2003, another lawsuit challenged the Final Supplemental Environmental Impact Study for the East Maui Water Development Plan. As Mr. Taylor stated, the lawsuits were resolved with the entry of the Consent Decree, signed by all the parties, including DWS, and that Consent Decree prescribed certain steps DWS must follow in order to develop the groundwater resources in East Maui. The Consent Decree, among other requirements, requires that any further efforts by the County to develop groundwater resources in the area prescribed in that Consent Decree in East Maui would be treated as a new project with the preparation of a new EA or EIS and further, before any new project is planned by the County to develop groundwater in East Maui, a cost benefit study of the surface and groundwater resources available in Central Maui, Upcountry and East Maui has to be prepared, as well as a mandate that the County should vigorously investigate and pursue the availability of surface water from the Na Wai Eha region. This Consent Decree remains in full force and in effect, and therefore DWS is subject to that Consent Decree. Now with regard to the East, with regard to the Na Wai Eha contested case hearing, Mr. Duey gave a great summary of the proceedings. CWRM, also...CWRM, the Commission on Water Resource Management, also sent a timeline to you folks, I think this morning which you all received and it basically lists what has happened from the beginning to now. The first round of this contested case hearing was held from December 2007 through March 2008. CWRM, as Mr. Duey pointed out, entered its Findings of Fact and Conclusions of Law, Decision and Order in June 2010. The plaintiffs, Hui o Na Wai Eha and Maui Tomorrow appealed this to the Supreme Court, which then remanded it back to CWRM for further proceedings. Currently we are in the briefing stage. The parties have submitted their opening briefs, responsive briefs and rebuttal briefs. Right now we are in the process of responding to a Position Statement and a Feasibility Study submitted by HC&S with regard to the feasibility of them using R-2 water for their irrigation needs. So the parties will be responding to HC&S's Position Statement at the end of this week or early next week. The hearings on this Na Wai Eha contested case remand hearing are scheduled to begin March 10<sup>th</sup> and run for three weeks at various locations on Maui. That's my summary of what's going on with the two litigation matters with, for the Water Department. I'm happy to answer any questions you folks may have; however, like the Chair said, I caution that any questions with regard to liability or strategies be asked of me in executive session. Thank you.

CHAIR VICTORINO: Thank you. Mr. Kushi, would you like to add anything else at this point to Ms. Oana's presentation?

MR. KUSHI: No, nothing further.

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CHAIR VICTORINO: Nothing further. Thank you. Again, I will open up the floor for questions from my Members and again, if it goes into an area where the Corporation Counsel deems executive session is necessitated, then at that point in time I will look to call upon an executive session. So I'll open the floor up to questions. Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. The only question I think I can ask in open session is, what percentage of the water that comes from the Iao and the Na Wai Eha region is surface water versus groundwater?

MR. TAYLOR: The, I don't have exact numbers with me. I'm not prepared for that question, but the Iao Aquifer groundwater is, I believe, State Water Commission rates that groundwater as 20 million gallons a day sustainable yield. The problem with streams is they don't have a daily sustainable yield. Sometimes they're flowing full, sometimes they're not, so that has to be looked at as a, either yearly average or some sort of statistical methodology. But I can tell you that from the Department of Water Supply standpoint, we have authority from the State Water Commission to pump roughly 18 million gallons a day of groundwater from the West Maui or Iao Aquifer groundwater. We are currently pumping about 1.7, 1.8 million gallons a day or we get that much out of the Iao Stream through our surface water treatment plant. So that's our usage is really just a, you know, a little less than 2 million gallons of surface water versus close to 18 million gallons a day of groundwater from the Iao area.

VICE-CHAIR WHITE: Okay. Thank you. Thank you, Chair.

CHAIR VICTORINO: You're welcome. Further questions from the Committee? Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I guess this would be to, either Mr. Taylor or Corp. Counsel, I'm not sure, but when you talk about we have this, this East Maui Consent Decree, it was, is a result of a contested EIS, is that the initial cause of that, is an EIS that was contested?

MS. OANA: Yes, the plaintiffs filed a lawsuit to challenge the EIS.

COUNCILMEMBER COUCH: Okay. Just out of curiosity, wouldn't it be quicker and cleaner to just redo the EIS and put in what everybody is concerned about in the EIS and then move forward instead of having to deal with all this Consent Decree, you know, specifics that we don't know what the specifics are...

CHAIR VICTORINO: Mr., I'm gonna stop you at that point.

COUNCILMEMBER COUCH: Is that...

CHAIR VICTORINO: I'm gonna stop you right there because --

COUNCILMEMBER COUCH: Okay.

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CHAIR VICTORINO: --that would be kinda something we need to discuss.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: Okay.

COUNCILMEMBER COUCH: I wasn't sure.

CHAIR VICTORINO: You know, you were crossing a boundary that I, I know they were gonna stop you pretty soon, but I'll ask you to stop.

COUNCILMEMBER COUCH: Okay.

CHAIR VICTORINO: And that's something we can discuss in executive session.

COUNCILMEMBER COUCH: We'll do it in...yeah.

CHAIR VICTORINO: Please.

COUNCILMEMBER COUCH: Thank you.

