

REQUEST FOR LEGAL SERVICES

D a t e: October 31, 2025
F r o m: Tom Cook, Chair
Water and Infrastructure Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Caleb P. Rowe, Esq.

Subject: **BILL 160 (2025), AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR THE WAI MAOLI: FRESH WATER INITIATIVE** (WAI-19)

Background Data: Please opine on the attached questions related to Bill 160 (2025). Please submit your response to wai.committee@mauicounty.us with a reference to WAI-19.

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY
☒ OTHER: Legal Opinion

Requestor's signature  Tom Cook, Chair	Contact Person <u>Keone Hurdle or Carla Nakata</u> (Telephone Extension: <u>7659 or 5519</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 7, 2025
REASON: For consideration at the November 17, 2025, WAI Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____
(Rev. 7/03)

wai:ltr:019acc01:kjh

Attachments

ORDINANCE NO. _____

BILL NO. 160 (2025)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY, THE COUNTY OF HAWAI'I DEPARTMENT OF WATER SUPPLY, THE COUNTY OF KAUAI DEPARTMENT OF WATER SUPPLY, THE STATE OF HAWAI'I DEPARTMENT OF LAND AND NATURAL RESOURCES, THE STATE OF HAWAI'I DEPARTMENT OF AGRICULTURE, AND THE STATE OF HAWAI'I DEPARTMENT OF HEALTH, FOR THE WAI MAOLI: FRESH WATER INITIATIVE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The County of Maui Department of Water Supply, the City and County of Honolulu Board of Water Supply, the County of Hawai'i Department of Water Supply, the County of Kaua'i Department of Water Supply, the State of Hawai'i Department of Land and Natural Resources, the State of Hawai'i Department of Agriculture and the State of Hawai'i Department of Health seek to enter into an intergovernmental agreement for the Wai Maoli: Fresh Water Initiative as described in the Memorandum of Understanding attached as Exhibit "1."

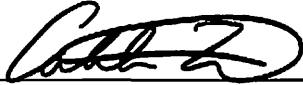
Section 2.20.020, Maui County Code, provides, "Unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof."

SECTION 2. Under Section 2.20.020, Maui County Code, the Council authorizes the Mayor or the Mayor's authorized representative to execute the

Memorandum of Agreement and any amendments consistent with the purpose and scope of the Memorandum of Agreement that do not increase the County's financial obligation or the agreement's duration.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE
Department of the Corporation Counsel
County of Maui
IGA 2025-1461 DRAFT

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris Lee", is written over a horizontal line.

Upon the request of the Mayor.

EXHIBIT "1"

FRESHWATER INITIATIVE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding aims to secure Hawai'i's freshwater by sharing expertise in the adoption of a One Water approach tailored to each island's unique needs.

DEFINITIONS:

Members: Signatories of this MOU, County and State entities

Resource Participants: Other contributing individuals, organizations or companies.

BACKGROUND: Fresh water is the foundation of economic and environmental sustainability for Hawai'i, but our supply is increasingly threatened by precipitating factors of climate change and a growing population.

In 2013, the Hawai'i Community Foundation (HCF) launched Wai Maoli: Hawai'i Fresh Water Initiative (FWI) to address water supply issues in Hawai'i. This initiative set ambitious goals for conservation, recharge, and reuse with over 30 recommended policies and changes to be implemented by 2030. Wai Maoli FWI.

The FWI aimed to secure an additional 100 million gallons per day of reliable freshwater for our islands by 2030. HCF brought together diverse stakeholders, including agriculture, private landowners, scientists, and government representatives, collectively, the Members and Resource Participants who developed the Freshwater Blueprint and have contributed to its implementation over the past decade with notable progress. Freshwater Blueprint

HCF's philanthropy organized and supported the FWI for over a decade contributing their leadership, energy and resources, of which the Members and Resource Participants are very appreciative. In return, the Members and Resource Participants express our commitment to extending our collaborative efforts, funding and in-kind services toward the FWI goals.

Over the past decade, a *One-Water* concept has been adopted nationally and used by many states, including Hawai'i. This approach provides an integrated method for planning and implementing the management of finite water resources to ensure long-term resilience and reliability, meeting the needs of both communities and ecosystems.

