

WATER RESOURCES COMMITTEE

Council of the County of Maui

MINUTES

October 5, 2016

Council Chamber, 8th Floor

CONVENE: 9:00 a.m.

PRESENT: VOTING MEMBERS:
Councilmember Gladys C. Baisa, Chair
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Robert Carroll (out 10:33 a.m.)
Councilmember Don Couch
Councilmember Stacy Crivello (out 10:41 a.m.)
Councilmember Mike White (in 9:10 a.m.)

EXCUSED: Councilmember Elle Cochran

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

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

ADMIN.: David Taylor, Director, Department of Water Supply
Jennifer Oana, Deputy Corporation Counsel, Department of the Corporation Counsel
Caleb Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel (WR-6(6))

Seated in the gallery:

Paul Meyer, Deputy Director, Department of Water Supply
Eva Blumenstein, Planning Program Manager, Water Resources Planning, Department of Water Supply

OTHERS: Stacey Sills (WR-6(5))
Rosemary Robbins (WR-6(5) and WR-6(6))
Trinette Furtado (WR-6(5) and WR-6(6))
Lucienne de Naie (WR-6(6))
Summer Starr (WR-6(6))
Albert Perez (WR-6(6))
Lyn Scott (WR-6(6))

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Jonathan Starr (WR-6(6))
Kainoa Horcajo (WR-6(6))
Tiare Lawrence (WR-6(5))
Hokuao Pellegrino (WR-6(5))
(5) additional attendees

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

CHAIR BAISA: . . .*(gavel)*. . . Will the Water Resources Committee please come to order. Good morning, today is Wednesday, October 5, 2016 and it's approximately 9 o'clock, depending on which clock you're looking at. I'd like to make some introductions this morning but before I start I'd like to remind everyone if you would please put your cell phones or anything you have that makes noise on the silent mode, we would appreciate that 'cause we would like not to have interruptions during our meeting, and Chair is checking too, I'm okay. I'd like to introduce the voting members of this Committee this morning. I have my Vice-Chair, Mike Victorino.

VICE-CHAIR VICTORINO: Chair.

CHAIR BAISA: Good morning. We have Mr. Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR BAISA: Good morning, Mr. Carroll. We have Mr. Couch.

COUNCILMEMBER COUCH: Aloha, good morning, Chair.

CHAIR BAISA: Good morning. And we have Ms. Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR BAISA: Good morning. And excused this morning is Ms. Cochran and Mr. White, I'm sure who will be joining us at some point. From the Administration this morning we have with us our Director of Water Supply, Dave Taylor.

MR. TAYLOR: Good morning, Chair.

CHAIR BAISA: Good morning. And I also have Jan Oana, our Deputy Corporation Counsel.

MS. OANA: Good morning.

CHAIR BAISA: Good morning. And joining us later in the meeting will be Caleb Rowe, the Deputy Corporation Counsel and we'll get to meet him when he gets here. I also have Committee Staff this morning, we have Kim Willenbrink our Legislative Analyst.

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MS. WILLENBRINK: Good morning, Chair.

CHAIR BAISA: And we have Yvette Bouthillier sitting in for Clarita Balala. Clarita is participating in a tennis championship and so we're hoping for the best for her. So we're watching Facebook carefully to see how she does and wishing her all the best. In our District Offices we have Dawn Lono in the Hana Office. Dawn, are you there?

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

CHAIR BAISA: Good morning. We have Denise Fernandez in the Lanai Office. Are you there, Denise?

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

CHAIR BAISA: Good morning. We have Ella Alcon in the Molokai Office. Ella?

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

CHAIR BAISA: Thank you very much, ladies, we'll be back to you shortly. Members, we have two items on our agenda today. Our first item relates to the recent storm activity. Our second item relates to the contested case hearings pending before the State Commission on Water Resource Management. We will begin this morning by taking public testimony. Testimony will be limited to the items on our agenda today. If you wish to testify, please sign up at the desk located in the 8th floor lobby or at one of the District Offices listed on the agenda. Testimony will be limited to three minutes and upon request another minute will be given to you to conclude. At three minutes the light will turn yellow and at four minutes the light will blink red. If you are still talking at the four-minute mark I will kindly ask you to stop. When testifying, please state your name and who you are representing if it's anyone besides yourself or a group. We have established a connection to the District Offices. To be fair we will rotate through each of the sites. We'll first check with the District Offices. Hana Office, Dawn, do you have anyone wishing to testify?

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

CHAIR BAISA: Thank you, Dawn. In the Lanai Office, Denise, do you have anyone wishing to testify?

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

CHAIR BAISA: Thank you, Denise. In the Molokai Office, Ella Alcon, do have anyone wishing to testify?

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

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CHAIR BAISA: Thank you, Ella. So at this point we will take the testimony of the folks that are registered here in the Chamber. Ms. Willenbrink, if you would take care of calling the testifiers?

MS. WILLENBRINK: Yes thank you, Madam Chair. Our first person to sign up in the Chamber to testify is Stacy Sills.

CHAIR BAISA: Good morning and welcome.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. SILLS: Good morning, Gladys. Aloha, Councilmembers. I'm coming to you today, it's not something I would normally do but for the past five years I've documented the weather geo engineering that happens on Maui and I don't know if you know what happened on that day. I realized that it is something you can't really talk about in the...but it is happening globally, there's no dispute. So I've documented it, and I've documented what happened on this day and we were bombed by aerosol down bursts, I have the proof, the documentation. I videoed it, you can see that we had down burst that day. They were exploding bombs, first they did a first round over Maui and then did the second one. There were no clouds in the sky and now you see these explosions. Now I've posted this on Facebook. I've sent to you, Gladys, in your Facebook and you just need to use your own eyes. You don't need anyone to tell you scientifically that there were no clouds and then all of a sudden this exploded. They caused the damage that is up in our Iao Valley today and I'm not sure what the private agenda is or if somebody has a governmental wish to recharge our river or I don't know these things, all I know is what I saw, what I've documented. Our islands were attacked and you should be aware that we are being attacked. I've written a 16-page letter to our Mayor with no response from him and he just won't even acknowledge that this is going on, but the fact is go outside and look in our sky today and you're going to see aerosols being sprayed in our skies, aluminum, barium, strontium, coal ash. And you guys need to know it, you're our leaders and I expect you to tell me what I need to do to make a change in our community of the air around us. This is ridiculous, let's just talk about it. Don't just stick your head in the sand for goodness sakes, get out there and make a difference. It's polluting our skies, it's causing Alzheimer's, dementia, and its poisoning our air, water, soil, and our food. Please take a look at the video, go to my Facebook, I have over 500 videos documenting this global engineering around the world. It's...they, right now they just post Michael this morning. The hurricane that's going on there. They're increasing it, they're causing damage, insurance companies pay for these things. I don't know what the whole, you know, weird thing is that's being done, I just can see what's happening with my own eyes, you need to use your own eyes, discern for yourself what's going on. Don't listen to the scientists 'cause it's all BS and we're being attacked and our Hawaiian people have been attacked many times before this I just never reported it. When they were protesting on Mauna Kea they bombed that protest with two huge...you notice that they closed down in July the hottest week. They closed down Mauna Kea for a blizzard, hello, look at it, ask yourself is that normal a blizzard in the middle of July

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while our Hawaiian people are protesting, come on, help me out. Please tell me what to do, where to go and look at the information for yourself. Just look it doesn't hurt anything for goodness sakes. That's my message and I don't know where you can guide me but you need to know this is happening and they're attacking our islands, they're attacking globally. It's a serious issue.

CHAIR BAISA: Thank you very much. Members, any questions for the testifier? Any need to clarify? Seeing none, thank you. Thank you very much for coming.

MS. SILLS: And can I submit my video or?

CHAIR BAISA: You can submit anything you'd like to our Staff, they'll take it.

MS. SILLS: Okay thank you, Gladys.

CHAIR BAISA: Thank you. Ms. Willenbrink?

MS. WILLENBRINK: Thank you, Chair. The final person signed up in the Chamber to testify is Rosemary Robbins. She will be testifying on both items.

CHAIR BAISA: Good morning.

MS. ROBBINS: Good morning, Gladys. Good morning, everybody. Wow, that was pretty moving. I don't understand a lot of that either but it's got to stop.

CHAIR BAISA: Ms. Robbins, if you could introduce yourself.

MS. ROBBINS: Rosemary...

CHAIR BAISA: And before you start I'd like to introduce Chair White who's with us. Thank you.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR BAISA: Go ahead, Rosemary.