CHAIR VICTORINO: If you don't mind, that question, just hold that question. Other questions in public? Yes, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I guess the only question that I can ask in open session and this is in regards to the same line, East Maui Consent Decree. When you're talking about East Maui, is that, what exactly are you talking about? What areas? I know you, East Maui is so broad that I would like to have a little bit more specifics.

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: Thank you, Mr. Chair. In the Consent Decree and if Staff wants to make copies of this, the Consent Decree has a map with a box. I know you're right in front of me, so you can see it and it delineates the area in question.

CHAIR VICTORINO: Can we have copies of that?

MR. TAYLOR: So that area is basically the...

CHAIR VICTORINO: I'll have Staff make copies for all of you.

COUNCILMEMBER GUZMAN: Okay.

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CHAIR VICTORINO: Since that is available to us. And I apologize for not having that before we started.

COUNCILMEMBER GUZMAN: Thank you, Chair.

MR. TAYLOR: So that area is defined --

CHAIR VICTORINO: And make some copies for the public, too.

MR. TAYLOR: --in the Consent Decree.

COUNCILMEMBER GUZMAN: Okay.

CHAIR VICTORINO: ...*(Inaudible)*... some requests, please.

MR. TAYLOR: And it is really the most, generally the most accessible area. It's a large area that covers the general geography that would be accessible through wells and a pipeline that would connect to our system.

COUNCILMEMBER GUZMAN: Okay. Thank you, Chair.

CHAIR VICTORINO: Okay. If I don't see any more questions for...or in the public session, with your approval, I will move into executive session, if you so deem that's, thinks it's necessary? No objections?

COUNCIL MEMBERS: No objections.

COUNCILMEMBER COUCH: Well, we have to have a motion, yes?

CHAIR VICTORINO: Yes, Mr....

COUNCILMEMBER COUCH: Oh, okay.

CHAIR VICTORINO: I was gonna get there. Thank you. Thank you. The Chair will entertain a motion to go into executive session under Hawaii Revised Statutes 92-5(a)(4) and 92-5(a)(8) for both, to allow the community to enter into executive session to consult with our legal counsel on questions or issues regarding the powers, duties and privilege and immunities and the liabilities of the County, the Council and this Committee, as well as deliberate and make decisions that require consideration for, of this information and must be confidential under State and Federal law. Do I have a motion?

VICE-CHAIR WHITE: So moved, Chair.

COUNCILMEMBER COUCH: Second.

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CHAIR VICTORINO: It's been moved by Mr. White and seconded by Mr. Couch. Seeing no discussion, all those in favor, say "aye".

COUNCIL MEMBERS: Aye.

CHAIR VICTORINO: All those opposed? Let the record read six ayes, one excused; Mr. Carroll.

**VOTE:       AYES:       Chair Victorino, Vice-Chair White, and Councilmembers Baisa, Couch, Crivello, and Guzman.**

**NOES:       None.**

**EXC.:       Councilmember Carroll.**

**ABSENT:   None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    APPROVE; RECESS open meeting and CONVENE executive meeting.**

CHAIR VICTORINO: We'll take a few minutes to get into, get the Chamber ready for executive session. We will...why don't we just take a five-minute recess and give everybody a chance to do whatever necessary needs are required. This meeting will stand in recess. . . .(gavel). . .

**RECESS:    9:39 a.m.**

**RECONVENE: 10:44 a.m.**

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resources Committee, February 19, 2014, will reconvene. Ladies and gentlemen, if you have any more questions at this time, if not, I'd like to make my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR VICTORINO: Thank you. I'd like to move to defer this action. So should I have a motion to defer?

VICE-CHAIR WHITE: So moved.

COUNCILMEMBER COUCH: But can you just defer it?

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VICE-CHAIR WHITE: Yeah, you can just defer it --

COUNCILMEMBER COUCH: Without objection...

CHAIR VICTORINO: Just, let's, yeah, okay, do I have a second?

COUNCILMEMBER COUCH: Second.

CHAIR VICTORINO: Okay. Thank you. The motion to defer was made by Mr. White and seconded by Mr. Couch. Any more discussion? Seeing none, all those in favor, say "aye".

COUNCILMEMBERS: Aye.

CHAIR VICTORINO: Opposed? So let the record show, six ayes, one excused, Mr. Carroll; and no noes.

**VOTE:       AYES:       Chair Victorino, Vice-Chair White, and Councilmembers Baisa, Couch, Crivello, and Guzman.**

**NOES:       None.**

**EXC.:       Councilmember Carroll.**

**ABSENT:    None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

**ACTION:    DEFER pending further discussion.**

CHAIR VICTORINO: Thank you very much. It was a very interesting morning. I'd like to thank the Administration, Mr. Taylor, as well as Ms. Oana, Mr. Kushi and Mr. Wong, for attending today, the Staff and all the Members. This meeting of the Water Resources Committee meeting is adjourned. . . .(gavel). . .

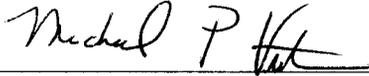
**ADJOURN:  10:46 a.m.**

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APPROVED:



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MICHAEL P. VICTORINO, Chair  
Water Resources Committee

wr:min:140219

Transcribed by: Joanne Bista

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CERTIFICATE

I, Joanne Bista, 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 5<sup>th</sup> day of March, 2014 in Kahului, Hawaii



Joanne Bista