

COUNCIL OF THE COUNTY OF MAUI
WATER RESOURCES COMMITTEE

November 16, 2007

**Committee
Report No.**

07-140

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

Chair and Members:

Your Water Resources Committee, having met on July 2, 2007, August 13, 2007, September 6, 2007, September 17, 2007, October 1, 2007, October 15, 2007, October 29, 2007, and November 2, 2007, makes reference to County Communication No. 05-271, from Councilmember Dain P. Kane, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 18.04.020, MAUI COUNTY CODE, RELATING TO GENERAL PROVISIONS". The purpose of the proposed bill is to prohibit development projects without verification of a long-term, reliable supply of water.

Your Committee notes that the Council (2005-2007 Council term) referred County Communication No. 05-271 to its Water Resources Committee at the Council meeting of August 23, 2005. The Committee met on this matter on November 2, 2005; December 7, 2005; December 14, 2005; February 2, 2006; June 7, 2006, and November 29, 2006.

The Committee received copies of correspondence dated June 22, 2005, from the Director of Water Supply to Clayton Suzuki, Land Manager, Wailuku Agribusiness Co., Inc.; Randall Moore, Manager, Water & Engineering Services, Hawaiian Commercial & Sugar Co.; and Warren Suzuki, Senior Vice President, Maui Land & Pineapple Company, Inc.; respectively, regarding the development of a groundwater model for the Central Maui area.

By correspondence dated October 28, 2005, the Chair of the Committee requested that the Department of the Corporation Counsel review and comment on the proposed bill.

At its meeting of November 2, 2005, the Committee met with the Director of Water Supply; the Planning Program Manager, Planning Division, Department of Water Supply; the Deputy Director of Public Works and Environmental Management; the Administrator, Long-Range Planning Division, Department of Planning; and a Deputy Corporation Counsel.

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The Committee received public testimony from three people in support of the proposed bill.

The Committee received written testimony from four people in support of the proposed bill.

After receiving preliminary comments on the proposed bill from Administration officials, the Committee deferred consideration of the matter pending further discussion.

By correspondence dated November 9, 2005, Jeffrey K. Eng, General Manager, Hawaii Water Service Company, expressed support for the proposed bill.

The Committee received a copy of correspondence dated November 14, 2005, from the Director of Water Supply to Karolyn Mossman, President, Kula Community Association, regarding the "Water Credits Agreement" reached between the Department of Hawaiian Home Lands and the Department of Water Supply for projects in Waiohuli and Keokea, Maui.

By correspondence dated December 6, 2005, Councilmember Dain P. Kane transmitted an excerpt from California Senate Bill 221 (signed into law in 2001), providing a definition of "sufficient water supply".

By correspondence dated December 6, 2005, Jeff Mikulina, Director, Sierra Club, Hawaii Chapter, expressed support for the proposed bill.

At its meeting of December 7, 2005, the Committee met with the Director of Water Supply; the Planning Program Manager, Planning Division, Department of Water Supply; and a Deputy Corporation Counsel.

The Committee received public testimony from three people in support of the proposed bill.

The Committee received written testimony from two people in support of the proposed bill.

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The Committee received supporting materials and suggested revisions to the proposed bill from Councilmember Dain P. Kane, who also provided a verbal overview of the proposed bill.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated December 13, 2005, the Chair of the Committee requested comments on the proposed bill from the Director of Water Supply; Director of Public Works and Environmental Management; the Planning Director; the Board of Water Supply; the Commission on Water Resource Management; the Hana Advisory Committee; the Maui Planning Commission; the Molokai Planning Commission; the Lanai Planning Commission; the United States Geological Survey; and the Department of the Corporation Counsel.

At its meeting of December 14, 2005, the Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

There was no public testimony.

The Chair of the Committee noted that the Committee had requested comments on the proposed bill from numerous government agencies and appointed officials.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated January 10, 2006, Gordon Tribble, Hawaii and Pacific Islands Director of Water Programs for the United States Geological Survey (USGS), declined to comment on the proposed bill and advised that it is not appropriate for the USGS to advocate for local water policies.

