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OFFICE OF THE
COUNTY COUNCIL

July 17, 2019

MEMO TO: GET Committee Staff

F R O M: Tasha Kama
Councilmember



SUBJECT: **TRANSMITTAL OF CORRESPONDENCE RELATING TO PENDING
COMMITTEE ITEM** (GET-26)

The attached correspondence received by my office relates to Item 26 on the Committee's master agenda.

TK/TK/EPD/epd

Attachments

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
Alice L. Lee
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

May 29, 2019

Honorable David Ige
Governor of Hawaii
Executive Chambers
State Capitol
Honolulu, Hawaii 96813

Dear Governor Ige:

**SUBJECT: DEPARTMENT OF HEALTH NON-PARTICIPATION IN
MAUI COUNCIL'S CONSIDERATION OF HAWAII
WILDLIFE FUND ET AL V. COUNTY OF MAUI, CIVIL
12-00198 SOM BMK, U.S. SUPREME COURT
DOCKET 18-260**

As a follow-up to the May 21, 2019, telephone discussion with your representative on Maui, Leah Belmonte, and given the inability of Maui Council to take any action in its consideration of a possible settlement of *Hawaii Wildlife Fund et al v. County of Maui*, I write to you, as an individual member of County Council, to urge you to direct the Hawaii Department of Health (DOH) to provide technical information and support to Maui County Council when it again considers this matter.

On May 20, 2019, the Governance, Ethics and Transparency (GET) Committee of Maui County Council met to receive testimony, presentations from County staff and from the attorneys representing Hawaii Wildlife Fund et al. The large volume of information required the GET Committee Chair, Councilmember Molina, to recess the meeting to May 23, 2019. On that date, the GET Committee went into executive session to receive information from staff on the technical and legal issues involved in the case.

At the conclusion of our executive session, several questions remained with Council that could have been easily addressed by Hawaii DOH staff, in my

Honorable David Ige, Governor of Hawaii
May 29, 2019
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opinion. For example, if the Ninth Circuit ruling regarding point sources of effluent that are hydrologically-connected to the "waters of the United States" stands, such that they become governed by the Clean Water Act rather than the Safe Drinking Water Act, the DOH would be responsible for addressing enforcement of any new requirement for National Pollution Discharge Elimination System (NPDES) permitting. As such, DOH could answer the question that Council had regarding the likelihood that the DOH would enforce NPDES permit requirements on other point sources, such as existing septic systems and cesspools.

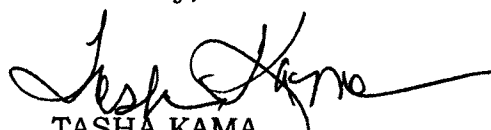
Committee members have questions regarding the difference between the County's existing Underground Injection Control (UIC) permit and the NPDES permit the County would be required to obtain, if the Ninth Circuit Court decision stands. Since Hawaii DOH is the regulator for both the UIC and the potential NPDES permit, DOH would be able to provide the best understanding of the technical differences between the permits and would likely be viewed by Councilmembers as neutral on this topic.

The Chair of our GET Committee, Councilmember Molina, is on record expressing his similar disappointment in the lack of participation by Hawaii DOH (not that I am empowered to speak on his behalf).

This matter has been deferred to a date uncertain by the inability of the GET Committee to take action. I certainly hope that you will consider the challenges faced by the County of Maui in this period of deferral.

For these reasons, I strongly urge you, in my role as a representative of the people residing in Maui County, to ask your Department of Health to participate in future discussions to be held by the GET Committee of Maui County Council.

Sincerely,


TASHA KAMA
Councilmember

TK/EPD/epd

cc: Councilmember Mike Molina (Chair of Governance, Ethics, and Transparency Committee)
Council Chair Kelly King
Corporation Counsel Moana Lutey
Deputy Corporation Counsel Richelle Thomson

DAVID Y. IGE
GOVERNOR OF HAWAII

BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HI 96801-3378

In reply, please refer to:
File:
1906032 (GOV)

June 18, 2019

The Honorable Tasha Kama
Councilmember
County Council
County of Maui
200 S. High Street
Wailuku, Hawai'i 96793

Dear Councilmember Kama:

This is in response to your letter to Governor Ige, dated May 29, 2019, in which you urged him to direct the Hawai'i Department of Health (DOH) to provide technical information and support to Maui County Council regarding the County's case before the United States Supreme Court, Hawai'i *Wildlife Fund et al. v. County of Maui*, Docket 18-260.

