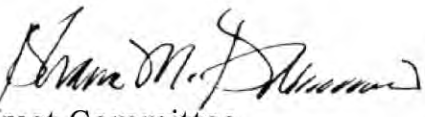


May 31, 2022

MEMO TO: APT-1(6) File

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

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

The attached informational documents pertain to Item 1(6) on the Committee's agenda.


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Attachment

Received at APT Committee
Meeting on 05-31-2022

May 31, 2022

MEMO TO: APT-1(6) File

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

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

This informational document lists questions presented at the May 24, 2022, Agriculture and Public Trust Committee meeting on a proposed Charter amendment to establish the East Maui Community Water Authority ("CWA"), followed by answers based on research.

1. What are the term limits for CWA Board members?

Answer: Board member terms will be for five years in accordance with the Maui County Charter Section 13-2.

2. What are the estimated costs for creating the CWA?

Answer: The first step to implementing the CWA is hiring an administrator, which would involve salary, fringe benefits, office space, and equipment. The administrator's salary would be set by ordinance. The first duties of the administrator would be to initiate licensing plans, obtain existing engineering studies and watershed management plans, and complete or contract out for the following reports:

- a. general assessment of the water collection and delivery system located on state land;
- b. proposed operation, maintenance, and capital improvement plan;
- c. an overview of state, federal, or other grants available for system operation, maintenance, and capital improvements;
- d. a business model including power generation options; and
- e. overview of Department of Land and Natural Resources intergovernmental agreement process, requirements, and stipulations.

Reports that are contracted out will require funding approved by the Council.

3. If leases are obtained from the State, will the CWA be dissolved or is it a permanent agency?

Answer: The CWA would be a permanent County agency responsible for (a) ongoing catchment and delivery of untreated water to the Department of Water Supply (“DWS”) and other County-designated user; and (b) management, operation, and upgrades to the system.

4. What is the relationship between the proposed CWA and DWS?

Answer: The proposed CWA is a separate County agency with responsibility for leases providing access to water in the license areas. The East Maui water system is a wholesale regional water catchment and delivery system that provides water to the central valley fields currently in cultivation by Mahi Pono and their subcontracted users and to the County Kamole Weir Water Treatment Facility. The current leaseholder and system operator sells the untreated water to DWS, which then treats and distributes the water to its customers.

If an intergovernmental agreement is ultimately approved by the Council, the proposed CWA would operate and manage the wholesale catchment and delivery system and would deliver the untreated water to DWS. The Council is responsible for water rate setting and would set the rates that CWA charges DWS and other users, including the current leaseholder. The Council is also responsible for approving County agency operations, such as staff, professional services, equipment, maintenance, and Capital Improvement Projects.

5. What are the duties of the existing Board of Water Supply (“BWS”) and the proposed CWA Board, and what is the relationship between the two?

Answer: The duties of the BWS are to advise DWS, review and submit the requested annual appropriation for DWS, and recommend rates and charges. The duties of the CWA Board would be to review and adopt the watershed management plan and advise the CWA administration. There is no relationship between the two boards.

6. Will Hāna continue to have representation on the BWS given that the CWA has a separate board with representatives from East Maui?

Answer: The BWS is not being changed as part of this process. The CWA is a separate agency, not under DWS on the County's organizational chart. The CWA Board consists of members from the license areas Nāhiku, Ke'anae, Honomanū, and Huelo, which do not include Hāna, Kipahulu, or Kaupo. The purpose of CWA is to review and approve a watershed management plan for the license areas and to advise the CWA administration.

7. Will there be difficulties filling CWA Board seats given the small populations of the license areas?

Answer: In each license area, there are current residents managing the watershed who appear qualified to sit on the CWA Board. The Council may amend the proposed resolution to set longer board member terms if desired.

8. Will water system upgrades be financed by increasing water rates?

Answer: As a County agency, CWA would have the ability to acquire federal and other funding for water system upgrades and use the County's excellent credit rating to obtain general obligation and revenue bonds if necessary. These upgrades would be completed and financed over the life of the lease.

