

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

October 29, 2014

Council Chamber, 8th Floor

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Michael P. Victorino, Chair
Councilmember Mike White, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Donald G. Couch, Jr. (out 10:45 a.m.)
Councilmember Stacy Crivello
Councilmember Don S. Guzman

STAFF:

Kimberley Willenbrink, Legislative Analyst
Mark Pigao, Legislative Analyst
Raynette Yap, Committee Secretary

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

ADMIN.:

David S. Taylor, Director, Department of Water Supply
Paul J. Meyer, Deputy Director, Department of Water Supply
Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS:

Rosemary Robbins
Bobbie Patnode
Plus (2) Others

PRESS:

Akaku Maui County Community Television, Inc.

CHAIR VICTORINO: ...*(gavel)*... Good morning. I'd like to convene the Water Resources Committee meeting for October 29, 2014. It is exactly 9:01 and I'd like to now recognize...before I start, I would like to ask everyone to put their cell phones or other noise-making devices on mute or turn it off. Decorum will be followed in the Chamber. I'm the Chair, Michael Victorino. I'd like to introduce the Members that are here this morning. First of all, our Vice-Chair of the Committee, Mr. Mike White.

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VICE-CHAIR WHITE: Good morning, Chair.

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

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR VICTORINO: Good morning. Our Vice-Chair from...for the Council, Mr. Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR VICTORINO: Good morning. And also from South Maui, Mr. Don Couch.

COUNCILMEMBER COUCH: Morning, Chair.

CHAIR VICTORINO: Good morning. And from Molokai, Stacey Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR VICTORINO: Good morning. And just getting to his seat, Mr. Don Guzman from Kahului.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR VICTORINO: Good morning, good morning. I'm glad to see everybody here bright and early. Our non-voting Members are not here. If they do come in, I will recognize them. From the Administration, I have Mr. Dave Taylor.

MR. TAYLOR: Good morning.

CHAIR VICTORINO: The Director of the Water Supply Division. Mr. Paul Meyer, Deputy Director of the Water Supply. And he's sitting in the back, hiding. And Mr. Ed Kushi will be with us very shortly, Corporation Counsel. For the Staff, I have Ms. Kim Willenbrink, our Legislative Analyst.

MS. WILLENBRINK: Good morning, Chair.

CHAIR VICTORINO: Good morning. And Rayna Yap, our Committee Secretary. Good morning, Ms. Yap. And, oh, and we have Mark Pigao who is sitting in today getting ready for future endeavors. Thank you, Mark, for being here. And Mark's new with our Corporation Counsel...I mean not Corporation...Council Services, excuse me. And we wanna welcome him aboard. From the District Offices I'd like to now, with no objections, check to make sure our District Offices are connected. Let me start with our Hana Office, Dawn Lono. Dawn, are you there?

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

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

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

CHAIR VICTORINO: Good morning, Denise. And of course, none other than our Molokai Office. The...Ella Alcon. Ella, are you there?

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

CHAIR VICTORINO: Good morning, Ella. So all our office...our District Offices are connected. Today we have two items on the agenda. Testimony will be limited to the items on the agenda today. If you wish to testify, please sign up at the desk located on the eighth floor lobby in the back. And the District Offices, we will call upon you, anyone there...that's there to testify. Testimony will be limited to three minutes and upon request one minute to conclude. The three minutes, the light will turn yellow and on the fourth minute the light will...will be blinking red. So then I will ask you to conclude at that point in time. When testifying, please state your name and any organization for which you are representing. Let us start, with no objections, can we start public testimony?

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very, very much. And good morning, Mr. Kushi, how are you doing, sir?

MR. KUSHI: Fine, good morning.

CHAIR VICTORINO: Good morning. I'm gonna do it a little different. I'm gonna check with our District Offices first and allow them to start if there's anyone out there that wants to testify from our District Offices. Let me start with Hana. Hana, do you have anybody wanting to testify?

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

CHAIR VICTORINO: Thank you, Dawn. Lanai, Denise, do you have anyone wishing to testify?

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

CHAIR VICTORINO: Thank you. And Molokai, do you have anyone wishing to testify?

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

CHAIR VICTORINO: So what you would do please, ladies, if you have anyone who comes in and wants to testify, please e-mail us so that we would know that. And I will call upon you at the

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very end of the testimony here in the Chamber. So let us start with those who are wanting to testify in the Chamber. Let us start with Rosemary Robbins and she is a concerned citizen and talking about WR...WR-18. Ms. Robinson [sic]. And then that will be followed by Bobbie Patnode and she will also be talking about the WR-18. And she's part of the Agriculture Working Group. Good morning, Rosemary.

... BEGIN PUBLIC TESTIMONY ...

MS. ROBBINS: Good morning. Good morning, everybody. Rosemary Robbins, concerned citizen. Yesterday or the day before yesterday I came down and went over the information that was going to be covered this morning and I'm wondering, Mr. Chair, if you would read WR-18 so that everybody gets a chance to be familiar with it.

CHAIR VICTORINO: Okay.

MS. ROBBINS: Thank you.

CHAIR VICTORINO: Okay, thank you. Again, Rosemary, you caught me in between working with the Staff and your request. What was your request again?

MS. ROBBINS: Those were always good conversations.

CHAIR VICTORINO: I'm sorry.

MS. ROBBINS: Yeah, for you to read WR-18 so that everybody gets a chance especially the folks at home.

CHAIR VICTORINO: Okay.

MS. ROBBINS: Thank you.

CHAIR VICTORINO: I can do that as soon as I can find it now. Okay, here. Okay, WR-18, Water Conservation and Control of Water Usage During Water Shortage. The Committee is in receipt of the following, correspondence dated March 1, 2013 from the Deputy County Clerk transmitting Bill 13 (2013), amending Chapter 14.06, Maui County Code, relating to the declaration of water shortages, recommended. No, I should say recommitted, excuse me. Recommended, excuse me, recommitted. Number 2, correspondence dated October 22, 2014 from myself, the Chair Michael Victorino, transmitting a revised proposed bill entitled, "A BILL FOR AN ORDINANCE RELATING TO WATER CONSERVATION AND CONTROL OF WATER USAGE DURING WATER SHORTAGE". The proposed...the purpose of the proposed bill is to implement a water conservation and water shortage program that includes, one, providing customers of the County...County water systems with leak detection tablets, high efficiency faucets and shower heads and outdoor hose nozzles. Two, establishing a water conservation educational program. Three, requiring the County to retrofit all County facilities

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with high-efficiency toilets and plumbing fixtures where applicable. Four, authorizing the Director of Water Supply with the approval of the Mayor to issue declarations of water shortage based upon three stages of severity when the water supply becomes inadequate in the area of the County. Five, clarifying the Director's authority to control water usage during a water shortage including the application of water shortage rates. And six, providing a partial exemption for the agricultural customers and a full exemption for water shortage due to human error. Is that enough?

MS. ROBBINS: Good.

CHAIR VICTORINO: Okay, thank you.

MS. ROBBINS: Okay, so the first thing I saw when I opened up the proposed bill that was on here was Hamakuapoko Wells. And 11 years ago I'm looking quickly at 3 of us who were here for that, the Board of Water Supply member, today's chairperson, and same Mayor then as Mayor now. And I was one of the concerned citizens that was here. It was not the same Water Director that we had at that time. So for the last 11 years we've been dealing with, hopefully, dealing with and room for improvement especially on Hamakuapoko Wells. And the system that we had shown to us yesterday when we were here indicated where that water was going and not going. Then over in the Page 2 of that bill it is said again, accurately so, that water is a public trust. That's in the State Constitution. We've known that for years. And it's a good talk the talk and we have to make sure that the walk the walk goes after that semi-colon. Room for improvement there, too. Also down on the bottom of Page 2 of this bill it says when supplies are available. Who knows when that's going to be? Then also over on Page 4 of this bill, and I have a green asterisk beside that, any area affected by a water shortage due to infrastructure or mechanical malfunction caused by human error by a County employee shall be exempt from any water shortage water rate increases. That's an improvement and the realizing that the definition of drought had been changed to talk about equipment malfunction and to talk about operator error. So I'm delighted to see in what Mr. Victorino just read that there was going to be education for the people who were working on this. I'm an educator by profession. I'm all in favor of that for sure. There is a problem I feel in this that you did read was that a lot of this was relatively manini stuff, the tablets to check whether or not there's leakage in our home systems. When it comes to the responsibility of this level, we're talking about the miles of water conveyance equipment. We're talking about the depth of wells involved in this. Those are huge issues that we don't see coming up in here. We see the smaller things. Hurray for the education like I say. But the smaller issues and the people out there are saying, what's happening to the extension of grids? What's happening to the bigger pieces? Those are valid questions and they're being asked all over the place. You've got a lot of concerned citizens that are very concerned about that. So thank you for the work that you've done. There's a load of work to go and that's on the higher level, your kuleana. Thank you.

CHAIR VICTORINO: Thank you, Rosemary, and you're absolutely correct. You know, the conservation and some of that is what we can do as individual citizens everyday to help in that

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respect. But the big picture is there's a lot more infrastructure improvements and drilling of wells and so I understand that. This is just the beginning of the whole process so...

MS. ROBBINS: No, this is a long way through --

CHAIR VICTORINO: Yeah.

MS. ROBBINS: --the beginning stage.

CHAIR VICTORINO: Yeah, thank you.

MS. ROBBINS: Yeah.

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

MS. ROBBINS: You're welcome.

CHAIR VICTORINO: Bobbie Patnode? And she's with the Ag Working Group. And that's the last written...or public testimony that I've received. Anyone that wants to please sign up at the desk and come on down. Go ahead, Bobbie, good morning.

MS. PATNODE: Good morning, aloha. My name is Bobbie Patnode and I'm here today representing the views of the Agriculture Working Group. The Ag Working Group is a group of about 15 farmers and ranchers which was formed about a year and a half ago to help provide input from the ag community to the Council. We have representatives from the Farm Bureau, the Farmers Union, Maui County, Maui Coffee Growers, Maui Cattlemen's Association and several community associations with one requirement, that you are personally engaged in agriculture. The Ag Working Group was able to discuss WR-18 last Thursday night and for the first time that I can recall we have complete consensus regarding this bill. And so I'm the only one who was able to be here today but I hope you will see 10 or 15 people in the gallery in your imagination. Here are our comments. In general, the Ag Working Group is in favor of the bill. We believe this bill is the direction the County should be going with regard to water conservation and availability of water for agriculture. Remember, cows do not stop drinking when it is hot and there is no water. They drink more, not less. Farmers cannot stop planting. There is no food or income if there are no crops. So if you increase rates during a shortage in order to encourage conservation, it is simply not possible to use less. And ranchers and farmers will end up just paying more for the water they need. And William Jacintho from our group sent in quite a lot of material to help you understand how cows use water, animals use water during drought. We can see there is a combination of strategies, that is, specific prevented uses for consumers to assure conservation as well as the option for higher rates as determined by the Council. The Ag Working Group has some specific recommendations for changes. And I've listed these out for you and I...so...and you have copies. So the first one is in 14.06A.30, remove "if applicable". And in 040, remove "when supplies are available". In 050, remove "when supplies are

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available”. Just make it, you know, that those things will happen. In 14.06A.060, how and when does a shortage get declared? What is the methodology used by the Director? The Ag Working Group believes that not only does the public need to know upon what data the decision is based but also what the Department has been doing to prevent the state of shortage and what will be done during the shortage to shorten the duration of the shortage. We’d like to see the description of the methodology and the requirement to communicate become part of the bill. We’d like to see in 070 1c., change “installation” to “activation”. A period of shortage should not prevent the work to install meters from incurring...from occurring, but it should prevent turning on the meters. In 080, the information we’d like to see published is covered in my earlier comments. We’d also like to see publication of when the shortage is declared over. In 90A, we believe the 90 days should start at the time the emergency level of shortage is declared. So this section needs to be more clear. In B., this also could be more clear. Ag water consumers pay the same rates as regular residential consumers for the first 15,000 gallons and the Ag rate only kicks in at the 15,000 and first gallon. Is the intent to have Ag consumers pay the emergency rate on the first 15,000 gallons just as residential consumers do? Or to delay the increase on the first 15,000 gallons for 90 days as well as the proposed increase to Ag rates which would kick in after 90 days. C., it may be prudent to include language to allow the Director to extend the 90-day delay allowed for the Ag consumers in special circumstances as requested by the Council. C., the language should include when the consumer will get their meter back after paying the reinstallment fee. And then we have some general comments. We’d like more information on what the Department is doing to prevent shortages from occurring in the first place. We believe the best policy regarding shortages is to prevent them from happening at all. The Council allocated 12.6 million to improve water infrastructure. Could that money be used to design systems which use solar power to keep pumps running thereby preventing the huge startup costs for pumps? Let’s keep water in the reservoirs. We continue to believe that Maui needs more reservoirs, particularly Upcountry. If landowners are willing to exchange land for the reservoirs for the meters, that seems like a good idea. We know that there are private wells which are underutilized. We’d like to see the County enter into agreements with the owners to allow the County to access these wells when they could be used to shorten the duration of a shortage. The Ag Working Group thinks now is a good time to get this bill passed. Previous versions have been before the Council since 2005. You have support from the farmers to do this. Thank you.

CHAIR VICTORINO: Thank you, Bobbie. Questions for the...yes, Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Mr. Chair. And thank you, Bobbie, for being here this morning. Just a quick question. I know you wear more than one hat. Do you have any information about the Kula Community Association and have they discussed this? Unfortunately, I was not able to be at the last meeting. I don’t know what I was up to but there’s so much going on during election as you know. Thank you.

MS. PATNODE: Right. The Kula Community Association board doesn’t have a regular meeting until next week so we’ve been discussing this via e-mail. And I would say at this point we don’t have a clear consensus on the bill. We have had a lot of comments about we think the bill could do more with regard to conservation year round, not just during a drought. You know, figure out a

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way to help us get to use gray water. There's just a lot more discussion with regard to conservation in general. So after our meeting next week, I'm sure we'll have more to say about it. Thanks, Gladys.

COUNCILMEMBER BAISA: Thank you very much.

CHAIR VICTORINO: Any other questions for the testifier? Seeing none, thank you, Bobbie, very, very much. Okay, any other testifiers in the gallery who wish to testify? Seeing none, let me check with the District Offices. Hana, Dawn, do you have anyone who's wishing to testify?