My responses to your two (paraphrased) questions are as follows:

1. *If the 9th Circuit ruling regarding point sources of effluent that are hydrologically-connected to the "waters of the United States" stands, ... [what is] the likelihood that the DOH would enforce NPDES permit requirements on other point sources, such as existing septic systems and cesspools?*

Response: DOH has no plans to enforce NPDES permit requirements against existing septic systems and cesspools.

2. *What are the technical differences between the County's existing Underground Injection Control (UIC) permit and the NPDES permit the County would be required to obtain if the 9th Circuit decision stands?*

Response: This question cannot be answered briefly. There are numerous technical differences between these two types of permits, as they are pursuant to different statutes and rules (Safe Drinking Water law, HRS ch. 340E and HAR ch. 11-23, versus Hawai'i Water Pollution statute, HRS ch. 342D and HAR chs. 11-54 and 11-55).

The Honorable Tasha Kama
June 18, 2019
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DOH would like to see greater beneficial reuse of wastewater under both programs and would be happy to discuss with the County of Maui how to achieve that goal. Please contact me at (808) 586-4424 or via email at keith.kawaoka@doh.hawaii.gov.

Sincerely,



KEITH E. KAWAOKA, D. Env.
Deputy Director for Environmental Health

c: The Honorable David Y. Ige
Bruce S. Anderson, Ph.D., Director of Health
Edward Bohlen, Deputy Attorney General

Council Chair
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www.MauiCounty.us

June 26, 2019

Keith E. Kawaoka
Deputy Director for Environmental Health
State of Hawaii
Department of Health
PO Box 3378
Honolulu HI 96801-3378

Dear Deputy Director Kawaoka:

**SUBJECT: LETTER OF JUNE 18, 2019 - HAWAII WILDLIFE
FUND *et al.* v. COUNTY OF MAUI (YOUR FILE
1906032 (GOV))**

Thank you for your letter in response to my communication to Governor Ige.

While you did respond to the questions that you drew from my letter to the Governor, this form of communication is lacking compared to having an authorized representative of the Department of Health available to Maui County Council to respond to our questions. For example, your reply to my question regarding the potential of DOH enforcement of Clean Water Act provisions to other point sources may be valid at this particular point in time. The follow-on question to your response would be, if the 9th Circuit ruling stands, what prevents a private party, such as the current plaintiffs or similar parties, from bringing suit against DOH for its now stated position of not enforcing the Clean Water provisions against existing owners/operators of septic systems. I believe we need interaction between Maui County Council, who has the authority to either allow our case to proceed to the United States Supreme Court or accept the settlement offered by the plaintiffs, and the State of Hawaii Department charged with enforcing whatever results from this case.


Deputy Director Kawaoka
State Department of Health
June 26, 2019
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Your response to the question about the technical differences between the existing UIC permit and NPDES permit that, "This question cannot be answered briefly" emphasizes the value of having direct exchange of information. To me your response suggests that the NPDES permit is a technically inappropriate regulation for point sources like injection wells and septic tanks.

For the reasons noted in this letter, I respectfully request that if and when this matter is reconsidered by Maui County's Governance, Ethics and Transparency Committee, that an authorized representative(s) of the Department of Health attend that meeting. Without the direct participation of the State Department of Health in our discussions of this matter, I remain convinced that it would be in the interest of Maui County and its residents to allow the United States Supreme Court to bring clarity to this issue.

I respectfully request that any response to this and any future letters on this matter be directed to Maui Council's Governance, Ethics and Transparency (GET) Committee so that my colleagues on that committee can benefit for your response.

Sincerely,



TASHA KAMA
Councilmember

TK/EPD/epd

cc: Honorable Governor David Ige