9. Is the State Public Utilities Commission ("PUC") involved in water rate setting?

Answer: No, the PUC is not involved in water rate setting. The PUC regulates chartered, franchised, certificated, and registered public utility companies operating in the State.

10. Are there concerns about the legality of taking over the system from the Commission on Water Resource Management ("CWRM")?

Answer: CWRM is not the current leaseholder or lessee. The Board of Land and Natural Resources ("BLNR") determines the subject leases. The current lease is held by East Maui Irrigation ("EMI"). Alexander & Baldwin, Inc.

and Mahi Pono Holdings, LLC, both have 50 percent interest in EMI. Mahi Pono's sole investor and member-owner is one of Canada's largest pension fund managers, Public Sector Pension Investment. 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. The current and any future leaseholders are required to operate within the standards and regulations set by CWRM.

11. Should the CWA Board include seats for water system users outside of the license areas?

Answer: The system delivers water to the County Kamole Weir Water Treatment Facility for distribution to Upcountry agricultural and domestic users. The proposed board is responsible for advising the CWA administration and reviewing, approving, and tracking the implementation of watershed management plans, which requires members to be knowledgeable about the watershed areas and issues. The proposed board also has a seat for: (a) a representative from the Hawaiian Homes Commission; (b) an Upcountry farmer or rancher with expertise in water resource management; and (c) the owner of the water delivery system. It has been suggested that a seat be added for another Upcountry resident with experience in water resource management.

12. Is the CWA Board a private or public board?

Answer: The CWA Board would be a public board and would follow the Maui County Charter requirements for boards and commissions. It would consist of four seats appointed by the Mayor and seven seats appointed by the Council.

While the BWS Temporary Investigative Group considered the option of creating a public company to obtain the subject water leases, the Council does not have the ability to create public companies or other private or solely community entities. The proposed CWA would be a public agency directly under County administration, like the DWS and most other departments.

13. Would the CWA Board be autonomous like the former BWS was?

Answer: No, the CWA Board would not be autonomous, with the exception of the approval of the long-range watershed management plans prepared by the CWA administrator for the license areas. The approval of the watershed plans is solely at the discretion of the CWA Board. Any budgetary needs for plan

preparation, such as the services of consultants or other professionals, would require Council approval through the budget process.

14. Will the full faith and credit of the County be used to support this autonomous or semi-autonomous agency?

Answer: Yes, CWA will be established and operated similarly to other administrative departments.

15. How would we hold the CWA Board accountable if members are not elected?

Answer: The removal provisions for CWA board members are not set out in the proposed amendment; however, the power to appoint also infers the power to remove. The CWA administrator is similar to a department head appointed, and removed, by the Mayor with Council approval.

16. Will the CWA Board be signing off on eminent domain procedures, leases, or other legal documents?

Answer: Corporation Counsel has recommended that the power to authorize acquiring real property by eminent domain remain with the Council. Likewise, the authority to enter into the water lease agreements would be via intergovernmental agreement, by ordinance approved in accordance with Chapter 2.20, Maui County Code.

17. Would the CWA be subject to State environmental regulations, such as Interim Instream Flow Standards (“IIFS”)? Would the CWA determine stream flows, water diversions, or water allocations? Where does CWA authority begin and State authority end?

Answer: The CWA would operate under the same regulatory structure as the existing leaseholder. The proposed Charter amendment does not impact DLNR’s regulatory authority or CWRM’s regulatory authority over IIFS. CWA’s water usage will be subject to IIFS and any additional stipulations mandated by BLNR in the intergovernmental agreement.

CWRM and BLNR still would have regulatory control over IIFS, which would determine “water allocation” from individual streams, in that the lease would provide a total amount of water that could be taken and the amount from

each stream would be subject to IIFS. In addition, stream diversions require a diversion works permit from CWRM, and the County would only be able to modify existing diversion works subject to CWRM's permitting process.

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