By correspondence dated January 10, 2006, Dean A. Nakano, Acting Deputy Director, State Department of Land and Natural Resources, on behalf of the Commission on Water Resource Management, provided suggestions on revising the proposed bill.

At its meeting of February 2, 2006, the Committee met with the Director of Water Supply; the Deputy Director of Public Works and Environmental Management; and a Deputy Corporation Counsel.

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The Committee received public testimony from two people in support of the proposed bill.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated February 13, 2006, the Director of Water Supply provided suggestions on revising the proposed bill.

By correspondence dated February 22, 2006, the Chair of the Molokai Planning Commission provided the Commission's suggestions on revising the proposed bill.

By correspondence dated June 6, 2006, Clyde Namuo, Administrator, Office of Hawaiian Affairs, provided suggestions on revising the proposed bill.

At its meeting of June 7, 2006, the Committee met with the Director of Water Supply, the Deputy Director of Water Supply, and a Deputy Corporation Counsel.

The Committee received public testimony from two people in support of the proposed bill.

The Committee deferred consideration of the matter pending further discussion.

At its meeting of November 29, 2006, the Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Committee recommended that County Communication No. 05-271 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 No. 05-271 to your Water Resources Committee (County Communication No. 07-6).

By correspondence dated June 26, 2007, the Chair of your Committee transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO WATER, AND ADDING CHAPTER 14.11, WATER AVAILABILITY" (water availability bill). The purpose of the water

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availability bill is to require developers to verify the availability of a long-term, reliable supply of water of at least 20 years prior to the approval of land use entitlements.

By correspondence dated June 29, 2007, the Chair of your Committee transmitted correspondence dated June 15, 2007, from the Mayor, regarding the drought declaration issued by the Department of Water Supply on June 13, 2007, and attaching related articles from *The Maui News*.

By correspondence dated July 2, 2007, Isaac Moriwake, Esq., Earthjustice, expressed support for prohibiting development projects that cannot verify a long-term, reliable supply of water.

At its meeting of July 2, 2007, your Committee met with the Director of Water Supply, and a Deputy Corporation Counsel.

Your Committee received public testimony from eight people in support of the water availability bill.

Your Committee received one written testimony in support of the water availability bill.

The Chair of your Committee transmitted an article dated April 2003, by Matthew McKinney, entitled "Linking Growth and Land Use to Water Supply".

The Chair of your Committee presented a computer-generated presentation reviewing the Hawaii Water Plan, the State Water Code, and Titles 18 and 19 of the Maui County Code.

Your Committee briefly discussed various elements of the water availability bill.

The Director of Water Supply recommended that language be added to include the United States Geological Survey approval as one criterion to consider when verifying a long term, reliable supply of water.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated July 9, 2007, the Chair of your Committee transmitted correspondence from Mark Hyde expressing support for the water availability bill.

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By correspondence dated July 11, 2007, the Chair of your Committee requested that the Director of Water Supply provide comments and recommendations relating to the water availability bill by July 19, 2007.

By correspondence dated July 11, 2007, the Chair of your Committee transmitted an article from the July 7, 2007, issue of *The Maui News* entitled “West Maui urged to save water.”

By correspondence dated July 13, 2007, the Director of Water Supply requested an extension until August 3, 2007, to comment on the water availability bill.

By correspondence dated July 16, 2007, Jocelyn Perreira, Executive Director, Tri-Isle Main Street Resource Center, transmitted a written copy of her testimony delivered at your Committee’s meeting of July 2, 2007, in support of the water availability bill.

By correspondence dated August 3, 2007, the Director of Water Supply raised concerns about the water availability bill relating to exemptions, the verification criteria, and the Upcountry Water Meter List.

At its meeting of August 13, 2007, your Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

Your Committee received public testimony from five people in support of the water availability bill. One testifier submitted a graph identifying recent conditions at the Waiehu deep monitor well.

Your Committee received one written testimony in support of the water availability bill and another written testimony providing comments on the bill.

The Chair of your Committee reviewed the concerns listed by the Director of Water Supply in his correspondence dated August 3, 2007.

