

BOARD OF WATER SUPPLY  
COUNTY OF MAUI

REGULAR BOARD MEETING  
MINUTES OF JULY 21, 2022

The regular meeting of the Maui County Board of Water Supply was held online via BlueJeans and at the physical location located at the Planning Department Conference Room, 250 South High Street, Wailuku, Hawaii 96793. Recordings of the meetings are viewable at <https://www.akaku.org/boards-commissions/>.

I. CALL TO ORDER

The meeting was called to order by Chair Buddy Nobriga at 1:32 p.m.

II. ROLL CALL

Members present: Buddy James Nobriga  
Jason Hew  
Dean Frampton  
Edwin Lindsey  
Antonette Eaton  
Juanita Reyher-Colon  
Ralph Thomas  
Donna Sterling

Staff present: Helene Kau, Director  
Keola Whittaker, Deputy Corporation Counsel  
Linda Kimura, Private Secretary

III. APPROVAL OF MINUTES

Member Eaton moved to approve the minutes of June 16, 2022. Member Reyher-Colon seconded the motion. The motion passed unanimously.

IV. TESTIMONY FROM THE PUBLIC

Deputy Corporation Counsel Whittaker stated that the new Sunshine Law that recently came into effect requires that boards and commissions take testimony throughout the meeting. Since this agenda states that testimony will be allowed prior to any deliberation on any individual item, we will do it that way.

Vice Chair Hew asked if someone can testify before a presentation and again after a presentation.

Deputy Corporation Counsel Whittaker said that testifiers cannot testify twice for the same agenda item.

Shay Chan Hodges testified about the costs of a community water authority. An argument in favor of Mahi Pono PSP continuing to control Maui water has been the 50-year-old

agreement with EMI to deliver water for six cents per thousand gallons. This rate reflects the low rate that the state has been charging EMI. In 1976, EMI paid \$160,000 a year, which in today's dollars would be over \$700,000. Their current lease is \$238,000, so EMI is actually paying 70% less for the leases today than it did 45 years ago. DLNR is hiring consultants to assess the value of East Maui water. Since the state hasn't adjusted the rates up in half a century, if Mahi Pono is allowed to bid on the leases, it is very likely that DLNR will at least triple what they charge them. Given that the Department of Water Supply supports Mahi Pono receiving the leases, I hope that they have prepared accurate projections on the county's increased future costs when Mahi Pono passes these increases onto the county. The county pays twenty-eight cents to Maui Land and Pine and fifty cents to Wailuku Water Company per thousand gallons.

What is the actual cost of a community water authority controlling the East Maui leases and what are the potential sources of revenues to offset those costs? DLNR has stated that unlike EMI, a county entity would not be charged for the state water leases. EMI is currently allowed to deliver 45 MGD, up to eight of which is delivered to our water department. A water authority would have revenues from the remaining 37 MGD to deliver for agriculture. Instead of looking for reasons why we can't control our destiny, we have an opportunity to develop the tools to achieve what the community has been asking for.

## V. UNFINISHED BUSINESS

### A. Discussion of Bill 79 (2022), Exemptions for Agricultural Water Consumers from Restrictions or Mandates During Water Shortages.

Councilmember Shane Sinenci thanked the members for their support of Bill 79. The Department of Water Supply stated at the last APT meeting that there wasn't enough water to go around, so councilmembers asked the department to help them with public policy issues, engineering issues, as well as the larger issues. They are waiting for a response from the department.

Gina Young, Executive Assistant, mentioned that they just received a response from the department. When the APT committee takes this item up again, council will discuss it.

Member Frampton asked for a general overview of the department's comments.

Ms. Young said that in reference to the public policy issue, the department referred to the Water Use and Development Plan and future plans to look to Haiku and the well strategy in Haiku.

Councilmember Sinenci added that the director said that their foremost priority is to the consumers, so they can't promise enough water for an extension.

Member Eaton said in the June division reports, the Upcountry water treatment plants treated about 7.5 MGD. According to EMI's delivery agreement in 2018, it states that everything in effect from the 1973 agreement will stay in effect. It states that EMI will deliver 12 MGD to the Wailoa Ditch system, which is five million gallons short of what we should be getting.

Councilmember Sinenci replied that the director just said that there was just not enough water in the ditch system.

