

**COUNCIL OF THE COUNTY OF MAUI**  
**WATER RESOURCES COMMITTEE**

April 21, 2006

**Committee**  
**Report No.**

\_\_\_\_\_ 06-59

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

Chair and Members:

Your Water Resources Committee, having met on June 15, 2005, August 17, 2005, August 31, 2005, September 14, 2005, October 19, 2005, November 2, 2005, December 7, 2005, December 14, 2005, February 2, 2006, and March 15, 2006, makes reference to County Communication No. 05-46, from Councilmember Michelle Anderson, relating to the rules and governing policies of the Department of Water Supply.

Your Committee notes that an amendment to the Revised Charter of the County of Maui (1983), as amended (Charter), approved by the electorate at the 2002 general election, provided that the Department of Water Supply's governing policies shall be established by ordinance, whereas they had previously been established by Board of Water Supply rules.

Your Committee further notes that the Department of the Corporation Counsel has advised that some previously established Board of Water Supply rules retain their legal effectiveness (until they are superseded by ordinance), whereas other previously established rules were rendered ineffective by the Charter amendment's passage.

By correspondence dated February 4, 2005, the Chair of your Committee transmitted the following correspondence relating to the rules and governing policies of the Department of Water Supply that had been received by the prior Council's Water Resources Committee:

- County Communication No. 03-34, from the Council Chair, relating to Board of Water Supply Rules. (Your Committee notes that County Communication No. 03-34 was filed on January 2, 2005.)
- Correspondence dated February 19, 2003, from the Chair of the Committee transmitting a copy of "RULES AND REGULATIONS OF THE DEPARTMENT OF WATER SUPPLY COUNTY OF MAUI (EFFECTIVE JANUARY 7, 1977)".

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- Correspondence dated February 21, 2003 and June 16, 2003, from the Chair of the Committee, requesting that the Department of the Corporation Counsel provide an updated compilation of the existing rules, and a written response to various questions relating to the rule-making authority of the Board of Water Supply.
- Correspondence dated May 29, 2003, from the Chairperson of the Board of Water Supply, requesting legislative action in response to the Charter amendment.
- Correspondence dated June 19, 2003, from the Chair of the Committee, informing the Chairperson of the Board of Water Supply that the Committee was awaiting legal advice from the Department of the Corporation Counsel before considering legislative action.
- Correspondence dated June 20, 2003, from the Department of the Corporation Counsel, requesting additional time to respond to the Committee.
- Correspondence dated June 24, 2003, from the Department of the Corporation Counsel, advising that some previously established Board of Water Supply rules retain their legal effectiveness (until they are superseded by ordinance), whereas other previously established rules were rendered ineffective by the Charter amendment's passage.
- Correspondence dated July 1, 2003, from the Chair of the Committee, requesting clarification and further information from the Department of the Corporation Counsel.
- Correspondence dated July 28, 2003, from the Department of the Corporation Counsel, providing further advice and information regarding the rules and governing polices of the Department of Water Supply.
- Correspondence dated July 31, 2003, from the Chair of the Committee, transmitting correspondence dated July 28, 2003, from the Department of the Corporation Counsel, to the Board of Water Supply.

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- Correspondence dated August 14, 2003, from the Chair of the Committee, requesting that the Department of the Corporation Counsel provide a brief written description of each of the Board of Water Supply rules that may conflict with the Charter.
- Correspondence dated September 2, 2003, from Alex Garcia, recommending that the Department of Water Supply grant an exception to the Upcountry Water Meter Issuance Rule in order to complete their subdivision on Oili Road in Haiku.
- Correspondence dated September 3, 2003, from Robert Nichols and Sally Raisbeck, providing written testimony regarding the rules and governing policies of the Department of Water Supply to the Committee.
- Correspondence dated April 19, 2004, from the Director of Water Supply, expressing concern about the expiration of the Water Meter Issuance Rules for the Upcountry Water System.
- Correspondence dated May 12, 2004, from the Chair of the Committee, transmitting a copy of correspondence dated September 19, 2003, from Benjamin A. Kudo, Imanaka Kudo & Fujimoto, to the Director of Council Services, expressing an interest in providing water-related legal advice to the Council; and correspondence dated March 24, 2004, from the Central Purchasing Agent, Department of Finance, to Imanaka Kudo & Fujimoto, transmitting a copy of Contract No. C3282 entitled “CONTRACT FOR LEGAL SERVICES FOR WATER-RELATED MATTERS” (\$10,000).

By correspondence dated February 9, 2005, the Chair of your Committee transmitted a document entitled “Rules and Regulations of the Department of Water Supply”.

By correspondence dated June 8, 2005, the Chair of your Committee requested that the Corporation Counsel submit proposed legislation to codify the substantive rules of the Board of Water Supply and Department of Water Supply.

At its meeting of June 15, 2005, your Committee met with the Planning Program Manager, Planning Division, Department of Water Supply; a Deputy Corporation Counsel; and the Chief of Litigation, Department of the Corporation Counsel.

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Your Committee accepted testimony from one person who provided comments on policies and procedures of the Board of Water Supply and Department of Water Supply.