Your Committee discussed current and future water source development partnerships and County development projects with the Director, who expressed concern that the water availability bill might preclude a developer from developing a new water

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source in Upcountry Maui. He noted that the execution of partnership agreements with developers is one way the County currently creates new water sources.

Your Committee discussed possible County liability if all land with land-use entitlements prior to enactment of the ordinance was subject to the water availability bill. The Deputy Corporation Counsel stated that, unless the entitled land has a guarantee from the Department of Water Supply regarding the availability of water, the County would not be liable.

The Deputy Corporation Counsel stated that the water availability bill, if enacted, would be a “land use ordinance” and may need to be reviewed by the planning commissions, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended (Charter). The Chair of your Committee requested the Department of the Corporation Council to provide a written legal opinion on the matter.

Your Committee considered possible revisions to the water availability bill, including the following: establish an exemption for water entitlements provided for by the Hawaiian Homes Commission Act, 1920, as amended; provide the Director of Water Supply 90 days instead of 45 days to verify in writing the applicant’s long-term, reliable supply of water; and require developments that received land-use entitlements prior to enactment of the water availability bill to also provide written verification of a long-term, reliable supply of water.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated August 23, 2007, Tamara Paltin expressed support for the water availability bill.

By correspondence dated August 23, 2007, Alan C. H. Akana expressed support for the water availability bill.

By correspondence dated August 24, 2007, the Chair of your Committee transmitted a revised draft water availability bill incorporating revisions discussed at your Committee’s meeting of August 13, 2007, and adding a new section entitled “Expiration”.

By correspondence dated August 24, 2007, in response to your Committee’s concerns regarding Native Hawaiian water rights, the Chair of your Committee requested that the Department of the Corporation Counsel review and approve a draft bill entitled

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“A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO THE COUNTY WATER CODE”. The purpose of the draft bill is to exempt rights and entitlements to water provided for by the Hawaiian Homes Commission Act, 1920, as amended, from the purview of the County Water Code’s regulations.

By correspondence dated August 29, 2007, the Department of the Corporation Counsel transmitted a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 14.01, MAUI COUNTY CODE, RELATING TO NATIVE HAWAIIAN WATER RIGHTS”. The purpose of the proposed bill is to exempt rights and entitlements to water provided for by the Hawaiian Homes Commission Act, 1920, as amended, from the purview of the County Water Code’s regulations.

By separate correspondence dated September 5, 2007, Stephanie Cherin and Philip Thomas expressed support for the water availability bill.

By correspondence dated September 6, 2007, Jessica Wemhoff expressed support for the water availability bill.

At its meeting of September 6, 2007, your Committee met with the Deputy Director of Water Supply and two Deputy Corporation Counsel.

Your Committee received public testimony from 24 people in support of the water availability bill, six of whom also submitted written testimony. Generally, the testifiers were concerned about weather patterns indicating less annual rainfall totals; meeting increasing water demands; salinity levels; and future water availability. Several people expressed concern about the appropriateness of providing exemptions if there is no available water. Testifiers variously suggested that the bill should be revised to require that applicants transmit copies of all written agreements and require a yearly review process; that the Department of Water Supply decrease water pressure to conserve water; and that the Department consider obtaining existing private water reservoirs.

Your Committee received written testimony from six other people in support of the availability bill.

The Chair of your Committee transmitted a revised draft water availability bill. This version clarifies the bill’s applicability and scope, by adding a provision stating that the legislation would apply to all development that has not received water meters.

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The Chair of your Committee transmitted correspondence dated September 5, 2007, from the Department of the Corporation Counsel, advising that the water availability bill would require review by the planning commissions. The correspondence also noted the applicable sections of Title 18 and Title 19, Maui County Code, that would need to be amended to conform to the bill.

Your Committee discussed the possibility of separating the water availability bill into two separate bills: (1) a bill requiring verification of a long-term, reliable supply of water prior to subdivision approval; and (2) a bill requiring verification of a long-term, reliable supply of water prior to land-use entitlements. A subdivision bill would not be considered a “land use ordinance” under the Charter, and therefore, would not require review by the planning commissions.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 10, 2007, the Department of the Corporation Counsel transmitted a draft bill entitled “A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE RELATING TO WATER AVAILABILITY” (subdivision bill). The purpose of the subdivision bill is to require written verification from the Director of Water Supply of a long-term, reliable supply of water prior to preliminary subdivision approval.

