May 9, 2022

MEMO TO: APT-1(6) File

F R O M: Shane M. Sinenci, Chair
Agriculture and Public Trust Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO PROPOSED CHARTER AMENDMENT TO ESTABLISH THE EAST MAUI COMMUNITY WATER AUTHORITY** (APT-1(6))

The attached legislative proposal pertains to Item 1(6) on the Committee's agenda.

apt:ltr:001(6)afile01:ans

Attachment

Resolution

No. 22-119

PROPOSING AN AMENDMENT TO THE
REVISED CHARTER OF THE COUNTY OF MAUI
(1983), AS AMENDED, TO ESTABLISH THE
EAST MAUI COMMUNITY WATER AUTHORITY

WHEREAS, the County Council proposes that the question be placed on the next General Election ballot of whether the Revised Charter of the County of Maui (1983), as amended ("Charter"), should be further amended to establish the East Maui Community Water Authority; and

WHEREAS, the County provides domestic and agricultural water to its residents, businesses, farmers, and ranchers and relies upon surface water from the Nāhiku, Ke'anae, Honomanū, and Huelo State of Hawaii License Areas ("License Areas") granted by the State of Hawai'i and situated in Makawao and Hāna to fulfill these needs; and

WHEREAS, the State of Hawai'i Department of Land and Natural Resources ("DLNR") Land Division is in the process of issuing 30-year water lease agreements for these License Areas; and

WHEREAS, the demand for water in the County continues to increase because of population growth, the need to enhance agricultural production to achieve food security, increasing drought conditions, and other environmental factors, and this increasing demand requires long-term, efficient, transparent, equitable, and community-oriented management of watersheds and water resources in the License Areas; and

WHEREAS, Article XI, Section 7 of the State of Hawai'i Constitution states: "The state has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people"; and

WHEREAS, the public trust doctrine mandated by the Hawai'i State Supreme Court in the Waiāhole Ditch case of 2000 and the Kaua'i Springs case of 2014 requires the management of water resources to achieve the most equitable and beneficial allocation of water resource; and

WHEREAS, the four public trust uses of water are: (1.) domestic use, such as drinking water; (2.) Native Hawaiian traditional and cultural

practices, (3.) "the maintenance of waters in their natural state," in the Supreme Court's words; and (4.) use by the Hawaiian Homes Commission for homestead needs; and

WHEREAS, East Maui Irrigation ("EMI") is applying for a 30-year water lease for the License Areas; and

WHEREAS, Alexander & Baldwin, Inc. and Mahi Pono Holdings, LLC both have 50 percent interest in EMI; and

WHEREAS, Mahi Pono Holdings, LLC's sole investor and member-owner is one of Canada's largest pension fund managers, Public Sector Pension Investment; and

WHEREAS, approval of a 30-year water lease to EMI would place a significant amount of Maui County's water resources under the control of a foreign, for-profit investor entity; and

WHEREAS, a Temporary Investigative Group ("TIG") was formed by the Maui County Board of Water Supply to explore the feasibility of purchasing and maintaining the EMI water-delivery system and examine alternatives for ensuring the people of Maui County have authority over the delivery of water; and

WHEREAS, the TIG's report, dated December 19, 2019, included the following primary recommendation: "Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Keʻanae, Honomanū, and Huelo License Areas"; and

WHEREAS, on January 6, 2022, the Board of Water Supply unanimously voted to encourage the County to pursue the feasibility of acquiring the water leases and to contact DLNR as soon as possible to determine the next steps for doing so; and

WHEREAS, on January 7, 2022, the Council adopted Resolution 22-4, FD1, which did the following:

1. Urged the Mayor to propose an intergovernmental agreement with the State of Hawaiʻi's Board of Land and Natural Resources to provide a long-term, reliable, and affordable source of water for County domestic and agricultural use;

2. Directed the Council Chair to transmit correspondence expressing interest in pursuing the long-term water leases for the County of Maui to Suzanne D. Case, Chairperson, Board of Land and Natural Resources;

3. Expressed concern with issuing these long-term water leases to private, for-profit entities; and

4. Supported the Board of Water Supply's Temporary Investigative Group recommendation that Maui County should immediately apply for a long-term (Water Lease) for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas; and

WHEREAS, by correspondence dated January 21, 2022, the Council Chair notified DLNR of the Council's interest in pursuing the long-term East Maui water leases; and

WHEREAS, the majority of municipal wholesale regional water systems in the United States are managed by water authorities; and

WHEREAS, the establishment of the East Maui Community Water Authority with a community board and a staff with expertise in water-system operations, public financing, grant acquisition, and watershed management would ensure management of the area's water resources in a competent, transparent, and fiscally and environmentally responsible manner that serves the public interest; and

WHEREAS, as a government agency, the East Maui Community Water Authority would have an unambiguous obligation to uphold the public trust doctrine and the legal obligations of the Hawaiian Homes Commission Act and the State of Hawai'i Constitution; and

WHEREAS, as a government agency, the East Maui Community Water Authority would have the ability to obtain significant private, State, and federal funding not available to private, for-profit entities to manage and upgrade the water-delivery system and to protect the watershed in the License Areas; and

WHEREAS, if the East Maui Community Water Authority were granted a lease rate comparable to those granted to the private lessee, the

cost savings, additional revenue, and additional funding could be used to finance needed repairs and maintenance of the system, reduce water costs for local farmers, decrease water rates, and restore the watershed in the License Areas; and

WHEREAS, if the East Maui Community Water Authority completed repairs and maintenance of the system, and restored the watershed, more water would be available to be returned to streams, and for domestic and agricultural users, including the Department of Hawaiian Home Lands; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That in accordance with Charter Section 14-1, it proposes that Article 8 of the Charter be amended by adding a new chapter to read as follows:

"CHAPTER 19
EAST MAUI COMMUNITY WATER AUTHORITY

Section 8-19.1 Organization. There is an East Maui community water authority, also referred to as the "water authority" or "agency," consisting of a community board, administrator, public finance specialist, engineering supervisor and maintenance staff, watershed management supervisor, and community engagement specialist to fulfill the agency's duties and functions.

