

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

April 20, 2007

Committee
Report No.

_____ 07-49 _____

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

Chair and Members:

Your Water Resources Committee, having met on February 12, 2007, February 26, 2007, and March 12, 2007, makes reference to the following:

1. County Communication No. 05-46, from Councilmember Michelle Anderson, relating to the rules and governing policies of the Department of Water Supply; and
2. County Communication No. 06-228, from the Director of Water Supply, transmitting the 2005 Groundwater Contamination Maps for the State of Hawaii.

Your Committee notes that the Council referred County Communication No. 05-46 to its Water Resources Committee at the Council meeting of January 21, 2005, and County Communication No. 06-228 to its Water Resources Committee at the Council meeting of September 1, 2006.

Your Committee further notes that the Water Resources Committee recommended that the Council pass on first reading a proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 2.88A, MAUI COUNTY CODE, AND AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE COUNTY WATER CODE", by Committee Report No. 06-59. The purpose of the proposed bill is to establish the County Water Code in Article 1, Title 14, Maui County Code (MCC), including a provision that water from wells located in a contaminated aquifer underneath active agriculture shall not be provided for human consumption. At its meeting of April 21, 2006, the Council recommitted Committee Report No. 06-59 to the Water Resources Committee.

Your Committee further notes that the Water Resources Committee recommended that the Council pass on first reading a proposed bill entitled "A BILL FOR AN ORDINANCE REPEALING CHAPTER 2.88A, MAUI COUNTY CODE, AND AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO THE COUNTY

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WATER CODE”, and file the recommitted Water Resources Committee Report No. 06-59, by Committee Report No. 06-104. The bill deleted the provision prohibiting the use of water from wells located in a contaminated aquifer underneath active agriculture, and replaced it with a provision prohibiting use of water from the Hamakuapoko wells for human consumption. At its meeting of September 1, 2006, the Council adopted Committee Report No. 06-104 and passed Bill No. 51 (2006) on first reading. Bill No. 51 (2006) was enacted as Ordinance No. 3404 on October 2, 2006.

By correspondence dated August 22, 2006, Frances and Alan Nago expressed concerns regarding the closure of the Hamakuapoko wells as a backup during times of drought.

At its meeting of August 30, 2006, the Water Resources Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

There was no public testimony.

The Committee deferred consideration of the matter pending further discussion.

At its meeting of September 13, 2006, the Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

The Committee received testimony from one person who opposed the Mayor’s continued pursuit of use of the Hamakuapoko wells and installation of the pipeline, and stated support of prohibiting use of water from the Hamakuapoko wells for human consumption.

The Committee discussed the draft bill transmitted by correspondence dated August 1, 2006, from the Department of the Corporation Counsel, entitled “A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES” (hereinafter “draft Rules bill”). The purpose of the draft Rules bill is to codify a portion of the existing rules and regulations of the Board of Water Supply. The draft Rules bill proposes the addition of four new chapters to Title 14, MCC, relating to general provisions; water service application, installation, and requirements; subdivision water system requirements; and water conservation during drought.

The Deputy Corporation Counsel informed the Committee that a draft bill containing at least three other chapters (relating to charges for water service, water

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system development fees, and water meter issuance for the Upcountry water system) must still be prepared and transmitted. He provided a status update on the preparation of a bill that would encompass these chapters. He further advised that the Department of the Corporation Counsel is working on a provision for administrative appeals.

The Committee requested that the draft Rules bill be revised to account for inconsistencies with Bill No. 51 (2006); to add a chapter relating to water meter issuance for the Upcountry water system, a stated priority for the Committee; and utilize a Ramseyer format to indicate changes.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 11, 2006, the Department of the Corporation Counsel transmitted the requested revised draft bill in Ramseyer format.

At its meeting of October 18, 2006, the Committee met with the Director of Water Supply, the Deputy Director of Water Supply, and a Deputy Corporation Counsel.