At its meeting of September 17, 2007, your Committee met with the Director of Water Supply; the Planning Program Manager, Planning Division, Department of Water Supply; and a Deputy Corporation Counsel.

Your Committee received public testimony from eight people in support of the subdivision bill and six people in opposition to the bill. Testifiers in opposition stated that the subdivision bill would be redundant to existing State and County regulations.

The Department of the Corporation Counsel transmitted a marked version of the subdivision bill that displayed differences with the water availability bill.

The Chair of your Committee briefly summarized the subdivision bill. The subdivision bill would require applicants to obtain from the Director of Water Supply written verification of a long-term, reliable supply of water, either by a County water reservation or by providing other evidence.

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The Director of Water Supply discussed the current availability of water with your Committee. He stated that there is no available water for new meters, although the Department continues to issue some meters. He cited drought conditions, United States Geological Survey studies, rising salt-water levels, and increased usage as factors in his determination that there is no available water. He requested your Committee's help in finding a solution.

The Planning Program Manager stated that the Director's determination is consistent with the Department's water availability studies.

Your Committee discussed concerns with the Director related to meter issuance, water set aside for Department of Hawaiian Home Lands projects, water availability methodology, and development projects in Central and South Maui that have received land-use entitlements.

The Director projected that approximately one million gallons per day of additional water will be metered during the next 12 months.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 19, 2007, Councilmember Gladys C. Baisa transmitted correspondence dated September 12, 2007, from C.V. Coelho, expressing concerns related to Maui's water supply; and an article from the June 14-20, 2007, issue of *Maui Weekly* by entitled "Think Kihei is bustling now? Just take a peek at the future."

By correspondence dated October 9, 2007, the Chair of your Committee transmitted a revised draft subdivision bill.

By correspondence dated October 9, 2007, the Chair of your Committee transmitted a draft resolution entitled "REFERRING A DRAFT BILL RELATING TO WATER AVAILABILITY TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS AND THE BOARD OF WATER SUPPLY", attaching a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 19, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY" (entitlement bill). The purpose of the entitlement bill is to require developers to require written verification from the Director of Water Supply of a long-term, reliable supply of water of at least 20 years prior to any land-use entitlements.

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By correspondence dated October 15, 2007, Councilmember Michael P. Victorino submitted suggested revisions to the entitlement bill.

By separate correspondence dated October 15, 2007, Jeffrey T. Pearson, P.E., Maui Land and Pineapple Company, Inc., and David Goode, President, KSD Hawaii, expressed concerns relating to the subdivision bill.

At its meeting of October 15, 2007, your Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

Your Committee received public testimony from five people in support of the subdivision and entitlement bills.

Your Committee received two written testimonies in opposition to the subdivision and entitlement bills.

The Chair of your Committee transmitted copies of excerpts of the rules of the Department of Water Supply, County of Hawaii; and Chapter 11-20, Hawaii Administrative Rules, entitled "Rules Relating to Potable Water Systems."

The Chair of your Committee stated that research was necessary to ascertain the impacts of the reports and applicable deadlines that would be required by the subdivision bill. She noted that she would meet with the Director, other members of the Administration, and Council staff to ensure the subdivision bill's consistency with Hawaii Administrative Rules and consider other revisions for clarity, accuracy, and effectiveness.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 26, 2007, the Chair of your Committee transmitted a revised draft subdivision bill for consideration. This version of the subdivision bill would: (1) require written verification of a long-term, reliable supply of water prior to final subdivision approval; (2) make bonded subdivisions and water source development agreements subject to the bill; (3) exempt subdivisions that do not require additional water service; (4) exempt subdivisions of 15 lots or less; (5) require that developers submit a copy of the approved engineering report required by the State

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Department of Health; and (6) allow for two six-month extensions prior to expiration of the written verification.