Director Kau stated that we are currently getting 14.5 MGD in the Wailoa Ditch. The primary concern is that statistically 84% of the water use in Upcountry is ag related, so if we are in dire straits and we extend the 90 to 180 days, there may not be sufficient supply for the general consumers.

Member Eaton understands that domestic use is top priority, but they're not getting their fair share of the water. They are not receiving all the water that they need from Mahi Pono through the Wailoa Ditch.

Director Kau replied that the Wailoa Ditch is not always flowing at full capacity. Mahi Pono attempts to give us as much as we need. Often times there is no ditch flow or the ditch flow is very low, so that's the largest variable.

Member Eaton asked what gives Mahi Pono priority over our Upcountry agricultural users and farmers.

Director Kau responded that the water coming through the ditch is for us and some for the Mahi Pono farms.

Member Eaton asked how Mahi Pono is able to take what they need, but Upcountry will not get water for ag and ranching. The thirty-three thousand acres of the licensed area where the water is coming from is state lands and all the improvements have reverted back to the government on that land. As stated in the 1973 agreement, all improvements, ditches and flumes go back to the government. How does Mahi Pono gets priority over Upcountry farmers and ranchers?

Director Kau replied that they have always prioritized our use. There have been times when they have not irrigated their fields so that we have water to provide to consumers.

#### B. Discussion of Resolution 22-119, CD1 and FD1; Proposed Charter Amendment to Establish the East Maui Community Water Authority.

Councilmember Sinenci stated that this past Monday, the council passed a resolution to put the charter amendment on the ballot for voters to decide. He added three countywide staff positions into the amendment. If approved by the voters, this authority will ensure the stability of the EMI system to provide water for all users, including the existing leaseholders and to the county. The water authority will be responsible for conducting the feasibility studies. With this charter amendment we can secure the East Maui water leases and partner with community leadership to help manage our water resources for generations.

Dick Mayer testified that he hopes the board will be able to support giving the voters the opportunity to establish a water authority. He would hate for Maui's water future to be in the hands of a pension fund in Montreal. The board needs to protect our residents by supporting some entity that would be able to manage the area with local management and local control.

Member Reyher-Colon asked Councilmember Sinenci what the relationship between the Board of Water Supply and the resources division within the department is going to look like should the proposed authority come into play.

Councilmember Sinenci responded that an amendment to the charter amendment was added saying the Department of Water Supply will retain some of their duties and functions, including taking over some private water systems. Currently the department manages our current system for our customers, and the water authority would be managing the watersheds, raw water that is transported to the department and to our facilities.

Member Reyher-Colon asked if the Water Resources Division will be working with this authority, because they do a lot of watershed management work.

Councilmember Sinenci stated that the department does provide grant funding to those non-profits in six or seven of the watershed areas. They tried to keep the authority under the county jurisdiction.

Vice Chair Hew asked if there is a mechanism that the feasibility study can be done before the authority is formed? Or can the feasibility study only be conducted once the authority is formed.

Councilmember Sinenci said that another councilmember proposed a feasibility study and they took the TIG report as a feasibility study. The administration can propose a budget amendment needed to hire a consultant to do the study. They will be creating a business model prior to the amendment going on the ballot.

Vice Chair Hew said that the majority of the system lies on state land. If the water authority receives the water lease from the state, how does that affect maintenance and infrastructure on the private lands? Water leases are for the water itself, not for the actual system.

Councilmember Sinenci said the leases would provide access on public land so we would need to work with the private lease holders. There's a lot of room for private-public partnership.

Vice Chair Hew asked if he foresees any animosity or any issues with trying to work with Mahi Pono or EMI if the water authority was to get the lease and not them?

Councilmember Sinenci said that throughout the Water Use and Development Plan process, they've extended an invitation to A&B and Mahi Pono, but they haven't responded. The State Attorney General and DLNR has told the county that they would likely be given the lease for free because we are using it for public trust usage and not for commercial or for profit usage.

Member Eaton asked who currently maintains the system now? EMI. Why would that change just because the county gets the four leased areas?

Councilmember Sinenci said that these are some of the issues that the board, once established, would be able to figure out.