Your Committee discussed the merits and possible means of enabling the Council to exercise its authority under the Charter, and establishing the Department of Water Supply's governing policies by ordinance.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated August 10, 2005, the Chair of your Committee transmitted a draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY". The purpose of the draft bill is to establish the Board of Water Supply's duties to promulgate rules and hear appeals.

At its meeting of August 17, 2005, your Committee met with the Director of Water Supply; the Planning Program Manager, Planning Division, Department of Water Supply; and a Deputy Corporation Counsel.

The Chairperson of the Board of Water Supply, and one individual provided comments on policies and procedures of the Board of Water Supply and Department of Water Supply.

The Deputy Corporation Counsel advised your Committee that the draft bill, by granting power to the Board of Water Supply, might not be consistent with the 2002 Charter amendment, which repealed the Board of Water Supply's semiautonomous status. He noted that Section 8-11.3 of the Charter establishes the Board of Water Supply as an advisory body.

The Chair of your Committee noted that Section 8-11.4(3), of the Charter also states that the Board of Water Supply shall "[p]erform such other duties and functions as shall be prescribed by law."

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated August 18, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel review and approve the draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY".

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By correspondence dated August 18, 2005, the Chair of your Committee requested that the Board of Water Supply comment on the draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY".

At its meeting of August 31, 2005, your Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

Your Committee accepted testimony from one person who provided comments on policies and procedures of the Board of Water Supply and Department of Water Supply.

Your Committee discussed the merits and possible means of legislating an appeals process for persons seeking redress of Department of Water Supply decisions and actions.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 13, 2005, the Chair of your Committee transmitted various sections of the Maui County Code, relating to policies and procedures on appeals.

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

There was no public testimony.

Your Committee noted that no responses had been received in reply to the correspondence dated August 18, 2005, from the Chair of your Committee to the Department of the Corporation Counsel and the Board of Water Supply, respectively.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated September 27, 2005, the Director of Water Supply stated that "the public is entitled to and needs an appellate board to which it can appeal decisions of the Department of Water Supply and its Director".

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By correspondence dated September 30, 2005, the Chair of your Committee transmitted a copy of a letter to the editor from the September 15, 2005 issue of *The Maui News*, entitled "Department problems need a tough new Mayor", from Frank, Alec and John Gomes.

By correspondence dated September 30, 2005, the Chair of your Committee transmitted correspondence dated August 25, 2005, from Roman Czerwinski to Councilmember Michael J. Molina, providing comments on policies and procedures of the Board of Water Supply and Department of Water Supply.

By correspondence dated October 12, 2005, the Chair of your Committee transmitted a copy of correspondence dated September 15, 2005, from Gregg Blue, on behalf of the Haiku Community Association, to the Director of Water Supply, requesting that he respond to questions about the use and allocation of water in the County.

At its meeting of October 19, 2005, your Committee met with the Director of Water Supply, an Engineer from the Department of Water Supply, and a Deputy Corporation Counsel.

There was no public testimony.

The Chair of your Committee provided a document entitled "Maui County Administrative Rule, Title 16, Chapter 106, Water Meter Issuance Rule for the Upcountry Water System".

The Department of Water Supply's representatives responded to your Committee's questions about the issuance of water meters in the Upcountry area.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 26, 2005, the Chair of your Committee transmitted a template entitled "Agreement Authorizing Waiver for Subdivision Water Systems".

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By correspondence dated October 27, 2005, the Vice Chairperson of the Board of Water Supply informed your Committee that the Board unanimously voted to support the draft bill, entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY", which would empower the Board to adjudicate appeals.

At its meeting of November 2, 2005, your Committee met with the Director of Water Supply; the Planning Program Manager, Planning Division, Department of Water Supply; and a Deputy Corporation Counsel.

The Chair of your Committee provided a copy of correspondence dated March 29, 2005, from the Department of the Corporation Counsel, regarding the issuance of a water meter for a property located in a subdivision where the existing water system improvements do not meet or conform to current departmental standards.

The Department of the Corporation Counsel provided a copy of a draft bill entitled "A BILL FOR AN ORDINANCE ADDING TITLE 14, MAUI COUNTY CODE, RELATING TO PUBLIC SERVICES". The purpose of the draft bill is to establish Article 1 in Title 14 of the Maui County Code, which would contain the governing policies of the Department of Water Supply.

In public testimony and written testimony, the Chairperson of the Board of Water Supply reiterated the Board's support for the draft bill, entitled "A BILL FOR AN ORDINANCE RELATING TO THE DUTIES OF THE BOARD OF WATER SUPPLY", which would authorize the Board to adjudicate appeals. He noted that the Board has already been hearing appeals. His written testimony stated: "Mayor Arakawa handed this responsibility of Appeal process back to the Board last year."

Your Committee conducted a lengthy discussion on the merits and possible means of legislating an appeals process for persons seeking redress of Department of Water Supply decisions and actions.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated November 4, 2005, the Chair of your Committee requested written documentation of the Mayor's action in purporting to grant appellate authority to the Board of Water Supply.