MS. ROBBINS: Okay. Rosemary Robbins, concerned citizen. This is relative to both of the items on the agenda today and I did go through the materials on both of those that are up on the 7th floor. Just some notes about that, it seems like it's in the contested case hearings a lot of time extensions, canceled meetings, postponed meetings, one party's withdrawal, then reinstatement as a party in the contested case hearing proceedings, briefs, rebuttal briefs, and exhibits. If we do it right the first time, we don't have to go to court forever, spend a fortune and months, years wasted on not stepping up to the facts that are available to us and are in process with other sciences coming along. So I have with me this morning I hope what's going to be a reminder, from the sea shall come the life of the land, written by a former County Councilmember from Kihei and a gifted photographer. So when we're feeling very despondent about what we're going to

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be handling in Iao, she has taken the opportunity, I'm talking Michelle Anderson, has taken the opportunity to publish this beautiful book and we also have people actually from Upcountry in addition to Joe Souki from here, at sea level, we also have Mark Andrews, who represented us in the State Legislature, back when, and so they have come together and have put out this wonderful, wonderful, serene, there's hope out there, folks, variety. Don't let this just sit in the library, treat yourself to being able to go through, these are pictures that Michelle took and then worked with other people in putting this book together. They're real, they weren't from an artist description. So please keep that goal in mind. The mission statement of having Hawaii appreciated for what they're doing and let's stop what's happening that's contrary to all the goodness that we've been gifted with. Second book is Maui County Data Book 2015 put out by the County. It's got all sorts of statistics in here and then inspirational perhaps, oh my gosh look out perhaps for some of these statistics, that then, that they would be able to read and we all know with statistics you can get them to say pretty much whatever you want. When they start going beyond the phase of experienced, we live through it, we know. That thought comes up about you can't fool all of the people all of the time. So when people are reading this be appreciative of the good stuff that's in there, be cautious of the stuff that's in there when you know it's contrary to what you're reading, what we just had presented to us here. So these are both from the library, so they're available if you have a card, if not get a card there and just feel better about the fact that better days are coming. On a quick personal note I was in at Iao on the 13th of September and when I put the window down from the air conditioning to be able to experience the real life that was there, I was nearly deafened by the sound of the river coming down and I looked out and saw all these people that were pulling up into that parking lot that had license plates that were rental cars and so I have to say when I got out of my car I was holding on to it and waved hello to the folks and they said what's all that noise? So I said well it's not like this all the time but I have to tell you I'm here as a concerned citizen having a salad and watching this and I'm leaving and we've got a river that's going beyond what people thought it was going to be, you're hearing it. There's only one way out of this valley feel free to follow this car and I got back into my car, wished them aloha and there they were. So with the grace of God I got out of there just in time because that was land absorbing what was coming up over the banks and subsequently dropped off. So no matter how good a swimmer you are, you're not going to be able to go against that sort of force of nature. It's there, we need to recognize it. We need to prevent anything further from that and we need to do a good job at acknowledging what it really is. So I thank you very much.

CHAIR BAISA: Thank you very much.

MS. ROBBINS: You're welcome.

CHAIR BAISA: Members, any need to clarify the testimony? Seeing none, thank you very much.

MS. ROBBINS: You're welcome.

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CHAIR BAISA: Ms. Willenbrink?

MS. WILLENBRINK: The next person signed up to testify is Trinette Furtado.

CHAIR BAISA: Good morning.

MS. FURTADO: Good morning. Aloha mai kakou, good morning, Councilmembers. My name is Trinette Furtado and I'm here to speak on both agenda items today. The first one, WR-6-5, sorry, (5) the condition of groundwater sources. As we know the Department of Water is still asking for water conservation in many parts of Maui because of the impact of the storm on Wailuku River, and I would hope that whatever action happens from this point on comes with the input of the ohana that happened directly and adversely impact by this and not just from the businesses that are involved and have interest in the water. I believe that many of these ohana, they have knowledge of how the river used to flow and I think the diversions that are there currently have been a part of the problem that has not just, not the storm but all of these things that have brought this perfect storm so that we've seen this drastic change in the flow of Wailuku River. I ask that you definitely take into account the requests and the suggestions of the ohana in addition to what the Army Corps of Engineers has basically signed off on, on this plan to rehabilitate the stream. And as for the other issue, WR-6(6), the update on the contested case hearings, these extended timelines on both of these cases I hope that the Council will impress that they should produce actual water use and needs of the entities. A lot of people say that HC&S and what they might do with the land afterwards is a big consideration and yes it is, but let's not look at restricting where the water goes and how it flows based on a supposition of what they might do and what might happen with those lands. Let's see a concrete plan before we start making concrete plans with the water for the rest of us. And I'd also like to mention that CWRM's attempt at finding the Duey ohana based on certain criteria, I think if criteria going to be applied to one ohana it should be applied across the board even to those bigger entities that perhaps have skirted regulations or requirements or keeping up to date with the data that we need to make sure that the water is used efficiently. We do have enough water on the island but we do need to make sure that not one or two or several entities are in control of it and thank you for your time. Mahalo.

CHAIR BAISA: Thank you. Members, any need to clarify the testimony? Seeing none, thank you.

MS. FURTADO: Thank you.

CHAIR BAISA: Ms. Willenbrink?

MS. WILLENBRINK: The next person signed up to testify is Lucienne de Naie.

CHAIR BAISA: Kim, you want to announce who follows so that they can be ready.

MS. WILLENBRINK: Yes she will be followed by Summer Starr.

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CHAIR BAISA: Good morning.

MS. de NAIE: Good morning, Water Resources Committee. My name is Lucienne de Naie. I'm testifying as a citizen of the Huelo area, the watershed and here today, you know, to speak for the situation in our community which on your agenda is a discussion of the contested cases. Our community is part of the contested case for the simple reason that we have no public water supply and so if we don't have something flowing in the streams or something coming out of the sky then we don't have too many choices. There's no County pipes and of course we understand why the County is concerned that it has adequate access to water resources to serve its citizen because we have exactly the same concerns in our community. Our community has 8 traditional ahupuaa, lots of archeological sites date back to the 1400s or before. We know that kalo cultivation was very extensive from all the descriptions in the Mahele land claims and we know that's the case because water was once plentiful there. So we know these streams did flow at one time and that they were really designed, you know, to carry water. As I said because we have no public water supply we been very concerned about water for many years and in 2001 our community was part of a contested case that continues to this day. Now a little bit about our area, the State has a license that permits an unlimited amount of water to be taken from the eight streams that serve our community. This is just our Huelo community, this is not Honopou, this not Hoolawa, the next one is not Hanawana, the next community surrounding us, this is just our community. We have eight streams there. We politely ask that two might have some restoration and so that's what the contested case is about. So I think a lot of times folks don't realize no one in these communities is saying like every single stream is going to be restored. There is a lot of water being left for the County, for A&B to be shared. The three streams that are subject to restoration, it was decided that there was going to be complete restoration in two of those streams in April of this year. Now no studies have ever been done of exactly how much water in our streams. So we're kind of like shooting in the dark to see, you know, what would or could be there and all of them are diverted multiple times, four different elevations have diversions. Our stream is a mile and a half long and it is diverted nine times in its tributaries and its main branches in that one and a half miles. So our streams were the first to be diverted from back in the 1870s, that's when the first ditch that A&B did, ran to Huelo. It ran a little bit past Hanawana area. So we've been kind of diverted for a long time. There are no watershed management plans that cover our area. No access is provided to community residents through locked gates to go up and maintain the stream channels or the watersheds ourselves. For, you know, about 30 or 40 years A&B's contracts up to the 1980s allowed them to take about the entire pretty much, the majority of the stream flow for \$3.95 for each million gallons. Now it's the price has gone up, it's now about \$15 a day for each million gallons that's taken from our stream. So this 2 streams that will be restored that's great. The other streams are still going to your system. So what we're asking is, you know, there was this recommendation that the flows will be restored permanently to our stream Hanehoi.

CHAIR BAISA: Ms. de Naie, you can wrap up please.

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MS. de NAIE: May I have a minute to conclude?

CHAIR BAISA: Yes.

MS. de NAIE: Thank you. But that was in April, it is October, so far what has happened is one gate on one diversion, Hanehoi Stream and one gate on Puolua Stream have been opened and all the other diversions are left intact and are kept diverting. Now we believe that, that water that is diverted is not needed by A&B and we believe it's kind of been dumped in Honopou which doesn't really serve any purpose but we believe that's kind of what's happening. So we would like to see the County sort of step up and be part of the management of this system. We would like to see the County advocate for the communities to have a key to have access to the gates so that they could care for the watershed because the County is benefitting from the whole system, it needs to step up and have the whole system be its kuleana. Thank you.

CHAIR BAISA: Thank you. Members, any need to clarify the testimony? Seeing none, thank you so much. Ms. Willenbrink?

MS. WILLENBRINK: Yes the final person signed up to testify in the Chamber is Summer Starr.

CHAIR BAISA: Good morning.