At its meeting of October 29, 2007, your Committee met with the Director of Water Supply, the Director of Public Works, and a Deputy Corporation Counsel.

Your Committee received testimony from six people in support of the subdivision bill. Two of those individuals, having testified in a previous meeting in opposition to the bill, noted their support for the revised draft subdivision bill.

The Chair of your Committee transmitted a further revised draft subdivision bill. This version of the subdivision bill replaces the provision granting the Director of Water Supply authority to “not verify the availability of water” with a provision requiring the Director to submit comments to the Department of Health prior to approval of an engineering report. The purpose of the revised draft subdivision bill is to require applicants to obtain written verification of a long-term, reliable supply of water either by submitting a paid receipt of a county water reservation or the Director of Water Supply’s written verification of a new long-term private source of water.

Your Committee discussed the subdivision bill. The Chair of your Committee noted the revised draft subdivision bill’s consistency with Chapter 11-20 of the Hawaii Administrative Rules, entitled “Rules Relating to Potable Water Systems.”

The Director of Water Supply suggested that linking the expiration of the written verification by the Director to completion of the water source would ensure construction of the source.

The Deputy Corporation Counsel suggested that the subdivision bill be revised to apply to condominiums.

Your Committee recessed its meeting until November 2, 2007.

At its reconvened meeting of November 2, 2007, your Committee met with the Deputy Director of Water Supply, the Director of Public Works, and a Deputy Corporation Counsel.

The Chair of your Committee transmitted a further revised draft subdivision bill incorporating revisions for clarity, accuracy, and effectiveness.

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Your Committee reviewed the subdivision bill in detail. Your Committee's legislative intent with regard to the essential elements of the subdivision bill is as follows:

- The subdivision bill's express purpose is to establish "a policy that requires verification of a long-term, reliable supply of water before subdivisions are approved".
- The Director of Water Supply shall provide an applicant with "written verification of a long-term, supply of water" when the applicant has obtained either: (1) a County water reservation (for subdivisions using the County water system); or (2) an approved engineering report from the Department of Health (for subdivisions not using the County water system).
- The requirement for written verification of a long-term, reliable supply of water shall apply to "applicants" for "subdivisions" prior to the submittal of subdivision construction plans. For purposes of the County Water Code, "applicants" shall include developers of planned unit developments and condominiums, in addition to "subdividers" as that term is defined in the Subdivision Code (Title 18, Maui County Code).
- The following applicants shall not be required to obtain written verification of a long-term, reliable supply of water: applicants for subdivisions not requiring water service; applicants for subdivision not requiring new or additional water services, and applicants for subdivisions that will not be regulated as a public water system under Chapter 11-20, Hawaii Administrative Rule (currently, a development of 14 lots or less). Applicants who are proposing to use an existing private water source shall not be required to obtain a new approved engineering report.
- Proposed Maui County Code Section 14.12.050 would require the Director of Water Supply to "consider" enumerated factors when "reviewing and commenting on an engineering report" under review by the Department of Health. Not all of the enumerated factors will necessarily be relevant to all draft engineering reports. Section 14.12.050 shall not be applicable when the Department of Health does not require a

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new engineering report. Section 14.12.050 is intended to provide the Department of Health with additional information during its inter-agency review period.

- Proposed Maui County Code Section 14.12.060, entitled “Expiration”, is intended to facilitate the Director of Water Supply’s monitoring of the development of new water source and the use of new water meters.

Your Committee voted to recommend passage of the subdivision bill, as revised.

Your Committee is in receipt of a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY”, reflecting your Committee’s revisions.

Your Water Resources Committee RECOMMENDS that Bill No. _____ (2007), attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING ARTICLE 1 OF TITLE 14, MAUI COUNTY CODE, AND TITLE 18, MAUI COUNTY CODE, RELATING TO WATER AVAILABILITY” be PASSED ON FIRST READING and be ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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MICHELLE ANDERSON **Chair**

DAIN P. KANE **Member**

CHARMAINE TAVARES **Vice-Chair**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

JOSEPH PONTANILLA **Member**

JO ANNE JOHNSON **Member**