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

CHAIR VICTORINO: Thank you. Denise, Lanai, do you have anyone wishing to testify?

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

CHAIR VICTORINO: Thank you, Denise. And finally, Ella in Molokai, do you have anyone wishing to testify?

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

CHAIR VICTORINO: Thank you. So seeing no one else rushing to testify, with no objections, I'll close public testimony for this morning.

COUNCIL MEMBERS: No objections.

CHAIR VICTORINO: Thank you very much.

... END OF PUBLIC TESTIMONY ...

CHAIR VICTORINO: Did you passed it out already, the bill? Yeah, the bill. So what I'm going to do at this point in time, I'm going to take a recess and I want everybody back by 9:35. I give you guys 15 minutes or so to read the bill. It's not that extensive but, you know, you need some time to review. 9:35 we will start, reconvene the meeting. This meeting is now in recess. ...*(gavel)*...

RECESS: 9:22 a.m.

RECONVENE: 9:35 a.m.

CHAIR VICTORINO: ...*(gavel)*... The meeting of the Water Resources Committee will reconvene. Ladies and gentlemen in the public, right now we're in the middle of making some revisions and some things that the Members have requested. So with that in mind I'm going to ask for another

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15 minutes so we will reconvene at 10 of 10:00, okay. So this meeting stands in recess till 10 minutes to 10:00 this morning. . . .(gavel). . .

RECESS: 9:35 a.m.

RECONVENE: 9:51 a.m.

CHAIR VICTORINO: . . .(gavel). . . The Water Resources Committee meeting of October 29 will reconvene. And thank you, public, for allowing us to get some more information out there so that the Members are better versed. But before we take up WR-18 we're gonna take up WR-28, the Water Availability Policy.

ITEM WR-28: WATER AVAILABILITY POLICY (CC 14-264)

CHAIR VICTORINO: Please turn your attention to correspondence dated October 2, 2014 from the Director of the Water Supply. Section 14.12.070 of the Maui County Code requires the Council to review the Show Me the Water bill every two years. To assist this in the review, the Department is required to submit reports to the...to the Council. Mr. Taylor would like to go over these reports that were...that was submitted. So at this time, Mr. Taylor, are you prepared to start on the reports on the Water Availability Bill?

MR. TAYLOR: Thank you, Mr. Chair. You caught me off guard. I thought we were going to --

CHAIR VICTORINO: Excuse me, sorry.

MR. TAYLOR: --continue what we were doing before the...

CHAIR VICTORINO: No, no, no. I want...that was the order. I wasn't going change the order. I apologize.

MR. TAYLOR: I don't think I have that in front of me right now.

CHAIR VICTORINO: Can you make sure Mr. Taylor...

UNIDENTIFIED SPEAKER: . . .(Inaudible). . .

CHAIR VICTORINO: Okay, we're gonna take another recess. We're having some very...some, some technical issues.

MR. TAYLOR: I have it now, Mr. Chair.

CHAIR VICTORINO: Oh, you found it?

MR. TAYLOR: Yeah, I have it.

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CHAIR VICTORINO: Mr. Couch, did you find yours? Okay, I'm going to take a two-minute recess. . . .(gavel). . .

RECESS: 9:53 a.m.

RECONVENE: 9:59 a.m.

CHAIR VICTORINO: . . .(gavel). . . The meeting of the Water Resource Committee October 29 meeting will reconvene. My apologies. For some unknown reason just one Member of all of us had the necessary documents so I apologize most profusely, my fault, my bad. And moving right along I will now like to call upon Mr. Taylor to give his presentation. Mr. Taylor.

MR. TAYLOR: Thank you, Mr. Chair. So on the August 25, 2014 memo from myself to the Chair we gave some quantification that's required in the Water Availability Ordinance about how many of certain things have been approved and the certain timeline. So some of those items are...I think the reason this is in there is to try to get...so the Council can get a sense of is the Water Availability policy working. What are the quantitative results from it? So in the two-year period there were a total of 123 units with private water resource improvements approved in the County, 892 units with County water meters. There were a number of affordable units, 56 from Waikapu Gardens, 120 from Kaiwahine Village, totaling a 176 units of affordable units. Those were exempt from Show Me the Water. Sixteen residential workforce housing units. I think as you all know infill is exempted from this Chapter so there were a total of 10 units that fit the infill requirements and 51 permits were issued on Hawaiian Home Lands during this time period. So that is the data. Whether you think that is successful or not successful I suppose is up to what your expectations were but that's the facts during this time period. Thank you, Mr. Chair.

CHAIR VICTORINO: Thank you. Questions for the Department? Again, this is a review that is mandated every two years by our ordinance so that we can take a look at the effectiveness or lack of effectiveness of this water availability policy, PAF 14-188. Yes, Ms. Baisa, go ahead.

COUNCILMEMBER BAISA: Thank you very much, Chair. We have the numbers that have been achieved in front of us and I want to thank the Department for this. But it's very difficult for us to sit here and try to say whether we think the policy is working or not. We don't have a comparison. You know, if 892 County water meters were issued, was there a goal? Was it more? Was it less? You know, I don't know what to compare it to. Eight hundred ninety two looks good to me but how do...how do I know?

MR. TAYLOR: Thank you, Chair Baisa, and the original data request in this bill was not something I wrote. I remember lobbying against including this when we took up this bill last time for exactly these reasons. The economy goes up and goes down. There is...there is no record of how many people would've applied for subdivisions if they were told there was a chance of getting them. So I've never been clear about what to do with this data because like you said, there's nothing to compare it to. Which is why I never really . . .(inaudible). . .transmit it in this method anyway

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because I don't think it really shows very much. But again this is what's in the ordinance, these are the facts. I think the single most important fact is something, again, that isn't tabulated. It's people that would've subdivided except they're told, don't even bother. We have no idea how many there are. And that's really I think what you really wanna know, is how many people would've subdivided if it weren't for this law. How many of those people went and developed, you know, a private well or something. Because we don't how many there would have been, there's really nothing to compare it to. And everything else is gonna go up and down with the economy with different, you know, different pressures on the development community. So I'm not sure what to make of these numbers. We got to see some extra numbers, not just these and there's really no conclusions we were able to make even talking to the folks in DSA, Development Services Administration. There really aren't any conclusions we feel comfortable sharing or we feel that we have knowledge of based on the numbers that...that exist.

COUNCILMEMBER BAISA: Thank you very much. I'm glad it's not me because, you know, I'm looking at these and I don't know what conclusions to draw. So, Chair, I appreciate the report but it really doesn't tell me much. If I could compare it with, you know, what...what the goals were or what might be standing in line or what this really means, then it would be useful. But thank you.

CHAIR VICTORINO: Well, again, Madam Chair, I agree with you and it may be one of the main reasons why this Water Availability Bill needs to be looked upon and maybe changes in some of the other areas. But it's really hard to judge and what do you compare it with? And I don't have nothing to compare with. Again, but it's mandated. Every two years we've gotta review it. This report has to be done so I thank the Department for doing it. And maybe in two years maybe we'll have something to compare. I'm not sure. Mr. White.

VICE-CHAIR WHITE: Thank you, Chair. Director, what is the timeframe during which these numbers are generated?

MR. TAYLOR: As I was reading this I was hoping no one would ask that question because it...I think it's one year. Look at the Deputy. Do you remember? We assigned this to a member of staff and he gathered the data and I know it doesn't say on here. It says every two years but I believe this was a one-year period. But I'm not positive and I'll have to get back to you on that.

VICE-CHAIR WHITE: 'Cause I think what would be helpful is if we could see the number of meters, you know, average per year that were issued prior to the Water Availability Bill and then how many meters have been issued since then by year. Because then, you know, like...like Ms. Baisa said that we need to have some way to measure the impact of the action. The other thing I would think would be very helpful is if...for instance, the number of units in the 892 could be broken down by, you know, general...General Plan district or by some means so we have a sense of where that's, you know, where it's happening. Is it happening in Wailuku? Is it happening in Lahaina? Is it happening Upcountry? Whereabouts is the...is the impact mostly felt?

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MR. TAYLOR: One thing we may want to do is change the request in the bill. Just to let the Council know we are not the keepers of almost any of this information. Essentially one of our staff went down to Development Services Administration. They are the keepers of all of this information and we...we don't have this. So although this ordinance assigned us to work with other departments, that other departments is almost solely the Department of Public Works who is the keeper of all this information. So what sort of demographics is available from them, I'm really not able to speak to.

VICE-CHAIR WHITE: Yeah, okay, thank you. Thank you, Chair.

CHAIR VICTORINO: You're welcome. Yes, Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I agree with everybody on my left there that say, well, it's apples and what? I'm not quite sure. But...and...and then the timeline too because I know Kaiwahine Village was...was approved in 2011. And so did they get their 120 units? And I thought it was only 85 units.

MR. TAYLOR: You know, while...while we're here the Deputy can run down to the person who did this and check the timeline right now 'cause I think we need to know that. So I'll ask him right now to just go down and find out exactly what timeframe this...this was. We can get that in the next couple of minutes.

COUNCILMEMBER COUCH: Okay. And the other thing is, is that the...that was the 201H that we did. Or is that the A&B's...

MR. TAYLOR: That was the 201H.

COUNCILMEMBER COUCH: The 201H, yeah. Okay, and did they actually get the meters or did they just do their subdivision in order to get the meter...to get on...

MR. TAYLOR: I believe because it says that they were developed, I think they got those meters. I think they were allocated on paper to them.

COUNCILMEMBER COUCH: Okay.

MR. TAYLOR: Otherwise it wouldn't be on this list.

COUNCILMEMBER COUCH: 'Cause they haven't even touched a blade of grass over there yet.

MR. TAYLOR: They may have already paid for them.

COUNCILMEMBER COUCH: Okay, thank you.

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CHAIR VICTORINO: Well, I think is true even with Waikapu Gardens. They have started but they haven't laid any...there's no meters there yet. They've actually done the infrastructure improvements so I can say this is just basically what they have issued as far as meters are concerned. Now how much of this has been completed...and if you read No. 6, 51 permits were issued to Hawaiian Home Lands for both single-family detached homes or additional alteration of existing homes. It's not all brand new meters either. So some of it is already meters...or lots and homes that exist already and maybe they added a cottage or something else or attached alteration to addition to their homes. So again, you know, this is only the second time we've ever done this and the first time was because of the economic downturn, there was very little to report.

MR. TAYLOR: Actually, Mr. Chair, this portion of the bill was only put in in the 2012 revision.

CHAIR VICTORINO: Okay.

MR. TAYLOR: So I believe this is the first time this data --

CHAIR VICTORINO: Okay, I apologize.

MR. TAYLOR: --was ever...was ever _____.

CHAIR VICTORINO: I remember doing that in 2012. That's why I was thinking it was twice. Okay, I apologize, okay. You're absolutely correct. We made that revision in 2012 because at that time I think the question came up from the Committee is what's happening. Remember? So then we had said, well, every two years let's look at it so we can get a better understanding. So maybe, to be perfectly honest with everybody, we really don't have apples and apples to compare. Right now this is the first one. Maybe in two years we would have something to compare with. So let's see what Mr. Meyers [*sic*] brings up from downstairs. Ms. Crivello, do you have anything you'd like to add?

COUNCILMEMBER CRIVELLO: No, not to add but to reaffirm the questions to, you know, the timeframe and I would really like to know the timeframe. And why would Public Works be the one to give us the data when the issuance of the water meter, does it not come from the Department?

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: The Department of Public Works is the...at the end of the day they're the ones who issue the permits. So it's all tied up in the KIVA program. We have access to our part of that but whether or not projects are finally approved isn't just a matter of our Department approving them. It matter...it's a matter of them going through the entire County approval process. So those records of which projects ended up being actually finally approved is...they're the keepers of that and apparently our staff did not have access to that to put this report together.

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COUNCILMEMBER CRIVELLO: Okay, I was just questioning about the issuance of water meters.

MR. TAYLOR: Issuance of actual water meters, of course we have that.

COUNCILMEMBER CRIVELLO: Yeah.

CHAIR VICTORINO: Okay. That's it?

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR VICTORINO: Thank you, Ms. Crivello. Mr. Carroll, do you have anything you'd like to ask?

COUNCILMEMBER CARROLL: . . .*(Inaudible)*. . ., Chair.

CHAIR VICTORINO: Okay. Anybody else have anything they would like to ask of the Department?
So I guess the only thing we're waiting for is a timeline and does anybody...I would like to move to defer this and we can discuss it at a later date bringing in the timeline. Is there any objections to deferring this matter?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (MV, MW, GB, RC, DC, SC, DG).

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Thank you. And what we will do is when we receive that I will make sure that it's added and forwarded to all of you so that it'll be in the book. And then maybe at a later meeting, we'll bring it back up again just to discuss the timeline, okay. All right, thank you very, very much. All right, so that's that and now we move to the big one, WR-R...I mean WR. I don't know why I get this IR. You know, I still get that from NACo.