Chair Nobriga applauded Councilmember Sinenci on bringing forth some monumental legislation that helped our community get better. Any comments on why and how this bill got proposed and is being passed so quickly?

Councilmember Sinenci said that it hasn't been without other people's help. Things happened and fell in place as they went along.

Member Reyher-Colon asked what is needed from the board, as far as the proposal.

Chair Nobriga replied that since posting this item on the agenda, the council did pass the resolution. The board supported the resolution and no action is needed.

## VI. OTHER BUSINESS

There was no public testimony for this section.

### A. Discussion regarding storage capacity.

Chair Nobriga apologized for not being able to connect with Wendy Taomoto, but it was his intention to have a presentation on our water system holding capacity and to have this board work on researching how we can expand our capacity with drought and climate change.

Member Eaton said that there is a storage tank in Waiohuli where the county is purging the water because it is stale. Can that water be used for agriculture or ranchers and allow the people to gather that stale water?

Director Kau said that DHHL is in the process of constructing additional homes in the area. In the meantime, that so-called stale water is not something that we would transport. Since it's not suitable for consumption, it's generally not something that we would provide to someone else. The potential liability for us would be fairly substantial, but we can look into alternative uses for that water.

Chair Nobriga will bring this item up again when we have a better opportunity to present a better view of the county's water storage system.

### B. Discussion regarding drought management.

There was no public testimony for this section.

Director Kau said that in Upcountry, storage conditions have improved, but she's not pulling the stage one conditions as because we still anticipate a dry summer. There is no additional source at this time, so we're attempting to conserve what we have.

Member Eaton asked if there has been discussions on source drilling of any wells in Makawao?

Director Kau replied that included in the WUDP is exploration of new well development in the Makawao Aquifer. There is no capacity to pump more at Pookela, however we're working on a backup well.

#### C. Board report on the Native Hawaiian Law Training Course.

Member Sterling reported on the 2-day training given by the Ka Huli Ao. They have a website which is dedicated to collect, disseminate and digitize the Hawaiian Kingdom historical issues. The seminar touched on maximizing the public's access to these important resources. There were a number of dignified people from movements within the state who spoke.

Chair Nobriga said this is the second training that he's attended so he would encourage anyone to attend. No board business was discussed during the training.

#### VII. DIVISION REPORTS

There were no questions on the Division Reports.

#### VIII. NEXT MEETING DATE AND TIME

Contested Case Hearing: July 25, 2022 at 1:30 p.m.

Board Meeting: August 18, 2022 at 1:30 p.m.

Member Eaton asked at what stage are we at for the Ventura hearing.

Deputy Corporation Counsel Whittaker replied that we are with the witnesses for the appellant. After that it'll be the witnesses for the county.

Member Eaton asked if it's necessary to have all these witnesses. This has been going on for months. Can they wrap it up and do their closing arguments?

Deputy Corporation Counsel Whittaker said that there is a transcript of all the hearings to refer back to and the attorneys should sum up what's been said in their closing arguments. We can't prevent them from presenting their case.

Member Reyher-Colon asked if we will finish sometime in August or September.

Deputy Corporation Counsel Whittaker said it will more likely be September if we're doing one a month, but it could be more.

Chair Nobriga said we will probably have three more sessions counting Monday. The board will go into Executive Session to discuss the case and then the vote will be taken and the next meeting.

Member Frampton will not be available for the August 18<sup>th</sup> meeting.

Chair Nobriga mentioned that the board secretary can provide transcripts and the recordings from previous meetings.

Deputy Corporation Counsel Whittaker mentioned that if members have missed a session then they need to watch the video and review the evidence that was presented to get caught up.

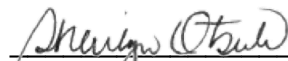
Dick Mayer testified that he would like to add something to the next agenda. There's a staff report that provides all the quantities of water. All these numbers are given on a monthly basis. He asked if future reports can be in the form of millions of gallons per day, and also by areas.

Director Kau mentioned that she misspoke earlier when referring to the 14.5 MGD, which was the total ditch flow. They have received what was needed, which is about 3.4 MGD.

#### IX. ADJOURNMENT

There being no further business, the regular meeting was adjourned at 2:48 p.m.

Prepared by:

  
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Secretary to Boards/Commissions II

Approved for distribution:

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Helene Kau  
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