WHEREAS, water, in all forms, is critical for Hawai'i's natural and built systems and managing it sustainably will be essential as the pressures of growth and development, aging infrastructure, and climate change and sea level rise increase over time; and

WHEREAS, Hawai'ian ahupua'a management acknowledges that all parts of a watershed, from mauka to makai, are interconnected, and activities carried out in one portion of a watershed can affect the rest of the watershed; and

WHEREAS, climate change is creating significant challenges for Hawai'i, including decreasing precipitation trends, increased runoff, erosion, flooding, drought, and saltwater intrusion that threaten ecosystems, water supply, freshwater sources, and agriculture;

WHEREAS, a *One-Water* approach can meet the FWI goals by managing finite water resources through integrated planning and implementation to ensure long-term resilience and reliability for both community and ecosystem needs.

WHEREAS, a *One-Water* approach can create resource and financial efficiencies in the natural and urban water cycles by managing stormwater, wastewater, groundwater, seawater, freshwater, graywater, and recycled water as an integrated resource, including roadways, buildings, parks, trees, treatment plants, pumping stations, and water distribution, drainage and wastewater collection systems.

WHEREAS, Honolulu County has developed it's One Water Honolulu program, providing useful insights for other Counties. A *One-Water* approach can help share information, skills, experience, and collaboration opportunities, enhancing existing financial and human resources by pooling them together and leveraging other sources, while respecting each County's unique resources and conditions.

NOW, THEREFORE, by this document, the Members and Resource Participants listed will work collaboratively to assist in the integrated planning and implementation of *One-Water* projects to meet the FWI goals, while respecting each County's unique resources and conditions. This MOU will assist the parties in identifying resources and opportunities for the achievement of agreed-upon objectives including:

1. Maximize efficiencies, minimize waste, and integrate management of water resources across freshwater, stormwater, and wastewater; and
2. Align key stakeholders to encourage public support in implementing adaptation and climate resilience actions
3. Establish working groups to coordinate on topical areas as needed. These may include climate change adaptation planning, projects and programs, design guidelines and standards, research, or other topical working groups that would be appropriate and useful.

COMMITMENTS:

1. Meetings will be held at agreed locations and intervals, at least quarterly, to discuss programs, projects, and objectives. Honolulu County will chair the meetings for the first year following execution of this MOU. Each year will be hosted by a rotating chair from Members and Resource Participants. Support for the meetings will be provided through a contractor to manage the administrative burden for the chair.
2. Contributions of necessary resources to support a multi-year work plan. This may involve allocating staff time for meeting coordination, pooling resources, shared funding for a long-term coordinator position, and other essential resources or capacities as collectively determined.

3. Seeking opportunities to obtain funding to implement agreed upon objectives, including collectively working on and developing applications for Federal funding and external financing.
4. The Members and Resource Participants will employ a consensus-based approach in making decisions in the interest of maintaining the broadest base of support.

GROUND RULES:

In recognition of the diverse perspectives, experiences, and responsibilities represented in this cross-sector partnership, all parties to this Memorandum of Understanding (MOU) commit to the following principles to guide our interactions and ensure a collaborative, respectful, and productive environment:

1. **Creating a Safe and Inclusive Space**
We commit to fostering an environment where all voices are heard and respected. Each participant should feel comfortable contributing ideas, raising concerns, and sharing perspectives without fear of dismissal or judgment.
2. **Engaging in Open, Candid Dialogue**
We value transparency, curiosity, and the free exchange of ideas. Honest and constructive conversations especially around complex or sensitive topics are essential. We commit to active listening and to addressing challenges directly, with a shared focus on problem-solving and learning.
3. **Removing Institutional Hats**
While we each bring expertise and responsibilities from our respective sectors, we also recognize the value of stepping beyond organizational roles when appropriate. In such moments, we agree to “take off our hats” and engage in person-to-person dialogue to build mutual understanding, strengthen trust, and advance shared goals.
4. **Assuming Positive Intent**
We approach all interactions with a mindset of goodwill and respect. When differences arise, we seek clarification before making assumptions, recognizing that our varied backgrounds may influence how we communicate and interpret information.
5. **Respecting Confidentiality and Trust**
Certain discussions may require discretion to allow for open, strategic dialogue. We agree to respect the confidentiality of those conversations as appropriate, and to protect the integrity of the relationships being built through this partnership. Nothing herein shall be construed to limit the obligations of Members under Hawai‘i’s public records and open meeting laws.
6. **Acknowledging and Embracing Differences**
We recognize the strengths that come from engaging across sectors and cultures. We strive to understand and honor each other’s priorities, constraints, and contributions—working collaboratively to bridge differences and identify common ground.
7. **Committing to Growth and Accountability**
As this partnership evolves, so too will our approach to communication and collaboration. We commit to regularly revisiting these ground rules, welcoming feedback, and holding ourselves and each other accountable to the values and intentions we have outlined here.