ITEM WR-18: WATER CONSERVATION AND CONTROL OF WATER USAGE DURING WATER SHORTAGE (MISC)

CHAIR VICTORINO: The WR-28 and that would be "A BILL FOR AN ORDINANCE RELATING TO WATER CONSERVATION AND CONTROL OF WATER USAGE DURING WATER SHORTAGE". Okay, today we start the journey. And again this was brought forward trying to incorporate all of the discussions we've had both with the Ag Working Group, other entities, the Department, some of the private purveyors, others that have come to us and asking to get something done, okay. Again it's gonna be a collaborative effort. It's not my bill. It's our bill, okay. And when we walk out of here when said and done, it will be we who committed and got it done, not me, okay. So I just wanted to note that this is just a starting point. And if yesterday, those that were present got that very enlightening, what you call, Important Ag Land report, and

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thanks to Mr. Guzman for bringing that up yesterday which was very apropos for today. I mean it just kinda ...(*whistles*)... worked its way in and so knowing that agriculture is an essential part of our community. And we cannot, shall not, should not leave them out of any issue when it comes to water. It's a no-brainer. Now, do we have the answers? I know the Department told me their answer is very simple. Give us the money and we'll get everything done. The reality is money is not there to get everything done. So how do we stagger this? How do we get things done? Well, this is the first step. This is the first step. And there's gonna be changes, revisions. I thank the Working Group for bringing their mana`o in and giving us some opportunities to hear from them, others have. Mr. Jacintho also sent written testimony. Jim Smith...and, you know, sent written testimony. So I think this is all a good beginning. So I'd like to turn your attention to the screen because we do make use of the screen now and I thank Mr. Couch for his innovation. You know, you know, he and I think big picture but he likes picture-picture. I like big picture but whichever picture we look at, it's the same picture. Thank you, Mr. Couch. Okay, let us start right from the top and let me start with saying, A BILL FOR AN ORDINANCE RELATING TO WATER CONSERVATION AND CONTROL OF WATER USAGE DURING WATER SHORTAGE. Okay, water shortage really incorporates drought, a tank going down, a pump going down. Anything that would give an area in Maui County a lack of adequate water supply. So that's what water shortage means so that it incorporates...I think sometimes we get too many...too much confusion with water shortage is drought. Yet it's just one segment of what water shortage is all about, okay. So let's start with Section 1 and that's Section 14.01.050, Maui County Code, is amending to read and it's really a housekeeping issue. 14.01.050 Hamakuapoko Wells, A. Water from the Hamakuapoko Wells 1 and 2 shall be...only be used for the following. One, agricultural purposes, and two, consumers of the Department's Upcountry water system as defined in Section 14.13.030 of this title when a water shortage is declared pursuant to Chapter 14.06A of this title. And three, backup for the department for existing water...Upcountry water system. B., the water quantity [*sic*] sampling schedule shall comply with the Department of Health's regulations and with standards set by the United States Environmental Protection Agency. So this one was a cleanup. You know, we're just getting it all cleaned up. Any questions in Section 1, 14.01.050? I think we're all okay with that? Okay, let's move to the...what I call the challenge section. Section 2, Chapter 14.01.060, Maui County Code is amended to read as follows. 14.01.060...

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Yes?

MS. WILLENBRINK: This is the section that was currently in the Water Conservation Chapter.

CHAIR VICTORINO: Right and we moved it over here.

MS. WILLENBRINK: And you're just...

CHAIR VICTORINO: I apologize.

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MS. WILLENBRINK: You're just moving it. It's a cut and paste, not...not a revision at all.

CHAIR VICTORINO: Yeah, this is from the Water Conservation section so I apologize. You know, I should've mentioned that, okay. Water resource development agreements with private entities. The Council shall approve by resolution any water source water source development agreement with private entities. For the purpose of this section a water source development agreement with a private entity means an agreement executed by the County and any person to develop water sources by constructing a structure to capture, convey, store, or treat currently underutilized, nonpotable water...surface water --

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: --constructing facility...

COUNCILMEMBER BAISA: Can we move that up?

CHAIR VICTORINO: Oh, can...can you move that up. I'm sorry. I was reading. I wasn't even looking there. I'm just reading, you know.

COUNCILMEMBER BAISA: I'm following.

CHAIR VICTORINO: And again it's there so if I make a mistake, you'll know I made a mistake. Now where was I? No...okay.

COUNCILMEMBER BAISA: Sorry.

CHAIR VICTORINO: Can somebody...where was I? I think on developing water sources by construction of structures to capture, convey, store or treat currently underutilized, nonpotable surface water, construct facilities to...for currently underutilized ground water and its treatment, including pumps, motor control system...stations, pump control, or disinfection contract time tanks...oh, wow, this is...constructing desalination facilities, or using any other technology that is provided or recaptured water that is acceptable by the State Department of Health...State of Hawaii Department of Health together with any easements required for improvements. This section shall not apply to County contracts that are subject to the Hawaii Public Procurement Code, as set forth in Chapter 103D, Hawaii Revised Statutes. Okay, and that's it for that one section. And then Section 3, 4 and 5 we...well, Section 3 and Section 4 which is in the Code already is to be repealed. And so let's go back to the Section 14.01.060, the water source development agreement. Questions? Yes, Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. It says that this section applies to agreements that are not subject to the Hawaii Procurement Code. How many agreements do we...would we enter into that are not subject to Procurement?

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MR. TAYLOR: All the agreements would not be subject to Procurement Code. Procurement Code would be things we build. That's how the government...that's how we go out to bid on things. These would be things where a private entity develops something and wants to give it to us in exchange for credits. We wouldn't go out to bid. We wouldn't weigh their ability versus someone else's. So it would be a different mechanism than something that would meet the Procurement Code.

VICE-CHAIR WHITE: Okay, so none of them are subject to it anyway?

MR. TAYLOR: No.

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

CHAIR VICTORINO: Yes, Ms. Baisa?

COUNCILMEMBER BAISA: I can defer to Member Guzman.

CHAIR VICTORINO: Yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. I may have a question for Corp. Counsel but my question would be normal procedure, wouldn't we already review these type of agreements?

CHAIR VICTORINO: Mr. Kushi?

MR. KUSHI: In the past the answer would've been...would've...is no.

COUNCILMEMBER GUZMAN: Oh.

MR. KUSHI: We've...the Department has entered into agreements with private third parties. Classic one was the Dowling well. But again at that time the Water Department was under the Board of Water Supply. The other one I can recall would be the Maui Lani well. The Department just went ahead and made a deal with the...made an agreement with Maui Lani for that well in return for capacity. Then immediately thereafter this bill came on board. So the answer was no.

COUNCILMEMBER GUZMAN: Okay.

MR. KUSHI: Mr. Chair, if I may?

CHAIR VICTORINO: Sure, go ahead, Mr. Kushi.

MR. KUSHI: To clarify again this section deals with private third parties. However, there may be a time in the future perhaps that the County through its Department would want to make an arrangement with the State or another governmental agency. So it wouldn't be covered here. However, if it's the State or another governmental agency it would be covered through inter-

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governmental agreements. So just to let you know that that's the route that we would advise the Department to go through.

COUNCILMEMBER GUZMAN: Thank you.

CHAIR VICTORINO: Okay, any...okay, thank you, Mr. Guzman. Mister...Ms. Baisa, I should say.

COUNCILMEMBER BAISA: Thank you very much, Chair. Question about procedure. You know, we received a list of suggested changes from the Ag Working Group. And I'm wondering, are we gonna try and incorporate these as we go or we wanna approve and then come back and change it again? I didn't know what procedure you wanna use.

CHAIR VICTORINO: I would like to just go through this entirely and then come back because --

COUNCILMEMBER BAISA: Oh, okay.

CHAIR VICTORINO: --I don't wanna get confused. We go through it and then whatever you think is applicable from the Working Group, we can discuss.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: And I don't agree with all their suggestions either but again, you know, let's do it this way and that way we won't get confused. Already had enough confusion this morning. I'm trying to eliminate any more.

COUNCILMEMBER BAISA: Okay, just so that we...I know what you're going...

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: You're welcome. Anything else? Anybody have any in this first section here...Section 2 I should say. Section 2. Okay, and then we turn the next page and above there there's two that we're repealing that we're gonna bring forth down below so we're repealing what exists now. And in Section 5, Title 14, Article 1, Maui County Code is amending by adding a new Chapter 14.06A to read as follows and that's what's followed down below here, okay. So before I go, do you understand what Section 3, Section 4 and Section 5 is all about? Okay, moving right along. Now we go to Water Conservation and Control of Water Usage During Water Shortage, okay. This section incorporates everything from 14.06A.010 to 14.06A.120, okay. So this is what this section does. Let's start off with the very first one, 14.06A dash...I mean dot, 010, Policy statement, okay. And it's there on the board right in front of you. Pursuant to Article X [*sic*], Section 1 of the Hawaii State Constitution, the County finds that water is a public trust. B, the County policy is to promote water conservation and to take preventative measures to reduce the risk of severe...risk and severity of water shortages. C,

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water conservation is essential to preserve water resources and to protect the public's health, safety and welfare. And D, unrestricted water use for nonessential needs during times of water shortage may endanger the adequacy of the County's water supply for essential needs, okay. I'll stop right there. Questions, comments? Go ahead. Oh, Mr. Taylor?

MR. TAYLOR: Mr. Chair...

CHAIR VICTORINO: Let Mr. Taylor start and then...

MR. TAYLOR: Maybe Staff can check on this. I believe in that first sentence, I believe the State Constitution says that water is a public trust *resource*. I think the word resource needs to be in there.

CHAIR VICTORINO: I have no objections to adding that. I mean I have no problem with that.

COUNCILMEMBER COUCH: No objections.

CHAIR VICTORINO: Okay. Just...so can you note adding "resource"? So public trust resource.

MS. WILLENBRINK: Would you like me to add it here or just in my notes?

CHAIR VICTORINO: Add it here now. Yeah, that way it's clear. That's one of those...I don't think substantive changes...what you call that?

MS. WILLENBRINK: Nonsubstantive?

CHAIR VICTORINO: Nonsubstantive changes. Thank you. Any questions before we move on to the next section? Okay, moving right on...right along, I should say. 14.06A.020, Definition. When used in this chapter, unless the context clearly indicates a different meaning, "water-efficiency" means practices using improved technology and methods to obtain the desired results utilizing the least amount of water. I think that's pretty clear. Any questions with that one? Okay, moving on to 14.06A.030, Water-efficient toilets, plumbing fixtures and irrigation equipment. This section is...Section B was removed on the advice of Corporation Counsel. According to Corporation Counsel this is a part of the Building Code already. Is that correct, Mr. Kushi?

MR. KUSHI: I'm not sure if it's part of the existing Building Code but if it's not, it should be and it shouldn't be in here.

CHAIR VICTORINO: Okay. Any questions on this particular section?

MR. TAYLOR: Mr. Chair?

CHAIR VICTORINO: Yes.

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MR. TAYLOR: This section doesn't have much to do with the Department of Water Supply. So I would recommend that you might wanna pull in the Public Works Director, especially the Parks Director, Environmental Management Director because this is about their facilities, primarily Parks is the one I'm thinking. And this isn't gonna be language that I'm gonna interpret. This would be language...I'm really thinking about the Parks Department trying to interpret what, you know, water conservation design principles really mean when it comes to retrofitting all of the Parks irrigation systems and what that means and doesn't mean. Along with the...all of these other facilities, you know, Police, Fire, et cetera, et cetera. So I think you should ask some of the other Departments what they think about this language before you throw it on them.

CHAIR VICTORINO: Well, I think, you know, this whole section is based upon the pretext that if we're gonna ask the public to do something we should be doing it...we should be doing the same thing. Or we should be the leader in this area. And I open it up to discussion with the Members but that was my take on this section is if we're gonna request people to use low-flow or other means of water-efficient toilets, plumbing fixtures, et cetera, irrigation, then we should be doing the same thing. And we actually should be the leader in that respect. So I open the floor for discussion. Yes, Mr. Carroll?

COUNCILMEMBER CARROLL: Very simply I agree with the Chair's statement. Thank you.

CHAIR VICTORINO: Thank you. Any other discussion? So I'll just going leave that and move along, okay. 14.06A.040, Leak detection. A., the Department shall monitor water consumption and issue high-consumption notices to customers when warranted. B., the Department shall prioritize the replacement of old and leaking...leak-prone water mains. C., when the supplies are available, I think that was one of the changes they were asking about, but anyhow let me read it. When the supplies are available the Department should distribute leak detection tablets or other leak detection methods to detect toilet tank leaks to consumers upon request. And D., the Department should be encouraging the public to report water leaks. Pretty self-explanatory but I open the...yes, Ms. Baisa?

COUNCILMEMBER BAISA: Just wanna clarify that those "shoulds" are actually "shalls". So no...no...

CHAIR VICTORINO: Did I say "should" instead of "shall"?

COUNCILMEMBER COUCH: Yes.

CHAIR VICTORINO: Okay, I apologize. My bad.

COUNCILMEMBER BAISA: No leeway given, yeah.

CHAIR VICTORINO: Yeah. The Department *shall* encourage. Okay.

COUNCILMEMBER BAISA: Thank you.

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CHAIR VICTORINO: I said should. I apologize, sorry. All the words were “shall” and if I said “should” in any one of ‘em. And that’s why it’s so good when you can read it and I’m speaking. So if I make a mistake, you correct me right there and then. Thank you. Any questions in this area? Mr. Guzman, I see this confused look on your face so I’m waiting for your question.

COUNCILMEMBER GUZMAN: Thank you, Chair. On Subsection C, could we delete “when supplies are available” and then just go straight into “the department shall”?

CHAIR VICTORINO: No. We’ll wait till the end. Remember I said I’ll wait till the end and then make all the changes.

COUNCILMEMBER GUZMAN: Oh, okay, okay.

CHAIR VICTORINO: Okay?

COUNCILMEMBER GUZMAN: Okay.

CHAIR VICTORINO: Yeah, I don’t wanna confuse us now. Let’s do it right at the end.

COUNCILMEMBER GUZMAN: Oh, okay.

CHAIR VICTORINO: Okay. Mr. Couch? You had a question?

COUNCILMEMBER COUCH: I just was curious how the Department...what the Department was...thought of this one.

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: We’re fine with this and we support the language “when they’re available”. I know there’s no penalties listed in here but I’m imagining, you know, we give out the last one and somebody comes in and asks for one and now we’re in, you know, now we’re in violation of the law. So I think “when available” is important. You know, we tend to keep a lot of these in stock but I don’t wanna be, you know, a criminal because we run out when someone asks for one.

CHAIR VICTORINO: Okay, any other questions? Okay, moving on if I may. May I move on? Everybody okay? Okay, now move on to 14.06A.050, Education and incentives. A., the Department shall promote water conservation education, okay. B., when supplies are available, the Department shall provide water-efficient faucets and shower fixtures or outdoor hose nozzles to the consumer upon request at no charge. The Department, in consultation with the board, shall implement an incentive program to encourage customers to replace old toilets and water fixtures with those that have...have an increased level of water...with those would have increased water efficiency and are consistent with the water conservation design principles. Questions? Mr. Taylor, you okay?

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MR. TAYLOR: I suppose we're...you know, we're certainly okay with those concepts. You know, the incentive program is not really clear what that means. I personally think that the tiered rate structure is an incentive program. And I've said before that we just do not have the staffing to go to 36,000 customers and make deals with them about getting them toilets and getting them retrofits and these kinds of things. I would rather stay out of the retail end of dealing with each customer one-on-one and deal with things through rate and fee structure. So if the intention of this is that people are gonna come in and we're gonna give, you know, a \$200 rebate on each toilet. That all of a sudden becomes a little contract with each person that comes in which I just don't think that's a very efficient way to deal with tens of thousands of applicants. So as long as the incentive can mean something as simple as rate structures, you know, I support it.