The Chair of the Committee transmitted a copy of correspondence dated August 24, 2006, from the Director of Water Supply to the Board of Water Supply, providing a list of meters installed or placed on reservation from the Upcountry Priority List.

There was no public testimony.

The Committee deferred consideration of the matter pending further discussion.

At its meeting of November 1, 2006, the Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided an extensive review of the revised draft Rules bill.

The Committee deferred consideration of the matter pending further discussion.

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At its meeting of November 29, 2006, the Water Resources Committee recommended that County Communication Nos. 05-46 and 06-228 be referred to the Council Chair for the term beginning January 2, 2007, for a recommendation as to referral or other disposition.

At its meeting of January 5, 2007, the Council referred County Communication Nos. 05-46 and 06-228 to your Water Resources Committee (County Communication No. 07-6).

By separate correspondence dated January 12, 2007, the Chair of your Committee requested comments and recommendations on the revised draft Rules bill from the Chair of the Board of Water Supply, the Fire Chief, and the Director of Public Works and Environmental Management.

By correspondence dated January 31, 2007, the Chair of the Board of Water Supply requested an extension until April 2, 2007 to review the revised draft Rules bill.

By correspondence dated January 31, 2007, the Director of Public Works and Environmental Management transmitted a lengthy list of recommendations from the Development Services Administration regarding the revised draft Rules bill.

By correspondence dated February 1, 2007, the Fire Chief recommended that the revised draft Rules bill be further revised to include an updated fire protection schedule, which he attached. He also suggested that it might be more prudent for the Department of Water Supply to conduct inspections of private fire service mains and hydrants, rather than the Department of Fire and Public Safety, as is the current practice.

By correspondence dated February 6, 2007, the Chair of your Committee granted the requested extension of time for review of the revised draft Rules bill to the Chair of the Board of Water Supply.

By correspondence dated February 8, 2007, Stephen Kealoha submitted testimony on behalf of Mr. and Mrs. Rodney Castanha regarding their attempts to receive a water meter in the Upcountry area.

At its meeting of February 12, 2007, your Committee met with the Acting Director of Water Supply, the Deputy Director of Water Supply, and a Deputy Corporation Counsel.

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One person testified in support of the Council enacting policies for the Department of Water Supply.

Your Committee discussed the revised draft Rules bill and reviewed the recommendations submitted by the various departments.

The Chair of your Committee requested that the Acting Director of Water Supply transmit a comprehensive list of Maui County's water users that are currently paying water service rates based on agricultural use, and the type of agricultural uses for each water user.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated February 16, 2007, the Director of Water Supply transmitted the current list of agricultural water users.

By correspondence dated February 23, 2007, the Director of Water Supply requested an extension of time to transmit the requested information about the type of agricultural uses for each water user.

By correspondence dated February 24, 2007, Robert "Bob" Horcajo, President and Principal Broker of Kama'aina Properties, Inc., provided comments on the water supply rules.

At its meeting of February 26, 2007, your Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

Your Committee received testimony from two people. The first testifier also submitted written testimony and a photograph. She requested that the Council research the lack of a water meter on her property, although she thought it had been metered since 1989. The second testifier, a member of the Board of Water Supply, recommended that the first testifier receive a water meter.

Your Committee continued its discussion of the revised draft Rules bill.

The Director of Water Supply addressed your Committee's concerns regarding the definition of "agricultural water user". He stated that approximately 2 percent of the

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Department of Water Supply's water users are charged an agricultural usage rate and about 8 percent of the Department's water supply is utilized by agricultural water users. He noted that the agricultural water users are required to submit annual applications, and to provide the Department with authorization to obtain copies of their General Excise Tax forms.

The Deputy Corporation Counsel advised that the requirements referenced by the Director of Water Supply are in accordance with existing rules and regulations of the Board of Water Supply, which would be codified into the County Water Code (Article I, Title 14, MCC) in the revised draft Rules bill.