MISCELLANEOUS CONDITIONS:

1. The Members and Resource Participants may allow additional Resource Participants to join, if such addition is agreed to by consensus of the current Members and Resource Participants.
2. This MOU may be modified at any time by amendment. Amendments to the MOU must be agreed to in writing by all Members and Resource Participants. This MOU shall not modify the existing authority of any Member, nor shall it reduce, expand, or transfer any of the statutory or regulatory authorities or responsibilities of any such Member.
3. Any Member may terminate its participation in this MOU by providing thirty (30) days written notice to all Members.
4. Nothing in the MOU shall be construed as a commitment to providing financial resources in violation of County, State or Federal laws.
5. Members and Resource Participants are not obligated to commit resources, commit use of their lands or participate in obtaining funds unless such commitments are part of a specific and separate written agreement executed by the Member(s) and Resource Participants. Expenditures will be determined by separate and specific written agreements entered by the Members and Resource Participants.
6. This Agreement may be executed in counterparts, utilizing electronic signatures, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original and said counterpart together shall constitute one and the same instrument. Copies shall have the same effect as original ink signatures.

IN WITNESS WHEREOF, the MEMBERS and Resource Participants have executed this MOU by their signatures on the dates below.

MEMBERS SIGNATURE PAGES TO FOLLOW

HONOLULU BOARD OF WATER SUPPLY

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

HAWAI'I DEPARTMENT OF WATER SUPPLY

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

MAUI DEPARTMENT OF WATER SUPPLY

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

KAUAI DEPARTMENT OF WATER

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF LAND AND NATURAL RESOURCES

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF AGRICULTURE

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

DEPARTMENT OF HEALTH

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

RESOURCE PARTICIPANTS

Hawai'i Community Foundation

By: _____

Title: _____

Date: _____

ITC Water Management, Inc.

By: _____

Title: _____

Date: _____

Kamehameha Schools

By: _____

Title: _____

Date: _____

Michael Buck

By: _____

Title: _____

Date: _____

Mark Fox

By: _____

Title: _____

Date: _____

Queen Emma Land Trust

By: _____

Title: _____

Date: _____

Section 2.20.020, Maui County Code, provides that, “Unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.”

Code Section 2.20.020 defines an “obligation” to mean “any commitment, promise, or similar representation contained in an intergovernmental agreement that the county or any agency thereof will provide funds, documents, statistical data or any professional or technical service, or establish any rules, regulations, or other law within the county to any other governmental or quasi-governmental agency.”

On page 2 of the proposed Memorandum of Understanding, Commitment 2 reads:

Contributions of necessary resources to support a multi-year work plan. This may involve allocating staff time for meeting coordination, pooling resources, shared funding for a long-term coordinator position, and other essential resources or capacities as collectively determined.

Page 4 of the proposed MOU contains a Miscellaneous Condition 5 that reads:

Members and Resource Participants are not obligated to commit resources, commit use of their lands or participate in obtaining funds unless such commitments are part of a specific and separate written agreement executed by the Member(s) and Resource Participants. Expenditures will be determined by separate and specific written agreements entered by the Members and Resource Participants.

Please advise whether the proposed MOU places a financial obligation on the County and explain the source of the financial obligation. Please note that, if the County has a financial obligation under the MOU, Section 2 of the bill does not authorize the Mayor to execute any amendments to the MOU that increase that obligation.