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By correspondence dated November 14, 2005, the Mayor informed your Committee that the Director of Water Supply announced the Mayor's preference to refer appeals to the Board of Water Supply for a recommendation at the Board meeting of October 27, 2004.

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

There was no public testimony.

Your Committee requested that the Administration provide an updated list of applicants for Upcountry water meters.

Your Committee deferred consideration of the matter pending further discussion.

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

There was no public testimony.

The Director of Water Supply provided your Committee with a document entitled "UPCOUNTRY WATER SERVICE: Priority List for Building Permit Applications, Subdivisions & Water Service Requests" and answered your Committee's questions about the document's maintenance.

The Director noted that the list has been compiled and maintained pursuant to the Water Meter Issuance Rule for the Upcountry Water System, which was adopted pursuant to the Board of Water Supply's rule-making authority prior to the 2002 Charter amendment. The Rule states that the list applies to the entire Upcountry Water System, that its purpose is to provide uniform handling of applications for water service from a "priority list", and that the priority list is the compilation of applications in the order received by the Department of Water Supply pursuant to a legal notice published in *The Maui News* on November 2, 1994 for applicants who were previously denied additional water service.



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The Director explained that the Upcountry Water System's priority list currently includes 1,071 requests, organized in chronological order. The applicant at the top of the list has first priority for water service. If that applicant declines water service when offered by the Department of Water Supply, the applicant is either removed from the priority list or placed at the bottom of the list pursuant to the applicant's request.

Your Committee deferred consideration of the matter pending further discussion.

At its meeting of February 2, 2006, your Committee met with the Director of Water Supply and a Deputy Corporation Counsel.

Your Committee accepted testimony from one person who offered suggestions on water policies for environmental and cultural preservation.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated March 8, 2006, the Chair of your Committee transmitted a draft bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE COUNTY WATER CODE". The purpose of the draft bill is to establish the County Water Code. The draft bill would establish Article 1 in Title 14 of the Maui County Code, which would contain the governing policies of the Department of Water Supply.

At its meeting of March 15, 2006, your Committee met with the Director of Water Supply and two Deputy Corporation Counsel.

There was no public testimony.

The Chair of your Committee provided a revised draft bill, entitled "A BILL FOR AN ORDINANCE RELATING TO THE COUNTY WATER CODE", adding a new section to provide that water from wells located in a contaminated aquifer underneath active agriculture shall not be provided for human consumption.

Your Committee reviewed the revised draft bill, entitled "A BILL FOR AN ORDINANCE RELATING TO THE COUNTY WATER CODE", and noted that this legislation could establish a framework for the codification of current and future water policies.

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Your Committee noted that, earlier in its meeting and at prior meetings, it had engaged in a comprehensive review of environmental and health concerns relating to the use of the Hamakuapoko wells for drinking water. Your Committee further noted that DBCP (dibromochloropropane) has been found in the Hamakuapoko wells. DBCP is a carcinogenic synthetic organic chemical that was formerly used to fumigate the soil in pineapple fields.

Earlier in its meeting, your Committee voted to recommend adoption of a proposed resolution urging the Administration to not use the Hamakuapoko wells for drinking water, citing health risks arising from agricultural pesticides.

Your Committee observed that this policy judgment should be equitably applied throughout the County. Consequently, the Chair of your Committee proposed that the revised draft bill be further revised to provide that water from wells located in a contaminated aquifer underneath active agriculture shall not be provided for human consumption, and to define "contaminated aquifer" as "an aquifer containing DBCP and other chemicals deemed hazardous to human health". The Chair of your Committee noted that the State Department of Health's Environmental Management Division could provide assistance in applying this standard.

Your Committee carefully reviewed the proposed amendment. The Chair of your Committee stated that, if approved, the proposed amendment would state an unambiguous and consistent County policy to direct both the Department of Water Supply and private water users in the development of future water resources. With this prohibition, the County would be encouraging the development of safe water sources not connected with active agricultural fields.

Your Committee notes that the legislative intent of the proposed amendment, as reflected in your Committee's deliberations, is for prospective application of the prohibition on the use of water from wells located in a contaminated aquifer underneath active agriculture. There is no legislative intent for the prohibition to apply to current water uses that meet existing legal requirements.

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To protect the health of Maui County residents and engender justifiable public confidence in the safety of all drinking water in the County, your Committee expressed its concurrence with the purpose and intent of the proposed amendment. Therefore, your Committee unanimously voted to recommend passage of the revised draft bill to provide that water from wells located in a contaminated aquifer underneath active agriculture shall not be provided for human consumption.

Your Committee is in receipt of 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", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's revisions.

Your Water Resources Committee RECOMMENDS that Bill No. \_\_\_\_\_ (2006), attached hereto, 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", be PASSED ON FIRST READING and be ORDERED TO PRINT.

Adoption of this report is respectfully requested.

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**MICHELLE ANDERSON** **Chair**

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**DAIN P. KANE** **Member**

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**CHARMAINE TAVARES** **Vice-Chair**

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**MICHAEL J. MOLINA** **Member**

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**ROBERT CARROLL** **Member**

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**JOSEPH PONTANILLA** **Member**

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**JO ANNE JOHNSON** **Member**