MS. STARR: Good morning. Good morning, Chair, Council. My name is Summer Starr and I'm coming from Upcountry, Maui with ohana in Iao as well. So I'm actually testifying on the second item if that's okay?

CHAIR BAISA: Yes. Go right ahead.

MS. STARR: Okay. And particularly because there's a note that says that there are executive meetings anticipated to discuss issues pertaining to the powers, duties, and privileges of the County with regards to this item. And e kala mai for not being totally organized, I heard about this last minute, but I'm wondering if the County has jurisdiction and this might be a question that you could just ask Corp. Counsel that I may not get answered at this moment but does the County have jurisdiction to suspend or revoke permits from Army Corps? I'm not sure if this layout is applicable for me to get an answer right now but it might be worth asking Corp. Counsel because it seems as though the permit for Wailuku Water that was granted by Army Corps actually runs contrary to the findings by CWRM and that seems very problematic. And I understand that's it's an emergency situation and that Mr. Chumbley actually went through the permitting process whereas a lot of the other residents weren't able to do that. So there may be differences there as well. But under the emergency proclamation realignment is not permitted and realignment is taking place at the site of the diversion. Though excavation is permitted, like I said realignment is not. And additionally what is the role of the County, of CWRM and of Army Corps to recognize that this is taking place with parties that are still in an open lawsuit and an open legal

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case? All of these kind of open-ended questions seem to have been irresponsibly ignored by the Army Corps and because this is in our backyard I'm wondering what the County Council is able to do to either inform the Army Corps so that they can change their opinion and revoke their permit or circumvent the Army Corps and suspend and revoke the permit themselves. Mahalo.

CHAIR BAISA: Thank you. Thank you very much. Members, any need to clarify the testimony? Seeing none, thank you very much. Ms. Willenbrink?

MS. WILLENBRINK: There is no one further signed up to testify in the Chamber.

CHAIR BAISA: Okay well let me make one round of the neighbor, neighboring offices. Dawn, has anybody shown up in Hana wanting to testify?

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

CHAIR BAISA: Thank you. Denise on Lanai, is anyone there to testify?

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

CHAIR BAISA: Thank you. And, Ella, anybody in Molokai wanting to testify?

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

CHAIR BAISA: Thank you so much.

MS. WILLENBRINK: Chair?

CHAIR BAISA: Is there anyone in the gallery? Yes would you please come forward.

MS. WILLENBRINK: This is Mr. Albert Perez.

MR. PEREZ: Good morning, Chair.

CHAIR BAISA: Good morning.

MR. PEREZ: Good morning, Councilmembers. Albert Perez, Maui Tomorrow Foundation. I think there's been some excellent testimony this morning. I thought that Summer Starr had some really good points. I would just like to encourage you folks as you deliberate today to consider what is going on in the Iao Stream right now, in my opinion is uncoordinated. Everybody's looking out for their property which is understandable and they need to do that, but the thing about streams is that they move on their own and it takes a stream expert. I've been trying to find someone who has experience in what is called fluvial geomorphology because if people are doing work upstream it can affect things down stream and streams don't want to be straight. From the pictures I've seen they're being straightened right now and they will start to meander again with unpredictable consequences. So there are people who have

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expertise in this area and just I think it would just be wise for the County to at least reach out to like the Corps of Engineers or the USGS and see if they have someone who can be an expert and prescribe solutions for this kind of work that's going on in the stream. My fear is that a lot of the work that's being done is going to be undone with the next big storm and we'll have continued sedimentation going offshore. We had a lot of sedimentation during the big storm but there are things we can do to minimize further damage so I would recommend that someone who's involved consult with a fluvial geomorphologist. Thank you.

CHAIR BAISA: Thank you very much. Members, any need to clarify the testimony? Seeing none, thank you. Is there anyone else that wants to testify? Would you please come down. The Chair would appreciate it if you'd like to testify if you please turn in your paperwork so that we know what we're dealing with here. Good morning.

MS. SCOTT: Oh he's tall. Good morning, Chairman Baisa.

CHAIR BAISA: Good morning.

MS. SCOTT: Sorry about that I just walked in last minute and didn't, wasn't sure that if you had this. My name is Lyn Scott I come from Honopou, I'm a kalo farmer there. I'm also a plaintiff in the East Maui water case. It says on your paperwork that you're receiving an update and I just wasn't sure if you had received the co-worm's [sic] plan on what they're planning to do. I was given this in June and we took a tour up into the mountains to see their steps of what they're doing and when they're going to do it and going about doing it and I was just wondering if you had a copy?

VICE-CHAIR VICTORINO: Can we get a copy?

CHAIR BAISA: I'm sure that we could receive a copy and somebody may have a copy but I do not have one and you're welcome to leave that with Staff and we'll make copies for the Members.

MS. SCOTT: Sure.

CHAIR BAISA: Thank you, Lyn. Thank you for being here. Proceed please.

MS. SCOTT: Thank you, that's all.

CHAIR BAISA: Oh thank you very, very much.

MS. SCOTT: Very short.

CHAIR BAISA: And again thank you for making the trip, I know how it is.

MS. SCOTT: Thank you.

CHAIR BAISA: Is there...

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VICE-CHAIR VICTORINO: Chair?

CHAIR BAISA: Yes.

VICE-CHAIR VICTORINO: I wanted to clarify, she said co-worm? What is co-worm?

MS. SCOTT: Oh I'm sorry Commission of Water Resource Management.

CHAIR BAISA: I think she means CWRM.

VICE-CHAIR VICTORINO: CWRM right?

MS. SCOTT: CWRM yeah, sorry.

VICE-CHAIR VICTORINO: Okay so just so that...

MS. SCOTT: Okay.

VICE-CHAIR VICTORINO: That was a term and I went like okay something went over my head again. Okay, CWRM. Okay --

MS. SCOTT: Sorry.

VICE-CHAIR VICTORINO: --thank you. No, no, that's okay, Lyn.

CHAIR BAISA: No thank you Mr. Victorino. I heard it to but I figured it was CWRM. Who knows maybe there's another worm that we don't know about.

VICE-CHAIR VICTORINO: Definitely.

CHAIR BAISA: Okay thank you.

MS. SCOTT: Thank you.

CHAIR BAISA: Ms. Willenbrink, is there anyone else in the gallery who would like to testify? Please turn in your paperwork.

MS. WILLENBRINK: It appears to be so.

CHAIR BAISA: Come on down, Mr. Starr.

MR. STARR: Good morning, Chair Baisa. Good morning, Commissioners. Good morning, Council Chair White and other good folks. I'm Jonathan Starr. Just for clarity, I recently served on the Commission on Water Resource Management for a four-year term. But I've not, my term ended about four months ago. And I just have something briefly to say about the second item on your agenda today which is that one of the

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things that we were doing on the Water Commission that I really thought was important and necessary Statewide. Was we had become, begun on a process of creating a non-potable water plan which was for Central Oahu, the original pilot and worked with consultant who had, did a lot of community outreach and a lot scientific work in Central Oahu area. And the idea was to take a clean sheet of paper and draw non-potable water systems which make up on Maui say somewhere between 80-85 percent of the water that's been developed and to find the highest, most reasonable and beneficial use for the different sources, types, and transmission systems for water and storage. And to try to create plan looking down the road toward the future on how the surface water and also some groundwater could best be utilized if it wasn't separated up into different pots of water that were controlled by different entities. And the results that were starting to come back were really informative. It turned out that there were in many ways much more efficient ways of using the water so that the needs of nature, the needs of traditional and customary users, riparian users as well as the domestic system which is a priority and protected use as well can best be taken care of. And I was hoping that that process would extend to Maui and Kauai and the Big island and it never kind of moved in that direction but if the Maui County, the Council and our Water Department were to want to help look down the road, it might to help create a frame work of working with the Water Commission and working with other entities to move forward with this type of non-potable water planning since we do seem to be at a turning point as far as the use of water on Maui. I think this would be a very good time to at least start discussing and possibly moving forward 'cause things are going to change over the next decades and if we are able to have that be a beneficial change to the greatest possible extent, we'll do the best we can. Thank you.

CHAIR BAISA: Thank you. Members, any need to clarify the testimony? Seeing none, Ms. Willenbrink?

MS. WILLENBRINK: The next person signed up to testify is Kainoa Horcajo.

CHAIR BAISA: Good morning.

MR. HORCAJO: Good morning. Aloha kakahiaka. Good morning Chair, Council. I didn't want to, I apologize, I didn't want to sign up if I didn't have anything of value to say and we've had some great testifiers who've spoken on many of the points that I would bring up but I did want to do a couple things. And one was just speak from the perspective of a resident of Iao Valley, our family aina being on both sides of the Wailuku River and also being, you know, somewhat in, at least a part of everything that's gone on since the September 13th floods there. And we've had great help by the Council and by the County so thank you for that. From Water Supply to Public Works and the Council and the Mayor's Office. And what I hear and I think I do share a lot of the concerns of the previous testifiers and one thing that we know we are running on is concurrent tracks of emergency work and then also thinking about what must be done in the future. And that Army Corps has allowed, you know, certain exempt activities to go on, removal of debris and shoring up of properties to save significant property loss is I believe their terminology and we've had help with that from the County so thank you for that. One thing we've not yet begun discussing which is

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revealing itself in this meeting and through the testimony is what we really do moving forward and Iao Valley is a community like any other, it's kind of like a family, we don't all agree, we don't all get along necessarily but we all are neighbors. And I think that there is an opportunity for the Council or for the County to spearhead the efforts to create and we can give it a really long confusing government acronym, some kind of integrated watershed management program that involves the geo-hydromorphologist that Alfred [sic] referred to that brings in our community, that discusses traditional and customary uses and has its active parties in it, all of the neighbors. Starting with Wailuku Water Co. at the top of the watershed. The State Park Kepaniwai, the County parks, all of the landowners along the stream and then the County itself, Public Works, Water Department as that's all affected by the County flood control debris basin and all of that as Iao is, you know, the puuwai, Wailuku is the heart of so much of Maui. The water from there, you know, feeds not just our little valley but it really feeds a lot of the island, and so it would be nice to figure out a way to have a greater discussion also about what we do moving forward, involving the brightest minds in the business of permaculture, of hydrogeomorphology, or whatever the thing is. Those smart people that can really help us design the way to, not only design what should be done, but really prevent any future damage. As much as possible, mitigate damage from occurring with the correct information and that can only be done sort of on a large scale in my opinion and involving, bringing all parties to the table in a cooperative manner. So that's just something I haven't heard has been discussed yet that I think could add great value to how Iao as a community deals with what is going on now and also moving into the future. Thank you, Chair. Thank you, Council.

CHAIR BAISA: Thank you very much. Members, any need to clarify the testimony? Thank you very much for being here.

VICE-CHAIR VICTORINO: Madam Chair?

CHAIR BAISA: And please know we are very all committed to making things work. Mr. Couch, did you want to say something? No.

VICE-CHAIR VICTORINO: No, Madam Chair?

CHAIR BAISA: Yes?

VICE-CHAIR VICTORINO: Madam Chair?

CHAIR BAISA: Mr. Victorino?

VICE-CHAIR VICTORINO: A brief recess.

CHAIR BAISA: A quick recess? Sure, no problem. How...what? How quick? Just quick? Okay, subject to call of the Chair we'll be in recess. Please do not go very far. . . .(gavel). . .

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RECESS: 9:41 a.m.

RECONVENE: 9:42 a.m.

CHAIR BAISA: . . .*(gavel)*. . . Will the meeting please come back to order. Ms. Willenbrink, do we have any other testifiers?

MS. WILLENBRINK: Yes, ma'am. The next person signed up to testify is Tiare Lawrence.

CHAIR BAISA: Good morning.

MS. LAWRENCE: Aloha, Councilmembers. Want to thank you for putting this on the agenda and, Ms. Baisa, thank you for all of the, you know, bringing up the water issue. I think it's really important. In reference to WR-6(6) and everything that's happening with Na Wai Eha and East Maui water I think we can agree that these cases are going to set precedence for other issues that may come up, you know, throughout our County and perhaps throughout the State. So I just kind of wanted to take this time to tell the County Council I think now more than ever it's really critical that the County perhaps pressure the State to once and for all put the public trust in the hands of the public and that that could mediate a lot of the issues going on with this. I can say that in Lahaina we, we're dealing with some water issues now and this practice of allowing private water companies to kind of control this resource. So in pursuant to what's happening on Maui and what's been going on this past ten years with water I just kind of wanted to take this opportunity to perhaps encourage the County to pressure the State and, you know, put our foot down once and for all and let's put the, put water back into the hands of the public. Thank you.

CHAIR BAISA: Thank you. Members, any need to clarify the testimony? Seeing none, thank you. Ms. Willenbrink, anymore?

MS. WILLENBRINK: I have none.

CHAIR BAISA: Okay Chair will make one last opportunity for anybody who's in the audience who hasn't testified that would like to.

MR. PELLEGRINO: Aloha mai kakou.

CHAIR BAISA: Good morning.

MR. PELLEGRINO: My name is Hokuao Pellegrino, resident of Waikapu, Vice President of Hui O Na Wai Eha. I apologize I just got here and just was made aware of this only recently and the time is clicking. So basically, you know, I wanted to talk a little bit about, you know, just the fact that what I'm seeing in the Valley of Iao and the work that's being done. First and foremost respect and ultimate, you know, sensitivity to the residents and what they're going through is of the utmost importance but the work that's being done by Wailuku Water Company on the stream, the realignment of the stream to bring water back into the diversion without the appropriate measures is a

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major issue that we have. I'm concerned about the native stream life and the habitat. I'm concerned about the fact that we've gone through 13 years of what I had hoped was a collaborative approach to addressing water issues here on Maui, specifically within Na Wai Eha and here we see practices by Wailuku Water Company that's really going back into, you know, without any type of regulatory oversight by either the County, the State, Army Corps of Engineers. Our hope is that we would work closely with all of these regulatory agencies including yourself as well as Wailuku Water Company to create a system that would benefit both the stream and off stream users. What is happening now and what we are seeing is that we're going back to pre September 13th which is capture all water and release 1,000 yards later or 1,000 feet later, excuse me, and I'm concerned that, you know, the hope was that there would be an approach and a collaborative approach by all parties whereby we could recreate a system again that would benefit all, including the stream, including off stream users as well as, you know, kuleana users, and aquatic habitat and mauka to makai connectivity. The work has already commenced on Monday. From what I've seen personally this work is almost near finished. Most of the diversion has already been cleared out and, you know, I'd like to see some support and some greater leadership and oversight by the County even though this is not necessarily their jurisdiction but what is going on up in the valley, it just, all I can say is it just breaks my heart. I understand that the stream is never going to be the same and I think the natural state and what it's in, again this is just my personal manao is the natural state of the stream. And I feel for everybody that needs to take care of and protect their aina and that's one thing but in terms of a private corporation and entity to just have a rubber stamp and just go up into the valley and do as they please, it just baffles me in 2016. I don't know if you folks have had the opportunity to go up there and see what's going on. I would encourage you to reach out into the community, reach out to community members, reach out to Wailuku Water Company to ask some hard questions about what's going on because I understand that the County needs the water and I don't think anybody has an issue with that but the way in which this is going on it's just, it's unacceptable, it's unacceptable and I would expect more from all regulatory agencies to have greater oversight over the work that's ongoing right. Mahalo.

CHAIR BAISA: Thank you very much. Members, any need to clarify the testimony?

VICE-CHAIR VICTORINO: Chair?

CHAIR BAISA: Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. And, Hoku, thank you for being here. I just want to make sure I'm clear. Stream you mean Wailuku Rive right?

MR. PELLEGRINO: Wailuku River, I apologize if I didn't --

VICE-CHAIR VICTORINO: Okay and no...

MR. PELLEGRINO: --clarify that in the beginning.

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VICE-CHAIR VICTORINO: Yeah, you know, I don't want to get nit-picky but, you know, this is important because we need to talk about the river.

MR. PELLEGRINO: Sure.

VICE-CHAIR VICTORINO: That's what it's called and that's what we need to address.

MR. PELLEGRINO: Wailuku River yes.

VICE-CHAIR VICTORINO: Okay thank you and I agree with you and we'll look into what we can do. Thank you.

MR. PELLEGRINO: Mahalo.

CHAIR BAISA: Thank you. Any further questions? Seeing none, thank you very much. Ms. Willenbrink, anyone else?

MS. WILLENBRINK: There doesn't appear to be anyone else.

CHAIR BAISA: Anyone else? Members, seeing no one coming forward and nobody in the District Offices, without objection, the Chair would like to close public testimony for today.

COUNCILMEMBERS: No objections.

CHAIR BAISA: So ordered.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR BAISA: Members, unless you ask, I'm going to keep going, okay.

**ITEM-6(5): CONDITION OF GROUNDWATER SOURCE AT IAO TUNNEL,
IAO SURFACE WATER TREATMENT PLANT, AND OTHER
FACILITIES**

MS. BAISA: Today our first item is, and this apparently has been brought in considerably from what the Chair had intended when I put this on the agenda today, is a condition of groundwater source at the Iao Tunnel, Iao Surface Water Treatment Plant and Other Facilities, WR-6(5). As you are aware, the recent storm activity caused damaged Countywide, I have asked Mr. Taylor to provide us with an update on repair work as it relates to his Department, his Department. Before you is a copy of a recent press release relating to water conservation in certain areas as a result of the recent storm. With that I'd like to turn over the floor to him to provide us with an update but I do want to assure those that have come to today that, you know, this was serendipitous. We had planned to get an update on the court cases today and as most of you know

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our last meeting was right after the event that occurred and Mr. Taylor was gracious enough to give us a quick report on the floor of what he had seen and what we were kind of dealing with. Well, it's been a while now and we have a better assessment. You know, at that point I couldn't even get there to look because the water was too high and there was debris everywhere and whatever. So I had asked him if he would please do this for us today, to reassure the public that we are doing everything we can to make sure that everything is okay with the water that we need so that we can continue to use water for the things that we need and that's what he's here to discuss with us today. Go ahead, Mr. Taylor.

MR. TAYLOR: Thank you, Madam Chair. I'll start with my sort of conclusion and summary and then I'll walk back and fill in the details. I'm going to use rough numbers in my discussion today so just to be in the ballpark. So the Department of Water Supply supplies about 35 million gallons a day to Maui County residents, about 25 million of that is to Central and South Maui. Our budget this year is just under a \$100 million, CIP and operations. When we look back at the impacts of this storm we're going to see that probably for a couple of months we were impacted by about 3 million gallons a day. So 3 million gallons a day short and we're going to look back at it and say it costs us probably just under a million dollars to fix it. So, you know, put kind of book ends on this, this event is going to cause a, call it a 10 percent water shortage for a couple of months and costs about a million dollars. I think you all know in our budget even our electricity budget fluctuates a few million dollars just based on demand. So this is a manageable event for us, it's not a, we don't anticipate any long-term problems, it's a short-duration event within our ability to manage from both staff and financing. I say that just to put in perspective. I know on Friday you're going to hear a Budget amendment for the rest of the County. Iao Valley State Park, millions of dollars of damage. Kepaniwai Park, millions of dollars of damage. Public Works and Environmental Management, millions of dollars of debris cleanup. Again ours is relatively small compared to theirs. I'm sure you've heard a lot of the residents have had major damage. The Department of Water Supply again relatively minor, manageable, we expect to be fully back in operation hopefully by the end of this month, possibly a little bit longer. Say to go back and then fill in some of the details that leads to that. There are three water sources we use from Iao Valley, a well in Kepaniwai, a tunnel in Kepaniwai that goes through our ultraviolet disinfection system, both of those systems, the well and the tunnel feed the residents in Iao Valley and the excess water comes to the tank that's right at the fork in the road, Old Wailuku Heights to Iao Valley, you've all seen that tank where the new treatment plant is being built. In addition, Wailuku Water Company has a diversion in Wailuku River that through their distribution system we end up taking a million-and-a-half gallons of that for the Iao Treatment Plant. So let me talk first about the tunnel and the well. So what happened that night, I think it was the night of the 12th or morning of the 13th, I think that's, was a Tuesday night/Wednesday morning I believe, there were these incredibly high flows. The normal flow in the Wailuku River is somewhere 100 to 150 million gallons a day something like that I think and when the USGS monitoring system went dark when it got washed away the last reading was about 3 billion gallons a day so it was roughly 30 times its normal flow and that was the event that happened. The river bed itself is about three times, two to three times as wide as it

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was, it's washed out land, embankments, trees, et cetera. So the tunnel, let me first talk about the tunnel, tunnel's owned by Wailuku Water Company but we own the pipe that comes from the tunnel in, that was in the embankment, into Kepaniwai Park into our ultraviolet disinfection system, that's all owned by us. So that was buried in an embankment. That embankment washed away, washed away our pipe, about 250 feet of our pipe washed away. When that washed away, river water flowed into that system damaged our ultraviolet disinfection system and entered into the rest of our water system. So this caused us to immediately shut that off to keep dirty water from getting into our system. Because we knew that water got into that system we issued...and because the whole water system is interconnected and pressurized we didn't know the extents of it. So we immediately ordered a boil water notice for everyone all the way down to Makena, Paia, everyone who's on that system. In hindsight turns out that based on our testing that dirty water didn't go very far, most of our testing came out negative and within a couple of days we had lifted that boil water notice. The line down Iao Valley Road did get a lot of dirt and muck in it. That remained completely shut down for another couple of days. Once we got...so the well was never damaged. So the well, we got working the next day and started flushing that Iao Valley line and...or maybe two days later we started flushing that out. So while the rest of Central Maui and South Maui was allowed to use water, Iao Valley residents didn't have any water service for about two days, then their water service got turned on, think that was probably Thursday and then their boil water notice lasted till the following Monday until we finally got that system cleaned out. So the current status is everyone on Iao Valley Road is being served only by this well, there's no secondary source. I think that well has tripped out twice and is, because there's no tank every time that well trips out everybody on that system immediately loses pressures. There's only the pressure in the pipeline. So there is only one water source. Everyone on Iao Valley Road has been told to just be prepared that water service can go out any time until we get that tunnel back online. Okay, so the tunnel generates about a million-and-a-half gallons of water a day, 250 or so feet of pipe got washed out. We have crews in right now replacing that piece of pipe. So they are literally there as we speak. We hope to have that system back online by the end of this month. We need to replace 250 feet of pipe, encase it in concrete, and the ultraviolet disinfection system was damaged. So between these two this is going to be probably 500,000-\$600,000 by the time we're finished with that replacement. So we hope to have that back online I said by the end of the month. The other system, the Wailuku Water Company diversion that you heard some of the testifiers talked about, that is the diversion in the river that through distribution system ends up, the water ends up on really this side of the mountain just below old Wailuku Heights. That's where we take some of the water there about another million-and-a-half gallons a day. So a million and a half from the tunnel, million and a half to the plant. We take a million half from this diversion and from this distribution system it goes to our Iao Surface Water Treatment, Iao Surface Water Treatment Plant. That system is also down right now because we don't have enough water to operate it. So Wailuku Water Company at the same time that we went in from a Army Corps of Engineers' permit to replace our pipe in the stream bed, in the river bed, Wailuku Water Company also applied for a permit with the Army Corps of Engineers to do their remediation work to get the diversion functional. Both those, their permit was granted, we were told our

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work was exempt and Wailuku Water Company's work is proceeding as is ours as of this week. We're kind of right on top of each other so we're coordinating that work to not be in each other's way. Once the diversion is functional we will then have water back to our Iao Treatment Plant, we'll turn that back on, it's ready to run and we will then be back to our full production mode where that 3 million gallons we're short will be restored. We have no costs relative to the Wailuku Water Company work, that's something they're doing. So that's what's going on in Iao. On the other side 'cause this is about storm damage we also had some issues on the West Side. So there was...we own a diversion just below Lahainaluna High School in the valley that provides water for our Lahaina Treatment Plant, that also was filled with rubble. We had heavy equipment in for a little over a week and that is now fully functional. So these are the reasons why residents in those two areas were asked to conserve water because our production ability was short because of these events. The cost on the West Side is probably going to be between 50,000 and \$100,000 due to the heavy equipment cost removing all of that. So we also had some over time with flushing and our lab techs and all those kind of stuff to get the boil water notice thing taken care of. So all of that together I am hoping to be back to full production by the end of October, could take a little longer based on weather and logistics. If these things were off to the side of the road this would have been about a week's worth of work. But all of the work is happening in a river bed that is very inaccessible, we have helicopters flying in and out, et cetera. So it's not very difficult work, it's just difficult to access. So we anticipate being out of this hopefully the end of the month, maybe a little longer for a little less than a million dollars. Some lessons learned, one of the things is messaging. In my 25 or so years here we've really struggled lately with messaging because if you just go back 20 years, everyone listened to the radio and there was *The Maui News* and that's, and if you could hit those two things 90 percent of the people were informed. So now we're putting out press releases, we're trying to get on the radio, with *The Maui News*, we're on social media, and still a lot of people say oh I never knew and so we're sort of in this place in history where everyone's getting their news from different sources and we're really struggling to reach people. So, you know, we're on the, we have our website, we're answering phones, we're trying to tell all our people, you know, no matter what number they ring people know how to answer it, still our phone lines are jammed. We are really struggling with messaging because it's very hard to find any one place to contact everyone and we're doing messaging in a dozen different places and still a lot of people saying, hey no one told me. So that is one lesson learned. We have some ideas to try to make that a little better that we'll keep working towards working with Civil Defense. The other big takeaway that I just want bring up and I really appreciate Chair Baisa's scheduling this so I can share this message, we are in the middle of hurricane season and you've all heard the messaging a 100 times have 5 days of food, 5 days of water, be prepared for 5 days without electricity. So we had a couple of days where water was on, you just had to boil it. Power was on, the stores were open, the number of people who called my office and called me personally about this crisis that they couldn't handle and some of these were some pretty large entities, the, it seems that our messaging of being ready for an instantaneous outage of electricity. Water food is not being heard by the public. Because a two-day boil water notice should really have not have been a crisis in the middle of hurricane season. I live on Iao Valley Road, I didn't have any water for two

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days and it wasn't really a problem and then I, you know, had five more days of boil water and it wasn't a problem. The fact that so many people are so unprepared shows me that the public needs to take a little more action to be ready during hurricane season. This can happen anytime. So again back to my overall conclusion, a relatively manageable financial hit, a relatively manageable operational hit, we expect no long-term damage. We expect to be back online fully within the next month or so. There are some things, some projects we were working on that got bumped. Because we're in the beginning of the fiscal year we'll hopefully catch up, same time we're at the end of the FY '16 CIP 18-month period which means there's a couple of projects that we had to pull engineers off work to do this and we'll probably lapsed some CIP money and either ask for an FY '17 Budget amendment or back in FY '18 'cause we just couldn't get to it in time. So again no global problems but we have these local issues that took all of our attention and there are some carryover impacts to other work that had to get bumped. So, Madam Chair, that's my status report, I'll be more than happy to answer any questions.

CHAIR BAISA: Thank you very much, Mr. Taylor. Members, any questions for Mr. Taylor?

VICE-CHAIR VICTORINO: Chair?

CHAIR BAISA: Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. And first of all I'd like to compliment the Department. I was up there the first couple of days of the disaster and the Water Department and personnel were up there working very diligently trying to curb and correct the problems and some of it was unmanageable at that point but they really worked hard. So let's give our Department and our personnel a lot of kudos for their hard work. Okay, you know, the public doesn't understand that some of them are putting their lives on the line trying to get some of the stuff completed, you know, it's not just, like he said it's not right off the side of the road. It's, I mean some very dangerous areas that they have to access and this makes it very difficult for them and puts themselves in harm's way and I've seen specifically some of these areas and so I want to thank them. Secondly I think, Ms. Madam Chair, the people that have spoken today, I think they all agree that we need to continue to work together and try to find good solutions for the future so that this doesn't happen. But let me remind everybody that in 1916 *Maui News* has an article of a major storm that occurred which with 13 people were killed and a lot of damage was done on the lower part of Iao, Pihihana and all those areas. So that's not something, it's a 1 in a 100-year storm, you know, it was a perfect storm, everything went wrong that could have gone wrong, and I could see where the debris by sliding down the mountain and having land slide diverted the water into torrents that we had never seen in our lifetime. And people like Mr. Duarte and others who lived up there for 70-80 years they had never seen such a disastrous water flow. So I think we're at a point right now we can as a group understand and thank Mr. Taylor and his Department for what they've done. We need to continue to work together, we need to continue to cooperate, you need to continue to hear the public as they speak, Mr. Taylor, and CWRM and the rest but I think right now I'll leave it in their hands because they're the experts. All I can say is we can monitor and I have

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been, Mr. Taylor doesn't like to see my phone number on his phone, but I have tried to keep in touch and even with many of the residents, trying my best to make sure everybody's working together to find good solutions that we all can live with and none of this diversion and making changes in the river itself. Although the river itself has been changed, there is no question about that and like one testifier said maybe that's the natural flow from in the past, I don't know, I wasn't, I haven't been around that long to know that. So the other, there's one question I have for you, Mr. Taylor. You were mentioning about the intakes and especially the Wailuku Water Company's intake and I'm very curious, have you and the Wailuku Water Company been working together and monitoring what, you monitoring what their progression and what they been able to accomplish? And is it any many major change like some testifier had mentioned that there's been major changes in how they're doing their diversion? That was three questions by the way, I want you to know that.

CHAIR BAISA: Mr. Taylor, go ahead.

MR. TAYLOR: Mr. Victorino, let me say in the week that that happened, the week after the original event, the rest of that week. I was up there a number of times with Mr. Chumbley from Wailuku Water Company, with the Deputy Director of DLNR for State Water Commission, our staff went up there with Army Corps of Engineers but there were other trips with the Governor. We have been working with Wailuku Water Company, with the Army Corps of Engineers, with the State Water Commission all from day one. So our crews are working right next to their crews because our pipeline is a stone's, I don't want to say a stone's throw but literally almost the same stone, right next to their work. So we are coordinating with them on a daily basis, we coordinated our Army Corps of Engineer permit applications to make sure that what we were saying we're going to do was coordinated with each other and I think our staff and their staff are coordinating on a daily basis 'cause we're right on top of each other.

VICE-CHAIR VICTORINO: And is the public being made aware of these, this work together as far as the end result is to get the intake repaired so that we get our 3 million or whatever amount, 1.5 million, whatever gallons of water but is the public being informed on what's going on up there?

CHAIR BAISA: Mr. Taylor?

MR. TAYLOR: I think this is one of the ways the public is being informed. I think there's been newspaper articles. Because as one of the testifiers said there's, any time there is a disaster there is immediate response and there is long-term improvement. We are in that immediate response mode and I think on Friday when you talk about the...when you see this Budget amendment for the rest of the work you're going to hear that again and again. We are still in just trying to get out of the emergency, the idea of what the long term looks like there have been discussions about that but we are still really focused on just trying to get through this. So our goal as Department of Water Supply is to get the tunnel pipe and UV system working. That is ours, we need to get that working. We...Wailuku Water Company needs to get their system working. We are probably one of their big customers and we are pushing them, hey, when are

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you going to get this working but that's their responsibility. As far as messaging this, again the messaging is we're still in that emergency response mode and we're not in long term, you know, improvement mode.

VICE-CHAIR VICTORINO: Okay thank you. Thank you, Madam Chair. I'll let others ask questions.

CHAIR BAISA: Are there any other questions? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Madam Chair, and thank you, Mr. Taylor, for that update. Just real quickly, there was a testimony about potentially getting somebody that is a geo...I forget what the term was but somebody...

CHAIR BAISA: Geo-hydromorphologist.

COUNCILMEMBER COUCH: Okay, geo-hydro...

CHAIR BAISA: Never heard it before.

COUNCILMEMBER COUCH: Never heard it, yeah, but or somebody to coordinate with all the different agencies. I'm assuming that if we do something like that it would be for all the long-term solutions.

MR. TAYLOR: Yeah.

COUNCILMEMBER COUCH: Is anybody coordinating for the emergency?

MR. TAYLOR: Right now that is definitely being discussed and just because, a lot of people are going to find this surprising, it's going to sound obvious once I say it, if you look on the tax map key you don't see a line where the river is, it's just private property and essentially this is just water running through private property, there is no delineation that your property ends here, this is the river and there's your property. So this river is running through many, many peoples' properties. So it's kind of like the coastline of the ocean right, it isn't, there isn't one entity that owns it. So Public Works is really taking the lead, they are most knowledgeable in working with the Army Corps of Engineers 'cause they do so all the time. We've got these different entities involved but as far as what was being discussed, this idea of having management of the whole stream, you know, from mauka to makai, that is something that we have been talking to the Army Corps of Engineers about. I am not the leader of that, I think, I not sure who's going to be here on Friday to talk about what's going on on the bigger picture but I can assure you that those discussions are happening and there is recognition that this needs to be coordinated. That you can't just have a 100 individuals taking care of their little piece of the stream and hope it works. So that is certainly recognized and exactly how that comes to fruition, I don't know that there's an answer to that yet but that issue is certainly recognized.

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COUNCILMEMBER COUCH: Thank you, Madam Chair. One really quick question that may open a can of worms, I'm not sure. You said that this water runs through private property, what's the responsibility of the people who own the private property and whomever has control of the water?

MR. TAYLOR: I am not qualified to answer that, I think that's something that is really beyond my knowledge.

CHAIR BAISA: Any other burning questions? Seeing none, Chair would like to thank Mr. Taylor for doing this today. You know, he was not all that anxious to do this today but I thought it was really important. You know, he says well everybody watches the news and everybody sees TV and Facebook and whatever but I am aware that a lot of people do not, are not plugged into the system and they don't know and so they stop me in the store and say what's going to happen, can I drink my water now? How much is it going to cost? Are we going to have to pay more money? And so I said we need to report, and for those that came to testify I want you to understand that what we were here to talk about today was the effect on our drinking water and the water that Mr. Taylor has to deal with. I understand we have much bigger problems and they're more intense and we're going to be talking about getting the debris out and where the river goes and who gets water eventually and all of these things but today I wanted people to understand what had happened to our water system, what is being done to fix it and how long it would take and just bare information. And I really want to thank Mr. Taylor for bringing us up to date. On Friday, Council will be considering legislation to help pay for all of the repairs and you going to hear a lot more there about exactly what is happening along with the other departments and I think he made it very clear that other departments are impacted financially much, much more than the Water Department. So you'll be hearing some more but I want to thank him very, very much for doing this for us today, and I want to thank all the testifiers. And because we are going to be talking about this some more, I have a feeling that it would be best to defer this item, with no objections.

COUNCILMEMBERS: No objections.

CHAIR BAISA: Okay, so deferred.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR BAISA: Members, we're gonna take a five-minute recess, nothing more. We have a lot to cover and I know that I'm gonna be losing a quorum early today. So let's take five minutes and please come right back. The meeting is now in recess. ...(gavel)...

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RECESS: 10:15 a.m.

RECONVENE: 10:21 a.m.

**ITEM-6(6): UPDATE ON CONTESTED CASE HEARINGS PENDING
BEFORE THE COMMISSION ON WATER RESOURCE
MANAGEMENT**

CHAIR BAISA: . . .*(gavel)*. . . Will the meeting please come back to order. Thank you very much for that recess. I think some of us needed a little bit of a break. Our second item today is an update on contested case hearings pending before the Commission on Water Resource Management, and again, I want to be very clear that we are here and what has been agendized today is just an update on the long-standing cases. We are not gonna get into discussions of the merit of the cases, but we are here to receive an update on the status. Mr. Rowe, if you would please go ahead.

MR. ROWE: Thank you, Chair.

CHAIR BAISA: We need...you need your mic.

MR. ROWE: Thank you, Chair. So yeah, we, the Department of Water Supply is currently involved in four separate contested case hearings before the Commission on Water Resources Management. At least four that have actually gotten to the level of being at a contested case hearing. Three of those involve the Na Wai Eha, what I'm referring is the Na Wai Eha cases. Those relate to Wailuku, Waikapu, Waiehu, and Waihee Rivers. The other one deals with streams in East Maui that are on State land that is leased by East Maui Irrigation Company and a portion of which is then delivered to the County of Maui Department of Water Supply. As far as the Na Wai Eha cases, in front of you I put together a little kind of summary for you guys just so you can follow along. In Na Wai Eha the Department of Water Supply takes water from the Wailuku River that's delivered to the Department by Wailuku Water Company. That serves not only Wailuku, Kahului, but also Puunene, Kuau, Kihei, Paia, Spreckelsville, all the way to Wailea and Makena as well as Waikapu, Wailuku, Waiehu, and Waihee and that system serves approximately 101,000 different people. And for the purposes of the 4 Na Wai Eha streams things are a little bit complicated, more complicated there than they are in East Maui because in 2008 CWRM designated those rivers to be a surface water management area. As a result of this designation it basically means that everybody who diverts water from those streams needs to actually go out and get a permit. The rules are a little bit different when it's not a special management area. So the amount of water that each person can take is strictly limited, is limited by the amount of water that they are granted in their permit and the total amount that can permitted out is subject to the determination of the interim instream flow standards, that's another component of what CWRM regulates. So I'm going to start with the Na Wai Eha streams. The first step that CWRM took in figuring out how to manage the system and there's, was quite a bit of discussion about whether the permitting should be first and then you know exactly how much the demand of water need is or if the

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IIFS should be done so you know how much you can get out, it became a little bit of a chicken and an egg thing. Ultimately the Commission decided that the right course of action was to look at the interim instream flow standards. I'm going to refer to that as IIFS in case I keep saying that and you guys don't know what I'm talking about.

CHAIR BAISA: Thank you.

MR. ROWE: So basically in IIFS, with the IIFS the State is required to manage surface waters in a way that preserves certain in-stream values. This includes preservation of fish and wild life habitats, maintenance of ecosystems, recreation and aesthetic values, preserving water quality, maintenance of downstream diversions and protection of traditional and customary Hawaiian rights. That includes fishing, gathering and kalo cultivation, amongst other things. So in determining the IIFS, the state determines how much water needs to be left in the stream in order to protect these instream values and how much water can be taken out without compromising those instream values. In the Na Wai Eha IIFS case there was a contested case hearing that finished in 2010 but then went up to the Hawaii Supreme Court and the Hawaii Supreme Court determined that CWRM had not adequately considered several of the instream values that I just mentioned. So it was remanded back to CWRM and a settlement was reached in 2014 between all the major parties, that includes us, that includes HC&S, Wailuku Water Company and several community groups including Hui O Na Wai Eha and Maui Tomorrow. As part of the settlement the parties agreed that the Department of Water Supply's use of up to 3.2 million gallons a day was reasonable. Since this 2014 settlement agreement, obviously HC&S has announced that they're going to be closing their sugar plantation and that's going to have a fairly significant change in the amount of water that's needed and thus the demands on those streams. So the Commission decided that they were going to reopen the contested case hearing to redetermine the IIFS to figure out if there's more water that can be kept in the streams and what the actual demand of taking water out of them is and that contested case hearing, that reconvening is set to begin at the towards the end of this year into the beginning of next year. So the first component was the IIFS, the instream inflow standards, interim instream flow standards. The second component were the surface water use permit applications and in 2015 the Commission began to take up consideration of those. When determining whether or not a permit should be granted CWRM places permits into three categories. One is permits based on appurtenant rights and an appurtenant right is a right that you can show that you, that your property had a right to water existing at the time of the Great Mahele. There's also existing use permits and that's for people who can show that they were using water at the time of the management area designation which as I said was back in 2008, and new use permits which are for uses of water after 2008 subsequent to the designation. Under the Code, appurtenant rights are afforded the highest priority followed by existing uses and then new uses. So currently the Department has two permits under consideration. One is for existing uses, requesting 1.784 million gallons a day and the other is for new uses and that one is requesting 1.416 million gallons a day. So in determining how they were going to figure out the surface water use permit applications, CWRM bifurcated the proceedings and first took up the issue of appurtenant rights. Initial hearings were set and at these

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hearings they basically asked applicants who were claiming that they had an appurtenant right to give documents that there was a right to water on their land at the time of the Great Mahele, these included Land Court documents and native and foreign testimonies. The Department itself was not claiming any appurtenant rights so our involvement in that first part of the proceeding was very limited. Once the provisional recognition of appurtenant rights took place the actual issuing of permitting came up and that's kind of what I've been doing all year. There were nearly 200 applicants that submitted surface water use permit applications and these kind of ran the gamut, this included the Maui Department of Water Supply, the municipal water provider, that includes large agriculture operations, including HC&S, Waikapu Properties, that sort of thing. Private water systems such as Wailuku water system and, or Wailuku Water Company as well as Wailuku Country Estates irrigation system and it even included, you know, small farms owned by families just on their own lands. The evidentiary portion of that concluded I think, I believe it was just last week and parties are going to be asked to submit proposed findings of fact and conclusions of law, the hearings officer then, will then take those under advisement and issue a proposed decision. That decision will then go to the Commission and the Commission will decide whether or not to accept the hearing officer's recommendation. As far as the timing of that, that's a bit of anybody's guess. East Maui IIFS which I'll get to in a little bit was a much less complicated procedure. We wrapped up in April of last year and we still haven't gone to that stage yet. So that should give you a bit of an idea. So next I'll talk a little bit about East Maui which is also I was asked to specifically talk about the Na Wai Eha cases and East Maui cases. In East Maui water is delivered from EMI and used for distribution of the Upcountry service area and it's also used for non-potable water delivery to the Kula Ag Park. Communities which receive water from this system include Kula, Haiku, Makawao, Pukalani, Haliimaile, Waiakoa, Keokea, Waiohuli, Ulupalakua, Kanaio, Olinda, Omaopio, Kula Kai and Pulehu. The population that's served by this service area is approximately 35,251 people. So as I mentioned earlier, Na Wai Eha was designated a special management area. The East Maui streams have not had that designation yet. So water permit, the whole issue of water permitting isn't necessary. Really the only limitation on the use of water from these streams is the IIFS that's set by the Commission. CWRM initially took up...basically for an IIFS to be considered there has to be a petition to determine the IIFS for that stream filed by someone. There were 27 streams that had petitions filed for them and at first CWRM kind of did it as a piecemeal basis; however, after multiple trips to the Supreme Court and the Intermediate Court of Appeals, CWRM decided to consolidate all 27 streams into a single contested case hearing. Hearings for the IIFS for the 27 concluded on, in April of 2015. April submitted or parties submitted proposed findings of fact and conclusions of law and the hearings office then issued a proposed decision. And after that proposed decision was given it's supposed to go to the full Commission and they make a consideration of it however the CWRM put out an interim order that basically mandated that 18, the 18 million gallons a day that was returned to stream under the hearings officer's proposed decision, that would take effect pretty much immediately and I believe that that's kind of detailed in this chart that you have here. There are steps that have been agreed between East Maui Irrigation Company and CWRM for how to go about returning the 18 million gallons a day as expeditiously as possible. While all this is going on again the Commission has

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yet to take up the full decision; however, I will say that as part as the hearing officer's proposed decision the Department's use of approximately 8.2 million gallons a day was deemed reasonable and was provided for in the determination of the IIFS. Like in Na Wai Eha, CWRM has decided that they're going to reopen these proceedings to consider the impacts of the closure of HC&S on the demands of water in the 27 streams that were the subject of the hearing. In those hearings, the County is going to be pursuing additional water above its 8.2 million gallons a day to try and accommodate not only for future growth but to see if we can kind of put a dent in the Upcountry water meter priority list. By our estimation and by documents that have been submitted not only in this proceeding but in other proceedings, the decrease and demand as a result of HC&S stopping sugar operations will easily accommodate those needs and will still allow for a considerable bump, a considerable amount of additional water over the 18.2 million gallons to be returned to the subject streams and this discussion is scheduled to resume on January 9th of 2017.