CHAIR VICTORINO: Okay. Members? Well, you know, Mr. Taylor, I'll say this. Although I don't totally disagree in what you're saying, I believe it's time that we take the leadership as far as a Department and promote these efforts. And again it would...the Department with the consultation with the Board, the Board of Water Supply, I think could come up, we have some very good people there, I think could come up with some ideas. And, you know, it comes to a point where, you know, you keep saying about personnel. Again, if you get to a point where you need more personnel and you can say where this water personnel would help us with efficiency and saving us precious water resources, I think most Councils would be very intuitive to say yes to having that extra position if you can show results. I mean I guess that's result-oriented. That's business. So that's my take on it and I open the floor to anybody else who wants to say anything to the contrary or agree or disagree. But I think it's time we take the leadership. We've been told we're the one that make the policy, well darn it, we are going to make policy. And hopefully it will be a good policy. But only time will tell. Any other questions on this section? Okay, moving on to 14.06A.060, okay, Declaration of water shortage. The Director, and I think this was...this was one of those that we...we're gonna have more discussion on. The Director, with the approval of the mayor, may declare a water shortage whenever the water supply becomes inadequate in any area in the County or County water system because of a period of drought, an infrastructure or mechanical malfunction, natural disaster, or other events causing a water shortage, okay. So that's all-encompassing. Do you have any comments? Anything you'd like to see changed or added? Well, so far, so good. Moving right along. This is the one and I'm open so I'm just gonna tell you what I...what we came up with and we're gonna discuss it further. 14.06A.070, Stages of water shortage. A., time permitting, there shall be three stages of declaration of water shortage as follows. Number 1, water shortage advisory. During a water shortage advisory, the water consumers in the area, or of the County water system, affected by the water shortage shall be...shall be requested by the Mayor or the Mayor's representative to voluntarily restrict water usage by 5 percent, okay. That's what we call water shortage advisory. Next stage, two, water shortage warning. During a water shortage warning, the water consumer in the area or of the County water system, affected by the water shortage shall be mandated to restrict water usage by 5 percent and shall be requested by the Mayor or the Mayor's representative to restrict water usage up to 10 percent. So we have a 5 percent requirement, mandatory and up to 10 percent voluntary. And then the last one, water shortage emergency. During a water shortage emergency water consumers in the area, or the County water system,

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affected by the water shortage shall be mandated to restrict water usage by 10 percent. The Director may apply other schedules, restrictions, or measures as follows. A, prohibit water usage during certain hours of the day...hours of the days of the week...hours or the days of the week, excuse me. B, prohibit the use of water for irrigation, lawns, washing of cars, or other nonessential activities. C, prohibit the installation of any new water meter or water service, and D, institute water shortage water rates as...set forth in the annual budget. B., failure of the consumer to comply with any of the mandated water restrictions may result in penalties established in Section 14.06A.110. So I'm gonna stop right here. Lot, lot right here. Mr. Taylor, I'm going start with you and then open it up to our Members. Mr. Taylor?

MR. TAYLOR: Thank you, Mr. Chair. I think the single biggest question that needs to be talked about here, what if 10 percent doesn't do it? What if we only have 80 percent the normal amount? What if we only have 70 percent? I think everything else that I have to say is contingent upon what's supposed to happen since the most...the most substantial tier here is water shortage emergency which says 10 percent. So what do we do if that's not enough?

CHAIR VICTORINO: Okay, thank you, Mr. Taylor. Questions? And I'll start with you Ms. Baisa and work my way down 'cause I know this is...this is one of the hot ones right here.

COUNCILMEMBER BAISA: Okay, well, I'll just start right at the beginning and I'm sure others will pick up stuff as we go. But the first line of this thing that says time permitting. There shall be three stages of a declaration of water shortage. Time permitting to me is kind of difficult to define. I might think that, you know, time permitting is a day. Somebody else might think it's the well went down right now. I'm just curious. I'm wondering if we might have some kind of definition about time permitting and what that applies to. You know, with the mechanical malfunction I can understand because things go down and they go down from one minute to another. You know, you get in your car, you drove it there, and then you get in it and it won't start. I mean that happens. And I'm sure it happens in mechanical water things too. But then usually we see these droughts coming. I mean you can see them coming down the road like a train. You know, we don't have rain and it's dry and it just gets drier and drier so I think there's no problem there with time permitting. But I think we might wanna clarify that a little bit more because there is where you can drive a truck through it.

CHAIR VICTORINO: Okay. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. I just was going to reiterate the...what was submitted via testimony.

CHAIR VICTORINO: No, leave that out, and then we'll do that later.

COUNCILMEMBER GUZMAN: Oh, okay, okay.

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CHAIR VICTORINO: But I'm asking for specifics as far as what's written here now like time permitting. Okay, that was...that was not discussed. So okay, that's a good item. Okay, you have anything else you'd like to...

COUNCILMEMBER GUZMAN: Nothing further.

CHAIR VICTORINO: Okay, thank you. Mr. White?

VICE-CHAIR WHITE: Yeah, I'd just like to I guess reiterate the Director's concern that, you know, if we have a water emergency where we have a major malfunction where the pump's not working and we're only...if they're only able to provide 50 percent of the normal water, then a 10 percent restriction under emergency is not going to do much. So I'm just wondering...

CHAIR VICTORINO: Well, again, that's what a, b, c., and d does. If you read a, b, c it gives him that latitude to prohibit water usage during certain hours of the day or hours permit...you know, he can then declare whatever he needs to institute water shortage rates or whatever he needs to do at that point in time. The 10 percent was just an arbitrary number I took as far as the emergency so.

VICE-CHAIR WHITE: I think that might be misleading the people if we say 10 percent so I just...you know, again it's a...it gets down to semantics if you've got...

CHAIR VICTORINO: Okay.

VICE-CHAIR WHITE: If the...if we're giving the Director the ability to cut it back 10 percent if that's all he's supposed to do, I mean I...it's very difficult to enforce because people can still turn their tap on and use the water and they're not gonna know until a month later. Well even then they're not gonna know when, you know, who the violators were so.

CHAIR VICTORINO: Okay, okay. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I think a way to solve that would say "by at least 10 percent" but I don't know if we're into that portion yet.

CHAIR VICTORINO: No, not yet. But, yeah, okay, good. And you can bring that up as a suggestion.

COUNCILMEMBER COUCH: The number d, institute water shortage water rates as set forth in the annual budget. That essentially gives you your tiered rate system if we put it in the budget, right. But at this...

MR. TAYLOR: I'm not sure that it does because in the bill we wrote that we worked with Corp. Counsel on we defined Stage 1 and Stage 2 water shortages in sort of this part of the bill. We said Stage 1 means this, Stage 2 means that. And then in the budget it had numbers for Stage 1 and Stage 2. I'm not so sure that what we would put in the budget because there are no stages in

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this bill. So I...we might have to copy that language of Stage 1, Stage 2, Stage 3 into this section or something. It just doesn't...it seems like there's a...there's a disconnect.

COUNCILMEMBER COUCH: Okay, yeah, that makes sense because in...I recall in the budget portion it was gonna be different stages.

MR. TAYLOR: One way to solve both of these problems might be to move this water shortage to a fourth category. If the water shortage emergency of 10 percent isn't enough then, you know, some fourth thing, meaning anything beyond that, and put some other criteria in there that we're allowed to do if 10 percent isn't enough. That might solve the problem people have talked about about, you know, 10 percent is clearly 10 percent. And more than that goes into, you know, sort of extreme measures or something.

COUNCILMEMBER COUCH: I tend to agree. So I...whenever you're gonna plan on doing that, that's fine.

CHAIR VICTORINO: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Nothing right now, thank you.

CHAIR VICTORINO: Mr. Carroll? Nothing, okay. All right, moving right along. Where...oh, I lost my place, hang on. I'm flipping back and forth. Okay, all right, 14.06A.080, Notice and publication of declaration of water shortage. A notice of declaration of water shortage shall be published in the newspaper of general circulation in the County weekly during the period...in the County weekly during the period of any declaration of water shortage. Except for the declaration of a water shortage emergency, the first notice shall be published at least seven calendar days prior to bringing...beginning date of any water shortage. Each notice shall state the specific duration of any water shortage period, any schedules, restriction and other measures established by the Director to control the water use during the water shortage period and the application of water shortage rates for the duration of the water shortage period. To extend...to the extent possible the Department shall also notify consumers in the affected water system area of the water shortage declaration by regular United States mail provided that non-receipt of such mail notice by any affected water consumer shall not be affected nor invalid the...invalidate the...invalidate the...hoo!...the declaration of water shortage. Whew, that was a mouthful if I had to say something. Okay, questions? You're okay with that, Mr. Taylor? No? Okay, go ahead, tell us why.

MR. TAYLOR: Okay, in the stages of water shortage, 14.06A.070, the water shortage advisory doesn't have any penalties associated with it. But it calls it 5 percent. If you think about what happens all the time, we break a line and we ask people in a certain area, hey, we really want people to use, you know, 50 percent right now because we're in trouble for a short period of time. There's no penalty but we're...essentially it falls under that advisory. And the advisory may be much, much more than 5 percent for a short duration of time. This 14.06.080, notice of public declaration seven days, these things are never seven days. They're like seven minutes. You

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know, we just put out a press release and we try to get it out right away. So I think there needs to be some ability that a non-penalty water shortage advisory regardless of the amount of the request is exempt from any sort of time notification. Meaning it needs to be really clear that we can always with zero notice ask for a major voluntary reduction. But it's very clear that we're not going to wait seven days but we're also...there's no penalties attached. So I think between these two sections we need to make it clear that there's no...there's no time or volume restrictions on an advisory so that we can do them very, very fast.

CHAIR VICTORINO: Thank you, Mr. Taylor. Questions for the Department? Or are we clear with what he just said? Okay, I think we're clear. All right, moving right along. 14.06A.090, Agricultural consumers. A, in the event of water shortage declaration, agricultural water consumers shall request...shall be requested to reduce consumption to the extent practicable but shall not be required to implement any restrictions or mandates imposed by Section 14.06A.070 for the first 90 days after the publication in the newspaper of general circulation in the County. And B, after 90 days is provided in this subsection A, agricultural consumers shall be subject to the same provisions of other consumers, okay. Mr. Taylor?

MR. TAYLOR: I think we know that this paragraph is where we're gonna spend 90 percent of our time in this Committee. So let's just focus on Upcountry. The realities I've told you before that our average daily flow is about 8 million gallons a day. During low precipitation times it goes up to about 9 million gallons a day. Our total well capacity is only about 4 million gallons a day. So it is very, very possible that we could have a 50 percent...a 50 percent shortage of water Upcountry. That could go on for months. And if a pump breaks during that time, it could be more than 50 percent. Agricultural use Upcountry is about 40 to 50 percent of normal usage, the higher end during drought. So if we're in a place where let's say for a month we only have half of our normal volume of water and ag doesn't cut back at all, that means that residences and businesses cannot use any water during that time period. I don't think that's realistic. And although we understand that during drought, especially people with livestock do not want to cut back, the math just doesn't work. In a place like Upcountry where half the water goes out to ag and we could have a 50 percent shortage, leaving ag out in a major case like that, it just isn't gonna work. So I know I've said this before, you're tired of me saying this, but the bottom line is the math doesn't work. It's not about ideology or support. There would not be enough water to make this implementable during such a case.

CHAIR VICTORINO: Okay. Questions for the Department? Comments? Yes, Ms. Baisa?

COUNCILMEMBER BAISA: Might as well get into the down and dirty here. How did we, the...how did we come up with a proposal for 90 days?

CHAIR VICTORINO: It was my idea.

COUNCILMEMBER BAISA: Okay.

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CHAIR VICTORINO: And it's strictly my idea and the reason for that is this would give most of the farmers and ranchers an opportunity to do a couple of things. Number one, for the ranchers that'll give them time to reduce their herds or not buy new calves and stuff in that area if that's, you know, what they so desire during that period of time. Secondly, for the farmers it would give them an opportunity to maybe harvest something early or not plant because of that issue. Now I know they would rather have no exemption and no restrictions on days but that was the best when talking to all the parties trying to find some kind of compromise so that they would be allowed to continue the best they can. They're gonna cut back. They're gonna do their best to hold back 'cause they don't wanna...they're not wasting water. But they cannot, like was said earlier, cows don't stop drinking. Horses...I mean cattle don't stop drinking, excuse me. And crops out there don't stop needing water when it's dry. In fact, they probably need more water. But that was the rationale behind of that, giving them an opportunity to get ready if the drought continues longer than that.

COUNCILMEMBER BAISA: Okay, thank you. I think we'll discuss this more when we get to discussing what we received from the Ag Group. Thank you.

CHAIR VICTORINO: Yeah, thank you. Any other questions? Okay, moving right along. Okay, 14.06A.100, Exemptions. Any area affected by water shortage due to infrastructure or mechanical failure caused by human error, and I removed the rest, shall be exempt from any water shortage rate increases. Okay, it's doesn't say now we're not gonna ask for cutback or mandatory cutback but rate increases due to human error will not be instituted. Any questions? Okay, moving right along. 14.06A.110, Violations and penalties. A, any consumer violating the schedules, restrictions or measures established by the Director pursuant to this chapter may be charged with a violation and, upon conviction thereafter, shall be subject to a fine of not more than \$500 for each violation. B, the water meters of any consumer who has been convicted in accordance with subsection A, or has subsequently been charged with another, excuse me, violation of any schedule, restriction or measure established by the Director pursuant to this chapter, may be removed by the Director, subject to the opportunity to appeal such water meter removal from the Board in pursuant to Chapter 14.11 of this title. And C, any water meter removed pursuant to this chapter thereafter...thereafter reinstalled shall be subject to a \$100 reinstallation fee. Questions? Mr. Taylor?

MR. TAYLOR: I think it just needs to be clear is it takes a few months depending on time available to schedule an appeal. So is the intention that we would yank the meter and they would appeal it later? Or that until...or would it be a...or does this say that we would notify them that we intend to take their meter, then they file the appeal and three months later if we win, we take it. By that time the drought would be over. So I'm not clear what this...which of those is...is it intended that we let them go to the Board for an appeal before we yank the meter or not? I'm not clear about the intent of this language.

