


COUNTY OF MAUI DEPARTMENT OF THE CORPORATION COUNSEL
200 SOUTH HIGH STREET WAILUKU, HI 96793

INTER-OFFICE CORRESPONDENCE

D A T E: July 23, 2003
MEMO TO: George Tengan
Director, Water Supply
Attention: Alva Nakamura
Herb Chang
Engineering
F R O M: Ed Kushi, Jr., Deputy Corporation Counsel 
SUBJECT: Public and Private Water Systems for New
Subdivisions

Reference your request of June 12, 2003 (copy attached) regarding the above matter, which request specifically questions our office's previous opinion to your department dated March 9, 2002 (copy attached) on the same issues.

We herein confirm our office's previous response dated March 9, 2003, with the following clarifications and understandings:

- 1) Connection to the public water system.

Section 3-1(a) of the Department's Rules ("Rules") states:

"(a) Any prospective consumer whose premises are within service limits established by the department and adjacent to a distribution main, where pressure conditions permit, may obtain water service provided that the department has a sufficient water supply developed....and the consumer agrees to abide by the provisions of these rules and regulations." (emphasis added)

If it was mandatory to connect to the public water system, the above referenced rule should have used the operative word "shall", instead of "may".

2) Dual water systems.

The Rules do not prohibit new subdivisions from being served entirely by a private water system, and as you recall, in 1998, the Board of Water Supply amended Section 2-11 of the Rules to delete the Department's review, jurisdiction and authority over such private water systems. As stated in our March 9, 2001 response, we again confirm that a subdivision, of which the pre-subdivision lot is being served by the public water system, can be served partially by the public water system, and partially by a private water system for the newly created lot(s).

HOWEVER, we herein advise and caution that as the Department will not review nor approve the plans associated with the private water system which is represented to serve the new lot(s), there may be opportunity for such new lot(s) to be served by the pre-existing, public water system meter(s). In such cases, the subdivision would be in violation of Section 16-108-5(e) of the Rules ("All new premises resulting from the subdivision of the original premises will be required to have separate water service."), the penalty of which is found in Section 16-7-4(f) of the Rules ("The penalty for providing water service to lots other than the lot to which the service is assigned is removal of the meter.").

3) Extension of the public water system.

We confirm the general response set forth in our March 9, 2001 memo, however, we herein qualify said response in the hypothetical situations listed below:

A) Pre-subdivision lot not served by public water system; post-subdivision plans propose dual system.

Department should require compliance and extension of the public water system to the subdivision, but said requirements should be tailored for the public water system meter(s) only.

B) Pre-subdivision lot served by one (1) public water system meter; post-subdivision plans propose dual system, where the new lot(s) will be served by a private system.

Under this situation, it is assumed that when the existing public water system meter was installed, compliance and extension of the public system to the pre-subdivision lot was required. Accordingly, if the new lots resulting from the subdivision will be served privately, there should not be any further extension required.

George Tengan
July 23, 2003
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- C) Pre-subdivision lot served by one (1) public water system meter; post-subdivision plans propose dual system, where two (2) or more lots will be served by the public water system.

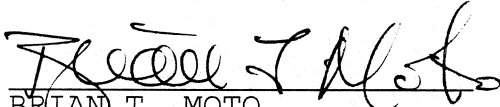
Compliance and extension of the public system to the subdivision to the extent required by the addition of new public system water service/meters.

Conclusion

Our response to your request is based on the questions posed as viewed against the current Rules of the Department. If the Department desires stricter compliance to public water system requirements and/or conditions, the subject, relevant Rules need to be amended (by adoption of ordinances either superseding said Rules or delegating rule-making authority to the Department), specifically, to require departmental review and approval of all private water systems, compliance of private water system standards to public water system standards, and/or perhaps, a mandatory "all private" or "all public" water system requirement for new subdivisions. Please advise accordingly.

Call if further discussion/clarification is needed.

APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

S:\ALL\ESK\Water\Rules\memo, opinion to gyt re public vs. private water system connections.wpd



Date: June 12, 2003

CORPORATION COUNSEL
20 (Transmit in duplicate)

To: DEPT. OF CORPORATION COUNSEL
Attention: Ed Kushi, Jr.

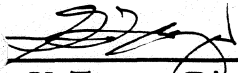
From: DEPT. OF WATER SUPPLY, COUNTY OF MAUI

Subject: Request for Legal Opinion - Public and Private Water Systems for New Subdivision

Background Data: DWS is considering whether it should continue the previous administration's practice of allowing a mixed source for new subdivisions in the upcountry area. Please provide a legal opinion on the following three questions: (1) Is a subdivision required to connect to the public water system if the public system is adjacent or in the vicinity of the subdivision site? (2) Are subdivisions allowed to be served partially by a public water system and partially by a private water system that start from an unsubdivided lot being served by our system? (3) Can the DWS require the subdivider to extend the public water system to the subdivision site if a portion of the subdivision is to be served by a public water system?