The Director stated concerns relating to the proposed Section 14.04.010(D), MCC, in the revised draft Rules bill, which reads as follows: "All water supplied by the department will be measured by means of suitable meters registering in gallons. When it is impractical to meter any service, a flat rate may be charged." He noted that the current practice of the Department is to charge the consumer a rate based on estimated consumption rather than on a flat rate. Your Committee requested that the Director provide specific instances where a water user's rate has been based upon an estimate of water usage. Your Committee further requested that the Director review the entire revised draft Rules bill and provide additional recommendations.

The Deputy Corporation Counsel stated concerns relating to the revised draft Rules bill's proposed Section 14.04.010(E), MCC, which reads in part: "... provided, however, that the foregoing shall not be applicable to the construction of the first and second dwelling unit on a premises in any district." Your Committee requested that the Deputy Corporation Counsel transmit recommended revisions to this proposed section. Your Committee further requested that the Deputy Corporation Counsel review the entire revised draft Rules bill and provide additional recommendations.

The Chair of your Committee stated her intention to explore ways to further revise the revised draft Rules bill to ensure that it includes only major policy matters that are necessarily within the Council's purview and to allow the Department of Water Supply to address internal and strictly technical matters through administrative rules.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 5, 2007, the Director of Water Supply advised that the general practice of the Department of Water Supply is to meter all water services,

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and that the practice of charging a water user based upon estimated water use occurs when a meter is not registering or when it is not possible to read the meter.

By correspondence dated March 5, 2007, the Chair of your Committee transmitted a revised draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY" (hereinafter "draft Duties bill"). The purpose of the revised draft Duties bill is to establish the Board of Water Supply's authority to promulgate rules and hear appeals.

By correspondence dated March 11, 2007, the Legislative Attorney provided an analysis of the Council's ability to authorize the Board of Water Supply, by ordinance, to adjudicate appeals of actions taken by the Department of Water Supply.

At its meeting of March 12, 2007, your Committee met with the Director of Water Supply, the Corporation Counsel, and a Deputy Corporation Counsel.

There was no public testimony.

Your Committee is in receipt of a revised draft Duties bill, entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY", incorporating technical revisions proposed by the Chair of your Committee.

The Chair of your Committee summarized the history of the revised draft Duties bill. She noted that the legislation was transmitted to the Water Resources Committee on August 10, 2005. She stated that, currently, there is no entity authorized to hear appeals from the public regarding decisions made by the Department of Water Supply and its Director.

The Chair of your Committee read the following excerpt from the March 11, 2007 correspondence, from your Committee's Legislative Attorney: "There is nothing in the Charter's text or its overall framework that reflects an intention to limit the range of duties and functions that the Council may establish for the Board. Consequently, it appears that the Council is empowered to authorize, by ordinance, the Board to adjudicate appeals of actions taken by the Department and the Director."

Your Committee expressed its view that, as a matter of policy, it would be appropriate and advisable for the Council to authorize the Board of Water Supply to hear appeals.

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The Corporation Counsel and the Deputy Corporation Counsel provided comments on the revised draft Duties bill. They suggested that the revised draft Duties bill be further revised to incorporate relevant provisions of the existing rules and regulations of the Board of Water Supply. They also suggested other technical revisions.

Your Committee voted to recommend passage of the revised draft Duties bill, as further revised to incorporate suggestions of the Department of the Corporation Counsel.

Your Committee is in receipt of a proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY", incorporating your Committee's revisions.

Your Water Resources Committee RECOMMENDS that Bill No. _____ (2007), attached hereto, entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY", be PASSED ON FIRST READING and be ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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MICHELLE ANDERSON **Chair**

DANNY A. MATEO **Member**

MICHAEL P. VICTORINO **Vice-Chair**

JOSEPH PONTANILLA **Member**

GLADYS C. BAISA **Member**