Section 8-19.2 Community Board. The community board must consist of eleven members. Eight members must: (a) have experience in water resource management and watershed restoration in the License Areas of Nāhiku, Ke'anae, Honomanū, and Huelo; and (b) be residents of the License Areas, with two each from Nāhiku, Ke'anae, Honomanū, and Huelo. Of these eight members, four must be appointed by the council, and four members must be appointed by the mayor. The three remaining members must be appointed by the council based on the following requirements: one member with experience in water resource management who is actively engaged in ranching or farming in the Upcountry residency area; one member who is a representative of the Hawaiian Homes Commission; and one member who is a representative of the owner of water system infrastructure in a License Area. The director of finance, the director of water supply, the councilmember holding residency area seat for East Maui, and the chair of the council committee

with jurisdiction over water issues are non-voting, ex-officio members of the board.

Section 8-19.3 Community Board Duties and Functions. The board performs the following duties and functions:

1. Review the preliminary assessments, studies, and environmental reports prepared by or for the agency.
2. Approve a long-term watershed management plan, review the plan annually, and provide a written evaluation of each plan goal and implementation status.
3. Provide an annual evaluation of the administrator to the mayor and the council.
4. Provide written comments on the agency's long-term capital improvement plan, annual maintenance plan, annual report, and annual operating budget, including recommendations on water rates and the agency's federal, state, and private funding plan.
5. Review the agency's request to the mayor for annual appropriations.
6. Hold at least two annual public community meetings in each Licensing Area with opportunities for written and oral public testimony.

Section 8-19.4 Administrator. The water authority administrator must be appointed by the mayor and approved by the council, and may be removed by the council. The salary of the administrator must be set by ordinance. The administrator must meet the following minimum qualifications:

1. Five years of experience in the management of a water system, either in public service or private business or both, including three years of experience in one or more of the following functions:
    a. Administering operations of a water purveyor, including day-to-day management and control of water systems.
    b. Preparing and implementing long-range capital improvement plans and up-to-date water use and development plans.
    c. Preparing an annual operating and capital budget.
2. As part of or in addition to the five years of management experience, three years of responsible budgetary and rate setting experience.
3. Three years of experience or the equivalent education in watershed management and a willingness to learn native

Hawaiian water resource management and ahupua'a connectivity systems.

4. Experience in community engagement and public outreach campaigns.
5. A bachelor's degree from an accredited college or university in engineering, water resources, business administration, public administration, or other relevant discipline, or a combination of education and work experience substantially equivalent to such bachelor's degree.

Section 8-19.5 Powers, Duties, and Functions. The water authority may prepare environmental impact statements and, when approved by council by resolution, may enter into intergovernmental agreements and acquire property interests by use of eminent domain. The water authority must:

1. Provide a report to the mayor and the council within twelve months of the appointment of the administrator, including a general assessment of the water collection and delivery system located on State land; a proposed operation, maintenance, and capital improvement plan; an overview of state, federal, or other grants available for system operation, maintenance, and capital improvements; a business model including power generation options; and an overview of Department of Land and Natural Resources intergovernmental agreement process, requirements, and stipulations.
2. Develop and implement a long-term capital improvement and annual maintenance plan for the water collection and delivery system.
3. Develop and implement a watershed management plan in partnership with the regional community.
4. Obtain state, federal, or private funding for system operation, maintenance, and capital improvements.
5. Submit to the mayor the agency's request for annual appropriations for operations and capital improvements.
6. Provide an annual report which must include the agency's watershed management plan; operating, maintenance, and long-term capital improvement plans and budgets; summary and status of grants or other funding sources applied for or received; board comments and recommendations; public testimony from community meetings; and other relevant information.
7. Perform other duties and functions as prescribed by law.

Section 8-19.5 Revenues. The revenues of the agency must be kept in a separate fund and used to support agency self-sufficiency. The council may issue general obligation bonds on behalf of the agency and may provide capital improvement appropriations for the agency. Initial operational funding may be provided through the county general fund."

2. That, in accordance with Charter Section 14-2(1), this Resolution be submitted to the voters of the County of Maui at the next General Election;

3. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election;

4. That, in accordance with Charter Section 14-1(1), it proposes that the following question be placed on the next General Election ballot:

   "Shall the Charter be amended, effective January 1, 2023, to establish the East Maui Community Water Authority and Community Board to pursue the feasibility of acquiring the long-term water lease agreements for the Nāhiku, Ke'anae, Honomanū, and Huelo License Areas and entering into an intergovernmental agreement to provide a long-term reliable supply of water for domestic and agricultural needs and to manage water resources in a competent, fiscally responsible, and transparent manner as mandated by the State of Hawai'i Constitution and public trust doctrine?"

5. That in accordance with Charter Section 14-2(2), the County Clerk publish the proposed amendment set forth in this Resolution in its entirety in a newspaper of general circulation;

6. That upon approval by the majority of the voters voting on the proposed amendment and upon certification of such result, the amendment proposed in this Resolution will take effect on January 1, 2023; and

7. That in accordance with Charter Section 14-4, the County Clerk must revise and publish in its entirety a revised Charter including amendments adopted in this Resolution and

renumbering provisions and cross-references as may be necessary by the approval of the revisions or amendments; and

8. That certified copies of this Resolution be transmitted to the Mayor and the County Clerk.

paf:ans:22-030a

INTRODUCED BY:

