

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

December 5, 2014

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Water Resources Committee, having met on March 13, 2013, March 25, 2013, July 3, 2013, September 18, 2013, November 13, 2013, October 29, 2014, and November 19, 2014, makes reference to Bill 13 (2013) entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.06, MAUI COUNTY CODE, RELATING TO DECLARATION OF WATER SHORTAGES".

The purposes of Bill 13 (2013) are to: (1) authorize the Director of Water Supply with the approval of the Mayor, to issue a declaration of water shortage when the potable water supply becomes inadequate in any area of the County; (2) establish stages of a water shortage based on the severity of the shortage; and (3) clarify the Director's authority to control water usage during a water shortage, including the application of water shortage rates as provided in the annual budget.

Your Committee notes at its meeting of February 15, 2013, the Council passed Bill 13 (2013) on first reading. At its meeting of March 1, 2013, the Council recommitted Bill 13 (2013) to your Committee for further consideration and clarification.

The Chair of your Committee transmitted a revised proposed bill, entitled "A BILL FOR AN ORDINANCE RELATING TO WATER CONSERVATION AND CONTROL OF WATER USAGE DURING WATER SHORTAGE", at your Committee's meeting of October 29, 2014.

The purpose of the revised proposed bill is to implement a water conservation and water shortage policy that supports the preservation of potable water and regulation of unrestricted water use for nonessential needs during times of water shortage.

Your Committee notes the proposed water conservation and water shortage policy (1) requires the Department to provide County water consumers with leak detection tablets, water-efficient faucet and shower fixtures, and outdoor hose nozzles when available and establish a water conservation education program; (2) requires the County to retrofit all County facilities with water-efficient toilet and plumbing fixtures, where

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

Page 2

**Committee
Report No.** _____

applicable, by January 1, 2018; (3) authorizes the Director, with the approval of the Mayor, to issue a declaration of water shortage when the water supply becomes inadequate in any area of the County; (4) clarifies the Director's authority to control water usage during a water shortage, including through the application of water shortage rates; and (5) provides a partial exemption for agricultural consumers.

The Director informed your Committee the application of water shortage rates would not be intended to generate revenue, but to encourage conservation by imposing higher rates for high consumption during a shortage.

Your Committee noted the revised proposed bill declares three stages of water shortage from least severe to most severe as: (1) Water Shortage Advisory; (2) Water Shortage Warning; (3) and Water Shortage Emergency. The revised proposed bill does not provide the methodology to determine when a water shortage begins or elevates to a higher stage. The Director suggested that basing the stages on a percentage of anticipated available water supply would be more advisable.

Your Committee revised the proposed bill to reflect the following: (1) a Stage 1 Water Shortage exists if water demand in an area is projected to exceed available water supply by 1 per cent to 15 per cent; (2) a Stage 2 Water Shortage exists if the excess demand projection is 16 per cent to 30 per cent; and (3) a Stage 3 Water Shortage exists if the projection is over 30 per cent.

Your Committee concluded the Director should have the authority to implement schedules, restrictions, or other measures, including instituting water shortage water rates, as soon as a Stage 1 Water Shortage has been declared. Progressively enhanced measures should be authorized for stages 2 and 3, respectively. Your Committee revised the proposed bill accordingly.

Your Committee deleted the proposed requirement that the County retrofit County facilities with water-efficient plumbing and irrigation fixtures. Your Committee agreed that it was more appropriate to address this matter during the annual budget process, as necessary.

Your Committee notes if the revised proposed bill is enacted, agricultural consumers will not be required to implement any restrictions or mandates imposed by the Director for the first 90 days after a water shortage has been declared.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

Page 3

**Committee
Report No.** _____

The Director stated agricultural water usage accounts for approximately 40 per cent of all water usage Upcountry. He said if a water shortage was severe enough, the 90-day exemption could be detrimental to other consumers.

Your Committee considered the Director's concerns. However, because a drought rarely lasts for 90 days, according to the Director, your Committee concluded that it was important to support agricultural consumers by allowing them time to employ measures to protect the viability of their agricultural operations. Therefore, your Committee retained the exemption.

Your Committee further revised the revised proposed bill to encourage the use of various forms of media to alert the public of a water shortage declaration (or a change or end to the declaration).

Your Committee noted the Director cautioned that violating imposed mandates and restrictions could place other consumers at risk of losing their water supply. Your Committee agreed that strong penalties should be assessed against a consumer who violates the provisions of the chapter.

Your Committee added a requirement that consumers who have had a water meter removed because of violations will have to pay a water system development fee as provided for in the annual budget in addition to a reinstallation fee of \$100.

Your Committee voted 6-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Victorino, and members Baisa, Carroll, Couch, Crivello, and Guzman voted "aye". Committee Vice-Chair White was excused.

Your Committee is in receipt of a further revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Water Resources Committee **RECOMMENDS** the following:

1. That Bill _____ (2014), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE RELATING TO WATER CONSERVATION AND CONTROL OF WATER USAGE DURING

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

Page 4

**Committee
Report No.** _____

WATER SHORTAGE”, be PASSED ON FIRST READING and be
ORDERED TO PRINT; and

2. That Bill 13 (2013) be FILED.

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

Page 5

Committee
Report No. _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



MICHAEL P. VICTORINO, Chair

wr:cr:14018aa:kcw

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY
CODE, RELATING TO WATER CONSERVATION AND CONTROL OF
WATER USAGE DURING WATER SHORTAGE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 14.01.050, Maui County Code, is amended to read as follows:

“14.01.050 Hamakuapoko Wells. A. Water from Hamakuapoko Wells 1 and 2 shall only be [provided for:] used for the following:

1. Agricultural purposes[;].
2. Consumers of the department’s upcountry water system as defined in section 14.13.030 of this [code] title when a [drought] water shortage is declared pursuant to [section 14.06.010] chapter 14.06A of this [code; and] title.
3. Backup to the department’s existing upcountry water system [facilities].

B. Water quality sampling schedules shall comply with department of health regulations and with standards set by the United States Environmental Protection Agency.”

SECTION 2. Chapter 14.01.060, Maui County Code, is amended to read as follows:

“14.01.060 [Reserved.] Water source development agreements with private entities. The council shall approve by resolution any water source development agreement with private entities. For purposes 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 resources by constructing a structure to capture, convey, store, and treat currently unutilized, nonpotable surface waters; constructing facilities for currently unutilized ground water and its treatment, including pumps, motor control stations, pump controls, or disinfection contact time tanks; constructing desalination facilities; or using any other technique that provides or recaptures water that is acceptable to the State of Hawaii, department of health, together with any easements required for the 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.”

SECTION 3. Chapter 14.03, Maui County Code, is repealed.

SECTION 4. Chapter 14.06, Maui County Code, is repealed.

SECTION 5. Title 14, Article 1, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 14.06A

**WATER CONSERVATION AND CONTROL OF WATER USAGE
DURING WATER SHORTAGE**

Sections:

- 14.06A.010 Policy statement.
- 14.06A.020 Definitions.
- 14.06A.030 Leak detection.
- 14.06A.040 Education and incentives.
- 14.06A.050 Declaration of water shortage.
- 14.06A.060 Stages of water shortage.
- 14.06A.070 Notice and publication of declaration of water shortage.
- 14.06A.080 Agricultural consumers.
- 14.06A.090 Violation-penalty.
- 14.06A.100 Review.

14.06A.010 Policy statement. A. Pursuant to Article XI, Section 1 of the Hawaii State Constitution, the County finds that water is a public trust resource.

B. The County’s policy is to promote water conservation and take preventative measures to reduce the risk and severity of water shortages.

C. Water conservation is essential to preserve water resources, and to protect public health, safety, and welfare.

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.

14.06A.020 Definitions. When used in this chapter, unless the context clearly indicates a different meaning, “water-efficient” means practices using improved technologies and methods to obtain desired results utilizing the least amounts of water.

14.06A.030 Leak detection. A. The department shall monitor water consumption and issue high-consumption notices to consumers when warranted.

B. The department shall prioritize the replacement of old and leak-prone water mains.

C. When available, the department shall reasonably distribute leak detection tablets or other leak detection methods to detect toilet tank leaks to a consumer upon request.

D. The department shall encourage the public to report water leaks.

14.06A.040 Education and incentives. A. The department shall promote water conservation education.

B. When available, the department shall reasonably provide water-efficient faucet and shower fixtures, and outdoor hose nozzles to consumers upon request at no charge.

C. The department, in consultation with the board, shall implement an incentive program to encourage consumers to replace old toilets and water fixtures with those that have increased levels of water efficiency and are consistent with water conservation design principles.

14.06A.050 Declaration of water shortage. A. The director, with 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 event causing a water shortage.

B. Prior to declaring a water shortage, the director shall consider the following:

1. Current and predicted weather patterns.
2. Reservoir water levels.
3. Surface water flow.
4. Current and predicted water usage.
5. Operational status of water production facilities.

14.06A.060 Stages of water shortage. A. In declaring a water shortage, the director shall designate the appropriate stage of the water shortage as follows:

1. Stage 1. A stage 1 water shortage shall exist if the director determines that anticipated water demand in an area is projected to exceed available water supply by one to fifteen percent.

2. Stage 2. A stage 2 water shortage shall exist if the director determines that anticipated water demand in an area is projected to exceed available water supply by sixteen to thirty percent.

3. Stage 3. A stage 3 water shortage shall exist if the director determines that anticipated water demand in an area is projected to exceed available water supply by thirty-one percent or more.

B. When a water shortage is declared, the director may apply schedules, restrictions, or measures as follows:

1. Prohibit water usage during certain hours or days of the week.
2. Prohibit the use of water for irrigation, lawns, personal washing of vehicles, or other nonessential activities.
3. Prohibit the use of temporary construction meters.

4. Institute water shortage water rates as set forth in the annual budget.

C. Failure of a consumer to comply with any mandated water restriction may result in penalties established in section 14.06A.090.

14.06A.070 Notice and publication of declaration of water shortage.

A. A notice of declaration of water shortage shall be published in a newspaper of general circulation, and to the extent possible, other available public media, in the County, once each week for as long as the water shortage exists. Except during a stage 3 water shortage, the first notice of a water shortage shall be published at least seven calendar days prior to the beginning date of any water shortage.

B. Each water shortage notice shall state the duration of restrictions, the application of water shortage rates, and any other measures established by the director to control water usage.

C. A notice shall be published in a newspaper of general circulation, and to the extent possible, other available public media, in the County, when a water shortage declaration stage changes or when the water shortage declaration ends.

D. 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 mailed notice by any affected water consumer shall not affect nor invalidate the declaration of water shortage.

14.06A.080 Agricultural consumers. A. In the event of a water shortage declaration, agricultural water consumers shall be requested to reduce water consumption to the extent practicable, but shall not be required to implement any restrictions or mandates imposed by section 14.06A.060 for the first ninety days after publication in a newspaper of general circulation in the County.

B. After the ninety days provided in subsection A, agricultural consumers shall be subject to the same provisions as other consumers.

14.06A.090 Violation-penalty. A. Any consumer violating the schedules, restrictions, or measures established by the director pursuant to this chapter may be charged with a violation and, upon conviction thereof, shall be subject to a fine of not more than \$500 for each violation.

B. The water meter of any consumer who has been convicted in accordance with subsection A, and has subsequently been charged with another violation of any schedule, restriction, or measure established by the director pursuant to this chapter, may be removed by the director, subject to the opportunity to appeal such water meter removal to the board pursuant to chapter 14.11 of this title.

C. A reinstatement fee of \$100 and the water system development fee as set forth in the annual budget shall be assessed against the owner of any water meter removed pursuant to this section and thereafter reinstalled.

D. Any application for water service within thirty-six months after removal pursuant to the procedures set forth in this section shall be exempt from the water system development fee.

14.06A.100 Review. A. The council shall review the provisions set forth in this chapter beginning January 1, 2017, and every three years thereafter.

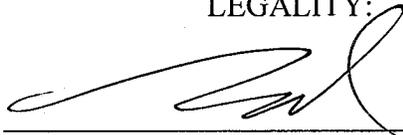
B. As part of the review, the director shall provide a report to the council on all actions taken by the department under this chapter during the review period, including a list of water shortage declarations and, for each water shortage declaration:

1. The areas affected by each water shortage declaration.
2. The duration of each water shortage declaration.
3. The restrictions imposed.”

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:



EDWARD S. KUSHI, JR.
Department of the Corporation Counsel
County of Maui

2014-3085.Chapter 14.06A.doc
wr.misc:018abil108:kcw