CHAIR VICTORINO: My intent was really to give them the opportunity to go to the Board for an appeal and then thereafter, you know, so you would then notify them that you will be taking, you know, removing the meter for these violations. They would have an opportunity to go to the

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Board and base their appeal and at that point in time, depending on what the Board discussed or decided, then the action appropriately be taken.

MR. TAYLOR: Well the drought's going to be long over by the time they get in front of the Appeals Board.

CHAIR VICTORINO: Well, again, we'll see how that works out. We can...we'll discuss that in more detail, okay? And some of that was from the original language anyhow so it's not something I just created. Moving right along, 14.06A.120, Review. The Council shall review this chapter beginning January 1, 2017, and every three years thereafter. B, as part of the review, the Director shall provide a report to the Council on the status of this chapter and shall include the list of water shortage declarations explaining the following. One, the areas affected by each water shortage declaration. Two, the duration of each water shortage declaration. And three, the restrictions imposed. Questions? Okay, we've covered the whole chapter and so now I'll go back and start with the revisions. And I'll start with Ms. Baisa. Where would you like to start?

COUNCILMEMBER BAISA: Well, why don't we start with the beginning of the list that we got and we go down it and then hopefully --

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: --we'll have some order here. The first section that they referred to making a change is in the 14.06A.030.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Okay.

CHAIR VICTORINO: Does everybody have that? That's water-efficiency toilets, plumbing. Is that the one? 14.06A.030?

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: And there's an "if applicable" that they would like removed but I don't see it.

CHAIR VICTORINO: I don't see it either.

COUNCILMEMBER BAISA: I think it might have been in the previous version of this but I think it's been taken out.

CHAIR VICTORINO: Yeah, okay.

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COUNCILMEMBER BAISA: So if it has, then that's something we don't have to worry about.

CHAIR VICTORINO: Okay, moving along, then, yeah, that was taken out. Okay, go ahead.

COUNCILMEMBER BAISA: Okay, and then let's do the next one and then I'll let somebody else continue.

CHAIR VICTORINO: Okay, go ahead.

COUNCILMEMBER BAISA: But 14.06A.040, remove "when supplies are available".

CHAIR VICTORINO: Well, I think you heard the Department's response to that, okay. And I tend to agree with the Department. If they run out and you walked in today...and they ran out yesterday and they walk in today, would they be in violation of the law because it wasn't there? You know, I think "when supplies are available" really protects the Department in case something does happen and they run short of the supplies. But it's up to you folks. Ms. Baisa?

COUNCILMEMBER BAISA: Well, you know, I can look at this both ways. I can see what the Department is saying but I think that's kind of a stretch. You know, normally when you take...or get into the end of something, that's why you have inventory control, you order because you know it takes three months for this thing to come from wherever these things come from. But, you know, I can understand their position but I also see the other side where it's something you wanna stock, something you should have. So you plan and you order enough or you order and keep. But, you know, I can go either way. For me, it's not a big deal. I see where the Ag Working Group is coming from. They wanna make sure that nobody that wants this doesn't receive it.

CHAIR VICTORINO: Mr. Taylor?

MR. TAYLOR: And thank you, Mr. Chair. We agree with the Chair's comments. We agree that we want people who want these things to receive them. That's why we keep them in stock. The "if available" gives us some latitude for somebody who is trying to start a business selling low-flow fixtures by getting hundreds of them free from us. It gives us the ability to say no. Without the "if applicable" it allows someone to come in and get as many as they want and just as soon as we order more, take them all every single time.

COUNCILMEMBER BAISA: We're not doing "if applicable". We're talking about "if available".

MR. TAYLOR: I'm sorry, if available. I'm sorry, if available. It allows...so I don't think anyone's ever had a problem the fact that they come to the County Fair, they come to our office, et cetera. And we give this stuff away. We have. There's some people I know we've said no to because they're basically asking for...you know, we've already given them ten low-flow fixtures. And we know they only have one house and they're asking for even more. So we just need some

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reasonableness. I don't think anybody has reasonably complained that we're doing something wrong. I don't want to get all litigious about this. But the "if available" just gives us some...some room to not have to supply someone's, you know, plumbing operation.

CHAIR VICTORINO: Yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: Why don't we just go "the Department shall reasonably distribute"? Is reasonable...

MR. TAYLOR: We're fine with that.

COUNCILMEMBER GUZMAN: What is reasonable?

MR. TAYLOR: We're fine with that.

CHAIR VICTORINO: But what's reasonable?

COUNCILMEMBER GUZMAN: Supply and demand, I suppose. If it's not available, then it's not available and they'll try to do their reasonable best to get more supplies. They'll...if it looks like someone is abusing this system then it's not reasonable to distribute to them. Reasonable, the reasonable man standard, reasonable.

CHAIR VICTORINO: Well, I don't really like that but that's fine if the Board wants it...

COUNCILMEMBER GUZMAN: Well that's fine if you don't want it.

CHAIR VICTORINO: I mean if the Committee wants it, then we can change it to reasonable. I don't...but I just want something to protect the Department and I agree with that, you know. And we need something that would protect the Department so...from being abused. You know, and that is very important. And I've seen this. I've seen people at the County Fair go 20 times picking up different stuff. And, you know, it's like, whoa, wait a minute, you know. So anyhow, Mr. Taylor?

MR. TAYLOR: We appreciate Mr. Guzman's comment. And we like that, reasonable. We want to give these away. It's in our budget every year to buy enough of these things whether it's leak detection tablets and low-flow fixtures so we want to do this. And your words "reasonable" I think are really all the protection we need.

CHAIR VICTORINO: Okay, so would we like to change that to "reasonable" instead of "available"? Mr. White?

VICE-CHAIR WHITE: Thank you, Chair. I agree with the reasonable because if we leave the wording "when supplies are available" that person who's being...who's requesting an unreasonable amount of fixtures can say, no, if the supplies are available you shall give it to me. Right? So I

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think the reasonable standard would be something that would be easier for you guys to work with in both these sections, 040 and 050.

CHAIR VICTORINO: Okay, so with no objections, I'm going change that to "reasonable"?

MS. WILLENBRINK: Excuse me, Chair?

CHAIR VICTORINO: Yeah.

MS. WILLENBRINK: Would it be then saying, the Department shall distribute leak detection tablets or other leak detection methods to detect toilet tank leaks to a consumer upon request when reasonable? How would you like that wording?

CHAIR VICTORINO: That's fine. I don't see a problem with that. Okay.

COUNCILMEMBER GUZMAN: The Department shall reasonably or reasonable.

CHAIR VICTORINO: Okay.

MS. WILLENBRINK: The Department shall reasonably distribute?

COUNCILMEMBER GUZMAN: Yes.

CHAIR VICTORINO: Okay.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Uh-huh?

COUNCILMEMBER BAISA: I don't want to belabor this but I would ask Mr. Kushi's opinion because, you know, lawyers like to play with words.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: And --

CHAIR VICTORINO: Mr. Kushi?

COUNCILMEMBER BAISA: --I know 'cause, you know, I sit in on a lot of these things and I think it'd be nice to see what he thinks about what is the better wording. We "reasonably distribute" or the second?

CHAIR VICTORINO: Mr. Kushi?

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MR. KUSHI: Okay, for Sections 040, C as in cat, and 050, B as in boy, why don't you change the wording to say "when available, the Department shall reasonably distribute" for both the sentences.

CHAIR VICTORINO: Sounds good to me.

MR. KUSHI: And the result of this is fine. If it's not there, they ran out. Too bad, too sad. If it's there and you have somebody coming in and the Department suspects it's a retail operation, reasonably in their discretion, no. If they're not satisfied, appeal to the Board.

COUNCILMEMBER BAISA: Good.

CHAIR VICTORINO: Perfect.

COUNCILMEMBER BAISA: Good.

CHAIR VICTORINO: That's why we have lawyers here.

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: That's why.

COUNCILMEMBER BAISA: They know words.

CHAIR VICTORINO: Okay, so you got that, Ms. Willenbrink? Okay, can you repeat that, Mr. Kushi, for Ms. Willenbrink?

MR. KUSHI: We'll work with Staff on the language.

CHAIR VICTORINO: Okay. When available and shall be reasonable or...okay, all right. So we're okay with then 14.06A.040 and 050, making those changes? Was that what the two we were looking at, right?

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Okay. Anything else? Anything else?

COUNCILMEMBER GUZMAN: Yeah, according to the written testimony from the Ag Working Group, the 14.06A.060 I guess...

CHAIR VICTORINO: We're not there yet.

COUNCILMEMBER GUZMAN: Okay.

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CHAIR VICTORINO: We're not there. So let's...

COUNCILMEMBER GUZMAN: I apologize.

CHAIR VICTORINO: I just said 14.06A.040 and 050. That's the two I'm working on right now.

COUNCILMEMBER GUZMAN: That's it.

CHAIR VICTORINO: Okay, okay. All right, any other discussion? And moving right along, now we go to 14.06A.060. And we have the suggestions made by the Working Group. And go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Oh yeah, just for discussion at this point, I...it appears that it looks as though they had questions about this section. How and when does the shortage get declared? And I guess the point there is what kind...what is the methodology used by the Director? What is the triggering mechanism that eventually, I guess, mandates a declaration of water shortage? And...

CHAIR VICTORINO: And I think they also wanted to add it in there so it would be clearly defined.

COUNCILMEMBER GUZMAN: Yeah, so it's clearly defined. You know, what is the triggering...what is the methodology, you know. Like does...do they have to, you know, I guess...

CHAIR VICTORINO: Well, let's hear from the Department first and then see what we can come up as far as putting some definition in there. I didn't because that was part of this whole exercise, is I'm not gonna tell you what. I wanna hear from the Working Group and others to how we can set this up. So, Mr. Taylor, would you explain how you do it and then we may take it from that point.

MR. TAYLOR: There is no equation that we have to use. The closest we're able to come to explain what we do is, is in our draft of the water shortage bill where we said if our prediction is that the supply will be X percent below the demand. You know, that was the closest we come to. We've got a number of various triggers, yeah, the language...thanks, Paul. The language we used was, a certain water shortage shall exist if the Director determines that anticipated water demand in an area is projected to exceed available water supply by up to 20 percent.

COUNCILMEMBER GUZMAN: Twenty percent.

MR. TAYLOR: So that's...that's what we came up with. What we actually do is we look at our infrastructure. We look at what's working, what isn't working. We look at reservoir levels in areas that have reservoirs. We look at the short-term and medium-term, long-term weather outlook for things like Upcountry where so much of it is surface water dependent. We look at how much water is flowing into the ditches and diversions, how long historically that's tended to dry...how, how...when it's at a certain level we looked how long does that tend to keep dribbling

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in. You know, is it a point where, look, another week it's gonna go completely dry. Or when it's at this level it tends to go for two more weeks. Are the weather forecasters forecasting rain in the horizon or does it look dry for next three weeks? We take all that into account. We usually discuss it as a team with the people that run these systems and ultimately, you know, there's a group of about five or six of us that come up with a determination. Ultimately it's the Director's determination. But there is no quantifiable, measurable data that plugs into an equation where we say yes, no. We have not gotten it to that point and I don't think we ever will because we've tried. So there's the actual data that exists, the predictions, the experience of the people who operate the systems and we put all that together to do this projection.

CHAIR VICTORINO: Mr. Guzman?

COUNCILMEMBER GUZMAN: No, I just...I'm kinda surprised that there isn't any type of, you know, formula or described methodology. I'm wondering if other jurisdictions have something similar that would have --

CHAIR VICTORINO: Kim, can you check...

COUNCILMEMBER GUZMAN: --a triggering point that at least to have a little bit more transparency for the public. Because at that point you have so many components and factors that are unknown that, you know, how do you...how does the general person, you know, really say, oh, is there really the necessary need for, you know, declaration of shortage, you know? We're just talking about transparency, you know. I understand where the general public would be coming from. Like, wow, there's so many unknown components. I mean how do you...how does one determine?

MR. TAYLOR: And we looked into that when we came up with our language. There are some places that, for example, have a huge reservoir. You know, they have a 90-day reservoir. And that's their sole source. One reservoir, one treatment plant. So something like that they may use reservoir trigger levels because there hasn't been a lot of growth and they know. You know, if the reservoir's going down faster than a certain level, you know, it's two months before drought time and it's already past a certain level, you know, they trigger it. But it's one thing and it's recurring every year. Someplace that's only aquifer-based, they may say when the aquifers get to a certain level and it hasn't rained, you know, there it is. When you have a mishmash of our systems like that we have where you've got these different systems at different elevations that have microclimates, there is no easy way to predict what to predict. So we...we've just been unable to come up with any, you know, equation kind of thing. There's some things that have been written before but they...they're more exemptions to the rules than there are rules. So it comes down to the people that know the systems looking at all the data and batting it back and forth usually for an hour or so in my office. And I wish we could do it better. I wish there were some way because we wanted to program all this into a computer, basically is what we wanted to do. And the fact is the weather forecasts are not quantifiable to the point that we can program them about when to turn pumps on and things. That's what we ran into, is that there's just a little

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bit of gut feel, interpreting the weather predictions to the rainfall predictions. And we've just had not come up with anyway to quantify it to go into a mathematical equation.

COUNCILMEMBER GUZMAN: Is there any way that you could at least put the top three components that you would be looking at and then add in language that...just, just to give the general public a sense of transparency that...'cause there are people that are --

MR. TAYLOR: Sure.

COUNCILMEMBER GUZMAN: --monitoring these things and they want...and they check and oh yeah, well, we better prepare for a shortage of water because X, Y and Z is low.

MR. TAYLOR: And when we put out our press releases...

COUNCILMEMBER GUZMAN: It kind of gives them a heads up in terms of what, you know, what are...what to monitor themselves, you know.

MR. TAYLOR: Sure. And we know that because when we put out our sort of regular please conserve, voluntary restrictions Upcountry, the things we list are, is it looking like it's going to be a wet or dry winter. You know, that's one thing. What is long-term and short-term weather prediction? What are the current levels of the ditches, right? What is the current usage? Those are really the big three, is current reservoir levels, current ditch flow and then current water use and predicted weather. Those are really the four items.

COUNCILMEMBER GUZMAN: Could we put language in there?

MR. TAYLOR: Saying the Department shall consider all four of those --

COUNCILMEMBER GUZMAN: Yes, yes.

MR. TAYLOR: -- I would support 100 percent. That's fine.

COUNCILMEMBER GUZMAN: Thank you, Chair. If that would be possible...if that's a...