On March 9, 2001 the Department of Corporation Counsel provided a legal opinion on the same questions. A copy of the opinion is attached.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 FOR REVIEW AND COMMENT
 OTHER: see 'Background Data' above for work requested

REQUESTOR:  <u>George Y. Tengan, Director of Water Supply</u>	CONTACT PERSON: (Ext. No. 7835) <u>Herb Chang</u> (Print name)
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ROUTINE (Within 15 working days) RUSH (Within 5 working days)
 PRIORITY (Within 10 working days) URGENT (Within 3 working days)
 SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): _____

Reason: _____
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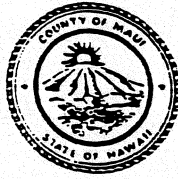
FOR CORPORATION COUNSEL'S RESPONSE BELOW:

Assigned to:	Assignment No.:	By:
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APPROVED RETURNING-PLEASE EXPAND AND PROVIDE
 DISAPPROVED DETAILS REGARDING ITEMS NOTED
 OTHER (See Comments Below)

COMMENTS: _____

By: _____
Date: _____



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX (808) 270-7152

March 9, 2001

DEPT. OF WATER SUPPLY
MAR 21 AM 10:41
CORPORATION COUNSEL

MEMO TO: David Craddick, Director, Department of Water Supply
F R O M: Richard K. Minatoya, Deputy Corporation Counsel
SUBJECT: Request for Legal Opinion dated March 7, 2001

This is in response to your request dated March 7, 2001 for a legal opinion regarding: (1) "[i]s a subdivision required to connect to the public water system if the public system [is] adjacent or in the vicinity of the subdivision site;" (2) "[a]re subdivisions allowed to be served partially by a public water system and partially by a private water system that start from an unsubdivided lot being served by our system;" and (3) "[c]an the DWS require the subdivider to extend the public water system to the subdivision site if a portion of the subdivision is to be served by a public water system."

BRIEF ANSWER:

It is our department's opinion that (1) a subdivision is not required to connect to the public water system if the public system is adjacent to or in the vicinity of the subdivision site; (2) subdivisions that start from unsubdivided lots being served by the public water system are allowed to be served partially by a public water system and partially by a private water system; and (3) the DWS can require a subdivider to extend the public water system to the subdivision site if a portion of the subdivision is to be served by the public water system.

ANALYSIS:

1. Connection to the public water system.

The Department of Water Supply's Rules and Regulations No. 2, Requirements for Subdivision Water Systems, does not require a subdivision to connect to the public water system. Although Maui

Mr. David Craddick
March 9, 2001
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County Code § 18.20.010¹ provides that all subdivisions be provided with water, it is clear that a subdivision may be served by a private water system. There is nothing in Title 18 of the Maui County Code that requires a subdivision to connect to the public water system.

2. Dual water systems.

The Rules and Regulations of the Department of Water Supply and the Board of Water Supply do not prohibit a subdivision from being served partially by a private water system and partially by the public water system. Further, § 16-8-5(e) provides:

(E) When premises with existing water service are subdivided, the owner may request relocation of the existing meter or a reduced-size meter upon payment of relocation costs. All new premises resulting from the subdivision of the original premises will be required to have separate water service.

is, one of the resulting lots from the subdivision may receive service from the then-existing water meter while the other lots are served by a private water system as set forth above.

3. Extension of the public water system.

Sections 2-1 and 2-6 of the Department of Water Supply Rules and Regulations No. 2 require that the subdivider extend the public water system to the subdivision if the subdivision will utilize the public water system. Thus, if a portion of the subdivision will utilize the public water system, the subdivider must extend the public water system to the subdivision site.

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18.20.010 Water supply.

Any subdivision hereinafter laid out within the county shall be provided with water in accordance with the rules and regulations of the board of water supply "Subdivision" means improved or , enacted in conformity with chapter 8 of the Maui County charter, and all amendments thereto.

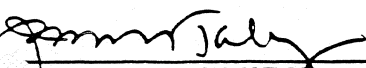
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Please contact me at x7205 if you was further questions or concerns.

RKM:ln

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APPROVED FOR TRANSMITTAL:



LES B. TAKAYESE
Corporation Counsel

FYHIRIT **VI**