CHAIR BAISA: That's it, Mr. Rowe? Thank you very much. Members, Chair has one question for Mr. Rowe and then I'll open it to you folks. Mr. Rowe will the recent storms have any effect on the Na Wai Eha court cases?

MR. ROWE: They should not. The one that we're dealing with as far as water use permit applications, that just, that deals with an entitlement to water, that doesn't necessarily deal with, you know, whether or not your diversion is actually connected that you'd actually need to get a separate permit to either establish one or redevelop one or that sort of thing. It's really at this point just about how much water can be taken out of the stream, who's saying that they need it and who ultimately ends up getting that water. So it shouldn't have an impact on the amount of water that people are claiming that they need.

CHAIR BAISA: Okay thank you very much. Members, questions? Mr. Victorino, I'll let you go first.

VICE-CHAIR VICTORINO: It was on, I turned it off sorry. First of all, Madam Chair, I'd like to that Mr. Rowe for such a comprehensive overview. Thank you. And I think the public out there at least has a better understanding of how this has progressed through the years and where the County of Maui's involvement has been and also looking at this chart I think it also helps us understand better how East Maui and Na Wai Eha are really, really one when you think about it 'cause it's the same water source. We still for the Upcountry area, Madam Chair, you know, all the water you folks get is from East Maui and the rest of the island pretty much outside of West Maui is served by the Central system. So it's very important that we understand. My question to you with all of this, you know, back and forth, HC&S closes down and really from what the Deputy Director of the Commission on Water Resources has told me and told others we're almost going back to square one because that really develops that. So is that your understanding right now that with the closing of HC&S it really, don't care which side east or west really puts us back to square one because now even though they have determined, you know, what the usage was to that point it all changes because one of the, the biggest user is being taken out of the equation. And

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until they come up with a plan to give us a real firm idea of what they want to do in with this 36,000 acres of agriculture we really back to square one and is that evaluation or is that opinion pretty much what's occurring out there?

MR. ROWE: Yes, as far as in East Maui the instructions of the hearings officer was that really they're not going to open up any new evidence other than what HC&S' actual needs are going to be, so it shouldn't hopefully be for...example we've already submitted all of our information on how much water we use, how much water we expect to need in the future and what would be required to fulfill the Upcountry water meter list. So really when this reopens its only about what HC&S can show that they're going to need going forward and so I wouldn't necessarily say its starting from square one. We are going to have to do a lot of work again, it is going to add some time to it. But starting from square one I think is a, makes its sound a little worse than it is. There's been a lot work done that I think is still good and that also includes in the Na Wai Eha system really we're just at the point of getting permits and at the point of permits you have to be able to prove what your actual need is. So as far as us, we've proven our actual need, you know, we show how much water we give out every day, how much, how many customers we have. So it shouldn't have a big effect on that. It will have an effect on really how much water goes back into the stream and how much water is available for people to get. But that determination again there's already been a lot of work and I don't think it's completely undermined by the closer of HC&S. It does definitely complicate things but I also think that it's important to know that these are interim decisions so these, they're not permanent and my understanding is if information changes they can always be changed.

VICE-CHAIR VICTORINO: Okay thank you for that clarification. And finally I've noticed that there are many petitioners both in the Na Wai Eha case you said nearly 200 and then also in East Maui you say 27...oh you talking about just the streams itself but a number of petitioners, you said 27 petition, no that's the streams, petitioner, petition streams, you didn't say the number. What is the number for East Maui as far as petitioners 'cause I didn't see that here?

MR. ROWE: In East Maui because it's not a special management area they don't need to permit so there's, nobody's applied to get a permit.

VICE-CHAIR VICTORINO: Okay.

MR. ROWE: Really for the purposes of this streams the only player is East Maui Irrigation who has a lease for the land and we're a party because we buy water from them to distribute to the Upcountry service area and the Kula Ag Park. And really their limitation on how much water they can take out is what the IIFS is, so that's what it is. But as, that was much smaller proceeding, it really only had four parties, it had us, it had East Maui irrigation/HC&S and it had the community groups which included Native Hawaiian Legal Corporation and Maui Tomorrow.

VICE-CHAIR VICTORINO: Okay thank you. And again the final question I have for you is with the decisions that were made prior to the shutdown of HC&S, for example Na Wai

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Eha was X amount of gallons of water each day, millions of gallons of water each day was to be put back in the streams and I also understand that nine, if I'm correct nine streams from East Maui A&B has now diverted or will not divert from the streams at all. And I don't know all the particulars 'cause they kind of change from news story to news story or from report to report but anyhow, does those decisions still have precedent in the total picture of what we're trying to accomplish here?

MR. ROWE: The earlier court decisions you mean?

VICE-CHAIR VICTORINO: Yeah court decisions, yes.

MR. ROWE: They've, by and large the Supreme Court has basically just said that we need to go back and we have to relook at all of these things. When you mentioned HC&S and the complete return of certain streams, that was partially based on them agreeing to do so but it was also based on an order by the Commission which all parties agreed with, including HC&S to return 18 million gallons a day and I believe part of the reason they did that was because they knew that they were going to have decreased need. The IIFS that does return that is still, hasn't been adopted by the full Commission and it will probably change. Likely to increase water that stays in the streams there.

VICE-CHAIR VICTORINO: Okay, Mr. Rowe, thank you very much. I guess the best way I can sum it up is keep, stay tuned because change is a coming right?

MR. ROWE: Yup.

VICE-CHAIR VICTORINO: And I think the public has to understand that this is a very complex but yet a matter that we take very seriously, not only the Council and the County but all around because water is the breath of life. I mean it is what we live, with no water, you can live without electricity, you can almost live without food but without water you're not going to survive very long so. I want to thank Mr. Rowe for this and the Department for this comprehensive overview and I'll let others ask questions. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Mr. Victorino. Members, any further questions? Seeing none, Chair would like to thank Mr. Rowe for coming to give us an update today. I think it's very important 'cause this gets very confusing. As you know there's many cases, many numbers, many kinds of things thrown at us and every now and then it helps to have someone who's intimately involved with it to come and kind of keep us back as to what's happening where. And with the recent storm activity of course everyone wants to know well how does this affect the cases and so I want to thank him very, very much for presenting for us today. And I'd like to again thank the people who came to testify today, stay with us, as Mr. Victorino says stay tuned, things change very quickly, you know, few weeks ago we weren't worried about Iao and all of a sudden it's on the front of our desks and so we never know from day to day. Chair would like to thank my Members for coming today, it's a very busy day, there's a lot going on. I will have the opportunity finally to tour the damage myself this afternoon and I'm really

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looking forward to it 'cause I've been reading about it but I understand it's really different when you get to see it. I didn't want to run up there because I thought what they really didn't need at that point was people getting in the way of equipment and, you know, going where they didn't belong so I waited until it was a good time and that they said it would be okay to go. So I'll be looking at that this afternoon. So I'd like to thank Mr. Taylor, his Department, I thank Jen also for being with us all the time, thank my Staff. And, Members, with no further business before the Committee today the meeting is...oh I'd like to defer the matter first of all because we...

VICE-CHAIR VICTORINO: No objections, Madam Chair.

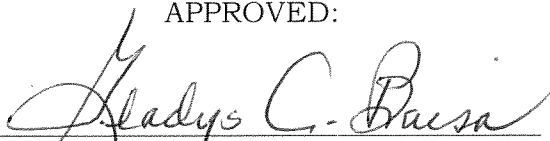
COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR BAISA: Because we're going to stay tuned believe me and then I will adjourn the meeting for today. Meeting is adjourned. ...(gavel)...

ADJOURN: 10:46 a.m.

APPROVED:



GLADYS C. BAISA, CHAIR
Water Resources Committee

wr:min:161005:jp

Transcribed by: Jean Pokipala

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CERTIFICATE

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

DATED the 25th day of October, 2016, in Kahului, Hawaii

A handwritten signature in cursive script, appearing to read "Jean Pokipala", is written over a horizontal line.

Jean Pokipala