CHAIR VICTORINO: Well, that plus a couple other things I think is very important that we need to add, you know. And, you know, we're talking also reduction in the aquifer here in Central Maui. So, you know, we have to have that inclusive of that so if it drops below a certain level, you know. And then we can have the Department formulate the wording but we need to have those kinds of tools.

COUNCILMEMBER GUZMAN: Yeah, I mean it just...it just clarifies --

CHAIR VICTORINO: Yeah, I understand.

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COUNCILMEMBER GUZMAN: --the intent of the bill and then when people read it that they kinda realize what factors or components that are...that the Department is using to quantify --

CHAIR VICTORINO: Yeah.

COUNCILMEMBER GUZMAN: --a water shortage declaration. You know it's all about transparency.

CHAIR VICTORINO: Yeah, and I'm all for transparency. This is what it's all about. That's what we've done, Mr. Guzman, what we're doing right here.

COUNCILMEMBER GUZMAN: Yeah, yeah.

CHAIR VICTORINO: If it wasn't transparent, we'd be done and gone home already. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I like this discussion. I think it's a good thing. You know, people watch us carefully and they're always concerned about giving a Director too much discretion. And so I think having a few references in here as to how he makes his decision is good. It's good for people to see and they know that there's a process. He just doesn't arbitrarily say that's it, you know, we have a shortage. So I think it helps him also.

CHAIR VICTORINO: No, absolutely. And Mr. Taylor will not be Director forever --

COUNCILMEMBER BAISA: There'll be others.

CHAIR VICTORINO: --so others following his footsteps. Yeah, and so now we have some...he was hoping forever but I don't think so. Anyhow, anyhow, moving right along. But, no, this does give guidelines at least for future directors coming in to understand what water shortage is all about. So that's what this discussion was going to be today and I thank you guys very much 'cause it's going in the direction we wanted. And that's why we asked the Working Group to also provide us with suggestions so that we could do this. So moving along, Mr. White, do you have anything else you would like to add? Ms. Crivello?

COUNCILMEMBER CRIVELLO: It's just for clarity. So we are going to be able to provide some sort of methodology...

CHAIR VICTORINO: Criteria?

COUNCILMEMBER CRIVELLO: Yeah, as to how you make that determination?

CHAIR VICTORINO: Yeah.

COUNCILMEMBER CRIVELLO: Okay.

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CHAIR VICTORINO: Mr. Carroll? Nothing, okay, okay. So why don't we come up with some language and, Mr. Taylor, you can give us some suggestions and couple other suggestions I heard from Mr. Guzman, myself and then we'll kinda incorporate it, okay. Okay, moving right along. The stages of water shortage, okay. And so this is basically again, 14.06A.070, okay. There was some suggestions from the Water Working Group which I would like to discuss also. But let me say that this was just an initial starting point. And the reason I use advisory, warning, and emergency, kind of like what I'm thinking is out there with hurricanes and other...you know, you get warning, you get...you get advisories, you get warning, you know. And you get the actual event occurring. And so I was trying to get so that the public kinda understands the same thing, Mr. Taylor, that these stages really fit with what they're used to hearing in other emergency situations. I mean it's not...it's not in stone. And then the percentages I put in was just a starting point for discussionary...for discussion today, yeah. So, go ahead. I open the floor. Ms. Baisa?

COUNCILMEMBER BAISA: Nothing at the moment.

CHAIR VICTORINO: Okay. Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. On the...the third section, Water shortage emergency. And I'm referring to Subsection c. It says, prohibit the installation and I believe, according to the proposed amendments from the Ag Working Group, they would like to delete "installation" and substitute "activation" of any new water meter or water service.

CHAIR VICTORINO: Mr. Taylor, what do you think of that?

MR. TAYLOR: You know, this is always something that comes up. You see this on the mainland and here too. There's a drought and they say, well, we've suspended, you know, no new water installations. There are 10,000 water meters Upcountry. I mean, even in a drought does anybody really think that not putting in one guy's meter is gonna make any difference? I just tend to think it's silly. It's not...it's not...it's not within the margin of error of the measurement of how much water we have. So to make a long-term decision whether or not to give a guy a meter based on a short-term issue and say, well, you know, when this three-week drought is over, then you get your meter. He's still part of it the next year when it happens. I'm not a fan of this because I find that it's just sort of silly. I don't think it really matters. I don't think it's within the reading _____ of the whole...of all the numbers in the first place. And I would not really want to tell somebody who is ready to have their meter installed, well, you can't because we're in a drought but, you know, in a week you'll be able to get it. Those are long-term decisions about giving out meters, not short-term decisions. And I think we should focus on short-term issues for short-term emergencies and not play around with long-term logistics, you know, due to issues that only last for a couple of weeks or a couple of months.

COUNCILMEMBER GUZMAN: So would you suggest just deleting that whole subsection c?

MR. TAYLOR: That would be my...I would rather not stop putting in meters during the drought although there's sort of a public outcry, why is this guy getting a meter when I'm in a drought.

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But again, I mean you look at the numbers. You know I'm a numbers guy. There are 10,000 meters Upcountry. Does anybody think that not giving you your meter for your single-family house is going to all of a sudden stop the drought? It's just sort of...it makes people feel good but it's sort of silly.

COUNCILMEMBER GUZMAN: With that being said, Chair, can I propose the deletion of Subsection c?

CHAIR VICTORINO: Well, I would not want to...I don't mind the...any new water meter. But I would like to keep any new water service because water service now could be a much bigger --

COUNCILMEMBER GUZMAN: Oh, I see.

CHAIR VICTORINO: --a problem. You know, water *service* now. It's not water meter, it's water service. Now, Mr. Taylor, can you address that issue about water service now?

MR. TAYLOR: I suppose I'm throwing them both in together and saying we're either agreeing to serve somebody because over the long term we can handle them on the system or we're saying we can't. And I think we should be making these decisions for the region. Are we going to allow expansion of service in that region or not? And if we are going to be allowing expansion in...of a service in a particular region and we're saying we can handle it and this is just a blip we're having right now with drought that we all just have to get through together, then again I just don't see the point of telling one person out of 10,000 that not hooking them up is going to have any substantial impact on the situation.

CHAIR VICTORINO: My question to you and Mr. Taylor, and you was talking water service, what if there was a major development or a major...a major construction of...and it doesn't have to be homes now, it could be a commercial entity or something and, you know, they start and they're gonna use maybe 50- to 100,000 gallons instead of just 600. How would that affect as far as you are hooking them up during a drought period?

MR. TAYLOR: One of the...I think the last meeting we handed out to you what our plan was during water shortages under the current law. And I think one of those things was immediate yanking of all construction water meters. So that's how we deal with that, by the temporary construction water meter, not by the permanent water service. And we say, look if you want to keep building you're gonna have to truck down to the wastewater plant and get the recycled water and truck that to your site. You know, we're yanking our construction meter. That's the way we handle construction during the low-flow. And that's something I completely support. You know, there's certain activities that we're saying, look, during the drought certain activities have to stop. But those are...those are temporary activities that have high-volume usage. And that's where the, you know, construction water meters come in.

CHAIR VICTORINO: So, Mr. Taylor, what if...if we added in c instead of...and delete "all new water meters and water service" and put any large consumption...or large temporary consumption of

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water usage. Yeah, I'm trying to use your words and trying to create something. But you understand what I'm trying to get to. You just said, you know, you wanted to make sure that that was...you were able to stop that.

MR. TAYLOR: Mr. Chair, all of these, and depending on how this looks at the end, it's going to give...it seems that the intention is to...as the existing situation is, giving the Director the authority to come up with some sort of schedules with consultation from the Board or something and then implementing those. So in the same way that we have a schedule now, that we've already consulted the Board, which says we would stop that, whatever passes out of this that's one of the first thing we would do to prep for this is to get those schedules done, have them ready. And I think the authority is already in here under the Director may apply other schedules, restrictions, or measures as follows that we would include that in those measures. So I don't know that you need to write that. If you want to write explicitly that the Director has the authority to yank any temporary construction meters, that's fine with me. That might make it very clear that you're giving that authority explicitly. Otherwise, that's gonna end up in one of the schedules.

CHAIR VICTORINO: What do you guys think? Agree putting that part in? Okay, so you wanna add where he has the authority to remove or stop any construction meter...usage of a construction meter. Is that what you're saying, Mr. Taylor?

MR. TAYLOR: Yeah, that would be very explicit and clearer.

CHAIR VICTORINO: Okay. We'll get the grammatics all corrected but I just...just so that the intent so we can move on. We're all clear with the intent? And we'll remove the new service and new water meters, okay? No questions? Okay, moving right along. Okay, next.

VICE-CHAIR WHITE: Chair?

CHAIR VICTORINO: Yeah, go ahead.

VICE-CHAIR WHITE: If you don't mind going back, Mr. Guzman jumped a little ahead...jumped over one of the items that I thought we should at least get the Director's feelings on. Under the water shortage advisory, the warning and the emergency, I'm wondering if the Director feels that the percentages are too limiting at the 5 percent. Whether we should say at least 5 percent, at least 10 percent.

CHAIR VICTORINO: Would you be okay with that, Mr. Taylor?

MR. TAYLOR: If you're gonna say at least 5 percent, that's the only thing you need to write because 100 percent is at least 5 percent. So in all seriousness, I think the Council needs to discuss a little bit sort of big picture. As we drop from 100 percent down to, let's say 50 percent, what do you want to see happen? Do you want 5 zones of 10 percent each? Do you want 10 zones of 5 percent, 5 percent, 5 percent? We should have a contingency plan and that's where this whole

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thing started when we proposed it. We wanted to have a contingency plan down to about 50 percent. So although we could not agree more that we don't want this to happen, we want to have a preapproved plan in place down to 50 percent of normal water usage. Our thought was, you know, sort of 10 or 20 percent tiers. But no matter how far we prepared or no matter how much we prepare, there was always the possibility we'll get down to only 50 percent. That's what's happening in California. No one ever thought it would happen and now they're struggling to kinda come up with law in the middle of their crisis because they didn't think about this beforehand. And, you know, frankly it's the same thing you see on the news about these quarantines for Ebola. No one knew until two days ago who had authority. You know, there was no plan for states to do or the country to do it. Now they're struggling under crisis. This is no something we ever want to use. We want to have a plan in place that's been approved by Council so as it drops to 90, 80, 70, 60, down to 50, we say this is the preauthorized plan of how we drop to 50 percent. So I think if you folks talk about what you want to see down towards 50 percent, then we just codify that. But I'm unclear about what you want to do much less how to write it at this point.

MS. WILLENBRINK: Chair?

CHAIR VICTORINO: Yes?

MS. WILLENBRINK: If I may?

CHAIR VICTORINO: Yes, go ahead.

MS. WILLENBRINK: Right now it says three stages. I know the Director mentioned a fourth stage but perhaps a new first stage that would just be a water shortage watch. Then a water shortage advisory, warning and then the very strong language under water shortage emergency that we could work on with the Department.

CHAIR VICTORINO: And I agree with Mr. White. Maybe putting "at least". That way, you know, that there's a minimum and we can go from there. And I can change those percentages again. That was just what we've been discussing. And again your contingency plan on 50 percent, really, that's almost a different...you know, another section we need to add because we haven't gone that far, you know. And so I think we need to add that. But what do you think, Members? I mean I'm open to suggestions but at least this...

COUNCILMEMBER CRIVELLO: Chair?

CHAIR VICTORINO: Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I think the advisory warning and emergency is sufficient. And, you know, for us to come down to 50 percent, we're already trying to make some kind determination by the 5 percent, 10 percent, et cetera. So I think the intent of just adding "at least", as you also agree to, is to me more makes sense in my opinion anyway.

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CHAIR VICTORINO: Okay. Any other ideas? I mean “at least”. Okay, I mean it’s not a big change but “at least”. What do you think? Anybody have any other suggestions? No? Okay, so we’ll...with your agreement, I’ll add “at least 5 percent”, “at least 10...” or “at least” in front of all those percentages. How’s that sound? Okay, all right.

MR. TAYLOR: Excuse me, Mr. Chair?

CHAIR VICTORINO: Yes?

MR. TAYLOR: I’m a little confused because I know you said you wanted to follow sort of what people are used to with the storms. Tropical storms have a wind speed of, you know, some range. It doesn’t say at least 50 miles an hour. It’s...and I don’t know the numbers. You know, 50 to 79 and then at 80 miles an hour it’s called something else. And then at 106 miles an hour it’s called something else.

CHAIR VICTORINO: Categories.

MR. TAYLOR: So it doesn’t just say “at least”. It has a clear bottom and top range. And I don’t see how we’re going to administer this without a bottom and top range for each of these. I just don’t think the word “at least” is going to be clear at all. I think we need a bottom and top range just like storms.

CHAIR VICTORINO: Okay, Mr. Taylor, then give me your bottom and your top range in each one of them. Okay, so that we quit, you know, dickered around with it. Let’s get some ...*(inaudible)*...

MR. TAYLOR: I think it should be by tens, you know.

CHAIR VICTORINO: Okay.

MR. TAYLOR: Up to 10, 10 to 20, 20 to 30, 30 to 40, and 40 to 50. Then there’s five clear ranges and even if you want to do the same thing in three of the ranges, it’s very, very clear. It’s when water supply does not meet demand. You know, it’s 10 percent short, 20 percent short, 30 percent short, 40, and 50. I think five ranges, five tiers gives us clarity without too many to make it unmanageable.

CHAIR VICTORINO: So if we put 10 percent for advisory, 20 percent for shortage warning, 30 percent for a watch, using your words, right? A watch, yeah. A water shortage watch. And anything...

MR. TAYLOR: I think you can just call it water shortages up to that percentage, you don’t have to come up with names. But you can call them whatever you want as long as the numbers are there.

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CHAIR VICTORINO: Yeah, okay, okay. Yeah, and fine. And the last one for water shortage emergency is 40 percent on up 'cause that would be everything from that point. Questions, Members? I mean I'm trying to keep this as simple as possible.

COUNCILMEMBER CRIVELLO: I have a question.

CHAIR VICTORINO: Yeah, go ahead.

COUNCILMEMBER CRIVELLO: So it says here, da da da shall be requested by the Mayor or the Mayor's representative to voluntarily restrict, *restrict* water usage by 5 percent. So are you saying you wanna restrict it by 30, 40, 50 percent?

MR. TAYLOR: What I'm saying is the first stage...I mean you really don't need any law for us to put out a press release asking people to please try to conserve 5 percent. I don't...I don't know that we need legislative approval to ask for people's kokua to conserve water. I just wanna be clear that whatever we're doing we're saying that when we're 10 percent short, we're gonna do these things. When we're between 10 and 20, we're doing these other things. So we can put it in whatever actions you want in each of those tiers as long as we have clarity of what happens when we go from 9 percent short to 11 percent short. We realize we jump into a different paragraph and everyone's clear on that. So that's why I suggested, you know, five groupings.

COUNCILMEMBER CRIVELLO: So you want five *groupings* to restrict our water usage?

MR. TAYLOR: That is what I would recommend. And frankly, I would have the requests not even be covered by this because as I said we're always free to ask people to voluntarily please try to conserve 5 or 10 percent. And I don't know...again, we don't need Council authorization to ask people to try to conserve water.

CHAIR VICTORINO: Okay. So, Mr. Taylor...

VICE-CHAIR WHITE: Chair?

CHAIR VICTORINO: Yeah, go ahead.

VICE-CHAIR WHITE: Oh, I'm sorry. I think Mr. Taylor's going in the right direction and so are you. I'm just thinking that it might be best if we have...have this drafted and submitted to us later because it...this is really the crux of what we're doing. And it seems to me that maybe...maybe the first section would be 10 to 20 because as he said you can ask for...

CHAIR VICTORINO: Yeah, so and that's exactly what I was gonna suggest.

VICE-CHAIR WHITE: So 10 to 20...

CHAIR VICTORINO: Thirty to...

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VICE-CHAIR WHITE: Twenty to 30...

CHAIR VICTORINO: And move right up.

VICE-CHAIR WHITE: I mean anything over 30 is a pretty significant challenge anyway so I would...I'm not sure we'd...would have any different ways of dealing with a 35 percent versus a 45 percent drop. They're all gonna be critical. So I'd...rather than us trying to figure out what...what steps might be appropriate in those ranges, I think it might be best if we allow them to come back to us with something that's crafted in such a way that we can...we can then put the finishing touches on it.

CHAIR VICTORINO: Okay.

MR. TAYLOR: And, Mr. Chair, we...in our draft of the water shortage bill we just came up with two.

CHAIR VICTORINO: Right.

MR. TAYLOR: And we had the break at 20. Anything up to 20, everything more than 20. So I agree, you know, we agree with what you're...with what Mr. White's saying. In fact, that was our version, is just two phases, up to 20 and more than 20. So we'd be happy with that. As long as there's clarity from the Council that...how many of these you want. I think two works it with the up to 20 percent and more than 20 percent. It just means that, you know, anything up to 20 we're going to do all those same things. Anything more than 20 we'll do all those same things. So there's just not as much micromanaging. But it's up to the Council.

CHAIR VICTORINO: Well, I'm gonna tell you what I think and it's up to you guys. I don't think 20 is sufficient enough to go into a heavy stage, you know. I say, like you Mr...Mr. White, 30, 35, 40 something like that, I know it's severe. Twenty percent, you can live with. But 35, 40 percent, yeah. So just having two stages, up to 20 and then 20 and above, I cannot live with. But it's up to you guys, you know. But I think we need three or maybe four to make sure that, you know...at least three to be fair to the public, you know. Because I think 20 percent, we can manage with 20 percent. Twenty-five percent, maybe not that bad. You start getting 35, 40 percent, there I might say, yeah, we got problems, you know. So, anyhow we can discuss it further and come up with some recommendations, okay. All righty, moving right along. I think...I knew that was going to be the big sticking point. Told you, Kim. I just know where everything's gonna get stuck. Moving right along, okay, where were we now? Okay, and you know, the other sections now from 14.06A.080, that one about the notification, until we get all the rest done this one, I don't know how you guys feel but, I cannot continue with this until we break down the...how we're gonna actually formulate. So once I get that then we can then maybe make changes on this section if that's all right with you folks, okay. That's to not delay the day, let's clear, you know, once we get the new setup then we can relate it to the 14.06A.080, notification and publication of the declaration of water shortage, okay.

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MR. TAYLOR: Mr. Chair?

CHAIR VICTORINO: Yes, sir?

MR. TAYLOR: I'm sorry. I think there's something back in 070 we didn't address and that's d, institute water shortage water rates as set forth in the annual budget. As I made in my earlier comments, I'm not sure that it's clear. Do you want this in one...did you want this in one of the stages? You know, we're talking about coming up with two or three stages but not in the other stages. I think if...offline we're gonna try to draft this and bring it back to the Council. I think we need to discuss what to do with this or not because otherwise we're just gonna end up right back here again.

CHAIR VICTORINO: Well, I'll ask the Members but I would think it...this would be where we would have the third stage or the emergency stage or the very severe stage where this would come into play. I think the other two stages where it's, you know, advisory and maybe early warning asking for a 25, 25 percent cut or whatever, I'm not sure if I would wanna institute rate changes at that point but I open up to the floor to you folks. I mean that's my take. I would look at it at the stage three or emergency stage or the severe stage where I would then say, okay, Director, you're allowed to raise the rates accordingly. But up to you folks. I'll open the floor to your ideas.

MR. TAYLOR: Mr. Chair, may I share something of California's experience with us?

CHAIR VICTORINO: Yeah, go ahead about California.

MR. TAYLOR: Okay. So a number of months ago, six, eight months ago the governor of California asked for...saw this drought getting worse and worse and worse and asked for I think maybe a 10 percent voluntary reduction. And water use went up across the state, didn't do anything 'cause the governor has no authority for any penalties. And then...and I don't understand exactly the bureaucracy of the state of California water system. There's some sort of state water commission of some sort that has authority over all the wholesalers. They passed something that said...or maybe the state legislature did or something that said there shall be these tiers. And then all the different regions went about establishing these shortage tiers and that's the first thing that worked. Santa Cruz I know has very aggressive water shortage tiers and that...people started cutting back. So it...what California learned and what we learned from watching California is only the tiered rate seemed to work. There's just been a big experiment over the last year and that's what seems to work. They're struggling kind of after the fact of _____ these things. So what I would suggest is, as I've been suggesting for the last year and a half on this item, have a tier in the budget for each of these stages. And it's up to you to make it...maybe make it one penny for the first tier. Maybe make it five cents for the second and then have a big one for the third. That gives us the option of saying when we call this...in fact, you might have no change for the first tier, right. So the budget may say stage one water shortage but the cost is exactly the same as normal rates. Or maybe for certain classes it's up one penny, something like that. But by putting this in for each of the tiers which is what we've wanted from the beginning

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it allows us in budget to put numbers to say how serious we are. And that seriousness could be not at all. We don't have to...we can have the shortage rate be exactly the same as the normal rate for certain occurrences. It gives us that option to play with it as we go and not have to come back with this bill. We just change the numbers in that spreadsheet essentially that's in the budget. So that's what California learned. We're trying to copy what they did to not be behind the eight ball if something like this happens. But setting up this...this methodology will allow us to be very flexible and look at it every year in budget and decide how best to change the numbers.

CHAIR VICTORINO: Well, ladies and gentlemen, if you would like him to bring that forth as a proposal in writing and we can review it, I can ask him to do that. Yes?

VICE-CHAIR WHITE: I would support that.

COUNCILMEMBER BAISA: Yeah.

CHAIR VICTORINO: Okay, thank you. Moving right along. I love when I get support on something. All right, the big one, 14.06A.090, agricultural consumers. Now that's the other biggie and I open the floor to discussion. For me personally, I still, still want to see these ag...I mean we talk about ag, we profess ag, we say we help ag. And when the drought comes they just can't turn their spigots off and they can't tell the cows not to drink and they can't tell the vegetables you don't have any more water, we're cutting you by 20 percent, 10 percent. Again on the severe, again I have no problems with something in the severe nature but anything under that and to start it when we get to the second stage or something like that, it's fine, you know. I'm open to compromise but I refuse to just say no. Ms. Baisa?

COUNCILMEMBER BAISA: Okay. Let me stick my neck out, as usual. What I'm getting from people that, you know, stop and talk to me, of course, we all support ag.

CHAIR VICTORINO: Uh-huh.

COUNCILMEMBER BAISA: And we all want to support ag. And if we listened to Mr. Arakawa yesterday afternoon who was presenting on IALs, one of the things that came up was how important water is to, you know, preserving agricultural IALs and using them. And I think we heard again, he was very discreet about how he, you know, put it to us. But I got the message. You know, walk the talk. If you're gonna support agriculture then you have to walk the talk. But then the other thing that I hear in conversation with people is their concern about they want to help the farmers, the real farmers, the people that are feeding us. But they are also afraid of how we define agricultural consumers that they don't want to extend these kinds of, you know, special benefits to people who will, as we know, our little backyard farmers or have a couple rows of tomatoes or whatever's going on. They don't feel that those people should be provided with these kinds of exemptions. So, Chair, I don't know how we do this. I mean this is very, very difficult. But, again, we might have to get down to the impact of the farmer. How much of an impact does this farmer have? You know, if it's somebody that's providing us food that we have

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to have, then I'm more than happy to give exemptions. But it's somebody like myself who has a backyard garden, well, I think I just have to eat it. So I don't know how we prove that or how we do that or what kind of a system we set up but, you know, if we're never...we're never gonna get this ordinance passed or this bill until we solve this ag question. I think, like you said Chair, it's the elephant in the room. We gotta deal with it. And more and more people want to take advantage of being called a farmer or being in ag. So we're gonna have to draw some lines here if we're gonna make this work and it's not easy and it's not popular. But I think the time has come. We can kick this can down the road one more time but we're only giving it to somebody else to deal with.

CHAIR VICTORINO: Okay. Well, we have the suggestions also from the Ag Working Group and again, as Mr. White knows, that I'm trying to put together a version of...a dedication of ag which I think once you dedicate that's, you know, I mean that's a simple, simple answer. That's all encompassing. But till then how do we define ag consumers? I think it's a real challenge but I wanna leave that in there for right now. I'm not kicking it down the road. I'm actually wanting to get this, you know, to protect the true farmers that are out there and the ranchers. You know, it's not just farmers.

COUNCILMEMBER BAISA: Yes.

CHAIR VICTORINO: That's why I use the word agricultural consumer.

COUNCILMEMBER BAISA: Correct.

CHAIR VICTORINO: It's not just farmers. It's our ranchers and there's many ranchers out there working very hard and they...their calves take years to grow, you know. And they don't stop drinking because it gets dry. In fact, they probably want more water. That's just the exact opposite, you know. So I'm gonna leave this for now 'cause we're gonna move on into the other areas and pretty, pretty much done and I know what direction to take. And that's what this was all about today, is to get direction so I know where we need to take this. And then we'll bring it forward. So, Mr. Taylor, you have anything else you wanna add?

MR. TAYLOR: Just one quantitative follow-up for you --

CHAIR VICTORINO: Yes, sir.

MR. TAYLOR: --to keep in your minds. Could not agree more with Chair Baisa. If we were to define agriculture more aggressively as...I know some things have been floated in the past of, you know, 51 percent of your total income coming from agriculture or something like that, you may see rather than half the water use going out at ag rates it may drop to just 25 percent and all of a sudden, you know, a lot of these problems I've been worried about disappear. So if real farmers are considered ag water and people who are not considered real farmers are not, I think a lot of these issues from the Cattlemen's Association would be much easier to solve 'cause there'd be a smaller volume going out at agricultural water rates to real farmers. And we could really protect

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real farmers, not the people who have homes and, you know, for \$1,000 a year grow some fruit or something although they really have regular jobs. That itself might be the biggest help to this 'cause it would...it would make the...it might really make the math work.

CHAIR VICTORINO: Okay. Ms. Baisa, you wanna add anything to that? I mean I think I know where we wanna go with this and now it's a matter of doing it. But again the other side of that coin is what about those who have these flower farms for many, many years? They're not...they've been doing that for years. How do we exclude them? I mean, and I'm putting that out on the table because I hear from them. They're very worried that if they're cut, they bring a big economic...coffee. Is coffee considered food? I don't know, you know...

COUNCILMEMBER BAISA: Well for some of us it does.

CHAIR VICTORINO: Well, so others they would say not at all, yeah. So again how do you, you know...and the word...defining ag is still part of but I think the real key is dedication. Once you dedicate you know that person is farming and that's pretty much easy. But anyhow, I know where we wanna go with this. Yes?

COUNCILMEMBER BAISA: Chair, I would really like to hear from Member Guzman. You know, he's been spending a lot of time with this Ag Working Group. I think they've been meeting like a year and a half. Any closer to any kind of resolution between who would be considered ag and who isn't? Chair?

COUNCILMEMBER GUZMAN: In what context are we talking about? For water you mean?

CHAIR VICTORINO: Well, are we any closer in the definition of ag?

COUNCILMEMBER GUZMAN: Oh, yeah. Actually the group has gone through all of the admin rules for each of the departments that are involved. I believe...I think they're last Department that they are working on is RPT, and so they've met with all the departments including the...this Department, Water, in terms of amending some of their admin rules. Because it all comes down to how it's been applied, you know. And so they do have a definition of agriculture. They're trying to streamline it through each of the departments to apply it across the board for consistency. So it is workable. They're almost done with the RPT. And then they came up with...they're discussing dedication as well because RPT is...has brought that into the mix. So we're...they're almost there. In fact, in my committee I was gonna have them give an update but I had the Important Ag Lands come in from Honolulu this last Tuesday so I postponed their update for probably the next go around next month. I'll have them come in and give an update.

CHAIR VICTORINO: Okay, so with that being said then I'm gonna leave 14.060...I mean 14.06A.090 in there for right now and move on. And until we get other...and we...it's there and then we can work around it.

COUNCILMEMBER BAISA: We can defer until we hear from them maybe.

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CHAIR VICTORINO: No, we're not going defer anything until we get everything back. So I'm going defer this anyhow.

COUNCILMEMBER BAISA: Oh, okay, okay.

CHAIR VICTORINO: Yeah, so I mean we can't decide today because you guys want too many things so we gotta go back and work on a lot of different issues. So we're gonna defer this matter anyhow.

COUNCILMEMBER BAISA: Chair, I was referring to deferring any more conversation about ag consumers until we hear from them. 'Cause I think the work they've been doing is relevant. It's been a long time and I know they've put a lot of energy...

CHAIR VICTORINO: Absolutely, absolutely.

COUNCILMEMBER BAISA: And that'll help us in deciding, well, who would qualify for this 90 days or any special considerations.

CHAIR VICTORINO: And, you know, Ms. Baisa, you're right. That's why I'm gonna leave it there because once ag is defined and dedication is put in which I'm working on right now, you know --

COUNCILMEMBER BAISA: It's done.

CHAIR VICTORINO: --then we won't have a problem. This definition would be applicable.

COUNCILMEMBER BAISA: It's done.

CHAIR VICTORINO: Yeah.

COUNCILMEMBER BAISA: Thank you.

MR. TAYLOR: And, Mr. Chair, just so the Council understands...

CHAIR VICTORINO: Yeah?

MR. TAYLOR: This issue of the math for ag users is really only for Upcountry. Upcountry is the only area where half of the water goes out to current ag customers. In Central it's some tiny fraction. So in Central if there was a drought, leaving ag out of it wouldn't matter, same with the other areas. So this is really just about making Upcountry work. It's probably one of the only potable water systems in the country where 50 percent of the potable water goes towards agricultural users. That's what makes this so complex and it makes it really just a unique problem for Upcountry that doesn't affect the other areas.

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CHAIR VICTORINO: Okay. Yeah, I think we're all clear on that. Anything else? Okay, moving right along. And, you know, the exemptions, okay on the...we removed "by County employees" and we just put in "human error". I think to me that's pretty safe and it only affects rate increases, okay. It doesn't mean the Department cannot call for, you know, cutbacks and mandatory cutbacks. And again, if a pipe was broken and it was a 10-inch meter...I mean a 10-inch main and it broke and a whole area like, say for example, Piiholo or something did not have water, well, obviously there's a cutback right there without any penalty because if that was done by human error they shouldn't be penalized rate wise. So, Mr. Taylor?

MR. TAYLOR: Yeah, Mr. Chair, I think you know what I'm going to say is --

CHAIR VICTORINO: I know what you're gonna say but go right ahead.

MR. TAYLOR: --I do not support this language. Regardless of the cause the situation is the same. There's not enough water. When you have...let's take somewhere like Molokai or Hana where there's just a couple of wells. If that well or if a shaft just breaks for no reason, well, we could be 50 percent. If that shaft breaks because somebody on my staff started it up wrong, the shaft is still broken and we're at 50 percent. And it takes just as long to fix it whether it's a nature-made drought or just a bad shaft or human error. It's exact...our implementation is the same. We could still be faced with three months that it takes to fix something. So regardless of the cause if at the end of the day we have some staged water rates to encourage conservation, they are needed regardless of whether it was an act of God or the Director, you know, hit a button and didn't start up the thing correctly, which I promise I wouldn't do. I wouldn't even know how. So I know there's this idea that just because if there's human error, people shouldn't have to suffer. But the suffering's identical regardless of the cause. And I think we should stay out of what caused the problem because all of these ideas, none of them are penalties on the people. They're all incentives to conserve water in our time of need regardless of the cause. So I'm just very concerned about this language because there won't...if our solution to a water shortage is increased rates to encourage conservation and this is the cause, human error, are we just gonna do nothing? What do we do? There is now no longer a plan. So that is my concern, is the implementation plan is the same regardless of the cause.

CHAIR VICTORINO: Well, Mr. Taylor, I...it's one of those that I'm gonna disagree with you. But anyhow, I'll let the other Members say their piece. Ms. Baisa?

COUNCILMEMBER BAISA: Okay, well, you know, I live in the area where water is a big issue and so I hear about it a lot. And what I've heard in regards to this is people understand that, you know, an error occurs and there's less water. And they're perfectly willing to go along with the reduced amounts that are available but they do not wish to be penalized financially for something that they had nothing to do with.

MR. TAYLOR: And again, if they cut back...I mean that's the whole point of the shortage tiers, is if you cut back you don't get charged more. So those people should be very happy with this because if they are willing to cut back then there will be no penalties.

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COUNCILMEMBER BAISA: Just passing it on. That's my job.

CHAIR VICTORINO: For the moment I'm gonna just leave it in here and we'll have more time to discuss it, okay. Violation, penalty, okay, I think once we get everything else done, then we will focus a little bit on that. Mr. Kushi, you have something you wanna say?

MR. KUSHI: Yeah, Mr. Chair, on this violation...

CHAIR VICTORINO: Can you speak into the mic?

MR. KUSHI: Yeah, about the violation penalty section --

CHAIR VICTORINO: Yeah, sir, go ahead.

MR. KUSHI: --.0...110.

CHAIR VICTORINO: Uh-huh.

MR. KUSHI: This is...our office would be probably enforcing this. If there's an appeal...right now, you know, if there's one violation it's \$500. They gotta go to court, get convicted. Second one, violation, they gotta go to court again, you know, for...and get convicted. Upon a second one, the Department has the ability to remove the meter. And Subsection C says, any meter removed and reinstalled shall pay a \$100 reinstallation fee. To make it more meaningful...more meaningful and maybe alarming maybe you should consider not only reinstallation fee but if you reinstall it, pay the water system development fee, the meter fee. And you wanna be more draconian, let's say for Upcountry, you're off the list basically. But there's no list so your meter's removed forever. Just food for thought.

CHAIR VICTORINO: That's pretty severe and I'm not so sure I can live with that food for thought. But anyhow thank you, Mr. Kushi, for bringing that to our attention and...but I think like you said, it's pretty severe and draconian and I cannot agree to something like that. But we'll talk about it some more. I mean it's not the end all, okay.

MR. TAYLOR: Chair, I would just ask that it'd be very clear for the future people administering this especially if it is Upcountry now that Mr. Kushi brings it up. I think you should be very clear that...what the intention is because staff may look at this, say well, your meter got removed. You know, you're not on the list, et cetera, et cetera. So should you...should you repay the water system development fees, I think it should say it's only the reinstallation fee but you will not be subject to, or you will be subject to. Either way just make it very, very clear. Otherwise you may get different interpretations in the future.

CHAIR VICTORINO: We can do that. We can make those changes. Yes, Ms. Baisa?

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COUNCILMEMBER BAISA: One of the things and the last thing that the Ag Working Group brought up was when you lose your meter, when do you get it back after paying your reinstatement fee? They asked when.

MR. TAYLOR: From a...from a logistical thing, it's usually a day or two. If it's...if you came in today, our crews might be able to do it this afternoon, probably tomorrow at the latest. If you came tomorrow too late, it may have to wait till Monday, being it Friday. It's a three-day weekend, that kind of thing. But that's usually something that customer service takes care of right away, sends a work order to the baseyard and they do it in the next day or two.

COUNCILMEMBER BAISA: Yeah, I'm not privy to the discussion but there must've been some concern about that. Maybe Mr. Guzman knows. I don't know.

CHAIR VICTORINO: Go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Yes, Chair, thank you. Yeah, during the discussion I guess it was just a concern that that portion of the provision was...I guess questions were brought up that, yeah. If it was taken away and there was an appeal process, was there an exact time in which they were going to be given to have it reinstalled after the payment. So I guess there was concerns that some people had been waiting for quite some time for...that's what I heard.

MR. TAYLOR: I'm not aware. People have had meters locked and things like that and, you know, it's usually just a matter of a couple of days. Since we're talking about these numbers right now, you might want to raise them a bit because just sending out a crew, sending out two guys taking an hour, you know, that's gonna cost more than a \$100. And staff time to document, it's gonna cost a lot more than \$500. I mean we're really losing money on every one of these just from a staffing time. I would think raising, you know, the \$500 even to a couple thousand; everything that's 100 up to 500 would at least, you know, be somewhere in the neighborhood of what it's costing for us to do. And my understanding is this money I believe goes to the State, not to the County anyways. Is that correct?

CHAIR VICTORINO: The \$500? Not the water meter one, right, Mr. Kushi?

MR. KUSHI: Right. It's a conviction so --

CHAIR VICTORINO: Yeah.

MR. KUSHI: --the State court takes care of it. Mr. Chair, you know, reading this section again and not to belabor this point but --

CHAIR VICTORINO: Yeah, go ahead.

MR. KUSHI: --if the second violation occurs and they got convicted, the Director may remove the meter. Let's say that happens and then the applicant appeals and of course during the term of the

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appeal, it's reasonable that the meter not be removed until the Board acts on the appeal. And let's say in this case the Board sustains or confirms the Director's decision to remove the meter. In my mind, the Board may say you're not going to get that meter back.

COUNCILMEMBER GUZMAN: Right.

MR. KUSHI: You know, so that may happen. So there may not be even the issue about reinstallation. So you may want to clarify that at this point, you know.

COUNCILMEMBER GUZMAN: I think that was...

MR. KUSHI: Or the Board may say, okay, your Director was okay in removing the meter but because of circumstances, go and reinstall it and just pay the reinstallation fee. But you're leaving quite an amount of discretion to the Board itself.

COUNCILMEMBER BAISA: Chair?

CHAIR VICTORINO: Yes?

COUNCILMEMBER BAISA: I have a question. I don't know these kinds of things but other people do. How common is this business of removing people's meters for them not paying?

CHAIR VICTORINO: Mr. Kushi or Mr. Taylor?

MR. KUSHI: Very rare. We have had recently a lot of instances of foreclosed properties, they just kinda lapsed and then, you know, during the foreclosure procedure the owners or tenants are not there and the bank takes over and the bank could care less. And then when they get the new owner, the owner comes back and says, oh, where's the meter? I mean, you know, we've had those instances, but very rarely aside from foreclosures the meters are locked and removed.

COUNCILMEMBER BAISA: So if they're removed in the instance of a foreclosure, it's possible that they could not ever get it back?

MR. KUSHI: They can get it back but if it's Upcountry, it's a different situation.

COUNCILMEMBER BAISA: I see. 'Cause then they get into this whole thing of --

MR. KUSHI: Right.

COUNCILMEMBER BAISA: --of the line. Okay, okay.

CHAIR VICTORINO: And then we also have if you recall correctly time restrictions. I think up to 36 months thereafter you gotta pay a new water use and development fee. And that's become an issue with people. We've had that complaints you and I and others. And I think, you know, it's

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like everything else there's no way you can get every scenario put together, you know. And so anyhow, anyhow I don't wanna go off track and keeping on what we're trying to accomplish here. Anything else that you would like to bring up? Yes, Mr. Guzman?

COUNCILMEMBER GUZMAN: Yeah, thank you, Chair. On the...I'm not sure if this was brought forward but on 14.06A.080 the Ag Working Group also had testimony in regards to whether a publication...language of publication for the shortage to be declared over. You know, like when they said...'cause you have it as notice of publication when the shortage begins and they're asking whether there could be language on publication for the shortage to be declared over.

CHAIR VICTORINO: And normally, it is in the newspaper but yeah, we can put that. It...that ain't no big thing.

COUNCILMEMBER GUZMAN: Yeah.

CHAIR VICTORINO: That's not a big thing. Yeah, okay, I can make sure that's put back in. Put that as far notification when the shortage is over. Okay.

MR. TAYLOR: And, Mr. Chair, I think if...depending on how many levels we come up with, if there's five levels it might not be over. It might have moved into a lesser level or something like that. We could probably borrow all those colors from the Department of Homeland Security.

COUNCILMEMBER GUZMAN: Yeah, that's right.

MR. TAYLOR: They used to use all those colors, red, green . . .*(inaudible)*. . .

COUNCILMEMBER GUZMAN: Orange, yeah, yeah. At least we could tell the people what stage we're in, yeah.

CHAIR VICTORINO: Yellow, yellow is what we need to make sure we focus on, yellow. Just, just one of them snide remarks, snide remarks.

COUNCILMEMBER GUZMAN: Or pink.

CHAIR VICTORINO: Pink, pink, yeah, yeah, okay. Again these are some of the stuff once we get really the complete breakdown with what the Department would like to suggest as far as stages and what percentages and all that, then I think we can move into these other issues. And we can make changes accordingly. I'm sorry. So anymore suggestions or ideas because I think we got an extensive group to work with right now. And as I told Ms. Willenbrink today, I know this was not gonna get completed because there's a lot of issues that have to be dealt with. But I think what I've seen today is a good collaboration of ideas, you know. I think we're a lot closer than we were and I think this could be the first step in other issues that we could resolve by collaborating. So anything else you'd like to add before we adjourn this meeting? And I had set this for all day but the Department has other plans this afternoon and I don't think we could

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ascertain the necessary information or changes today. So I will try to bring this up at our next meeting 'cause I really am in tune to try and get this completed before the end of the year. That's my goal to get it done before the end of the year. And I think with everybody's help we can do this, okay. Anything else you'd like to add? Mr. Taylor, are you okay with all of this and what we need to work on?

MR. TAYLOR: I'm okay with what we need to work on.

CHAIR VICTORINO: Okay, there you go. Okay, just wanted to make sure. And again in closing you all had the material that was handed out by yesterday's Important Ag Land. I made sure that that material was included. I know some of you were in the same Committee yesterday and EAR, E-A-R, and so...but I wanted to make sure that if any of you were not that you had a copy. And I think I wanna take away what Mr. Arakawa really, really was trying to emphasize. Important Ag Lands have a number of components to make 'em Important Ag Lands but one of the top, if not the top, is water. Without water nothing grows. And so we've gotta make sure that that is our whole premise in trying to put this together, is that conservation and leak detection and low-flow fixtures and toilets and all these other stuff all going help. But in the bottom line, how do we protect our ag consumers and how do we make sure those ag consumers are actually doing what we need is food production. Without leaving the other ancillary, floral and other coffee, which, you know, some people in this room will say is food and others will say it's not, you know. It's a discussion matter. However, I think we've gotten a lot closer and I wanna thank each and every one of you. Bobbie, I wanna thank your group. Ms. Robinson, I wanna thank you. And if there's no objections, I would like to adjourn this meeting.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (MV, MW, GB, RC, SC, DG).

ACTION: DEFER pending further discussion.

CHAIR VICTORINO: Meeting adjourned of the Water Resources Committee meeting, October 29, 2014. ...*(gavel)*...

ADJOURN: 12:07 p.m.

APPROVED:



MICHAEL P. VICTORINO, Chair
Water Resources Committee

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wr:min:141029:rlk

Transcribed by: Reinette Kutz

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CERTIFICATE

I, Reinette Kutz, 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 this 21st day of November 2014, in Wailuku, Hawaii.


Reinette L. Kutz