

June 22, 2022

MEMO TO: APT-1(9) File

F R O M: Shane M. Sinenci
Councilmember



SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO A
PROPOSED CHARTER AMENDMENT TO ESTABLISH A
COUNTYWIDE WATER AUTHORITY** (APT-1(9))

The attached legislative proposal pertains to Item 1(9) on the Committee's agenda.

paf:ans:22-030i

Attachment

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



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

June 22, 2022

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

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

SUBJECT: **AMENDMENT TO RESOLUTION 22-119, CD1** (PAF 22-030)

May I request the attached proposed amendment to Resolution 22-119, CD1, transmitting a proposed FD1 version of the resolution, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO ESTABLISH A MAUI COUNTY COMMUNITY WATER AUTHORITY AND AN EAST MAUI COMMUNITY REGIONAL BOARD," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane M. Sinenci".

SHANE M. SINENCI
Councilmember

paf:ans:22-030g

Attachment

July 1, 2022, Council Meeting

RESOLUTION 22-119, CD1,
PROPOSED FD1

MAUI COUNTY COUNCIL
Amendment Summary Form

Legislation: Resolution 22-119, CD1, proposing a Charter amendment to create a Water Authority.

Proposer: Councilmember Shane M. Sinenci.



Description: Amend Resolution 22-119, CD1 to provide the proposed Water Authority with countywide jurisdiction, allow for regional boards in any relevant area of Maui County, provide more specificity to certain provisions, make references to certain terms consistent throughout, and make nonsubstantive amendments for clarification.

Motion: Move to substitute the attached proposed FD1 version for Resolution 22-119, CD1. The proposed FD1 version would propose the Charter be amended to create a Maui County Community Water Authority and an East Maui Community Regional Board and allow the Council to create additional regional boards as warranted. It also amends certain proposed Charter provisions for more specificity and clarification, including:

1. **Section 8-19.2:** Add language for consistency and clarity, and to specify that the representative of the Hawaiian Homes Commission is to be nominated by the Department of Hawaiian Home Lands.
2. **Section 8-19.3:** Add new subsection to the community regional board powers, duties, and functions to read as follows:
 - “3. Interview, when possible, administrator candidates and provide an evaluation to the mayor.”
3. **Section 8-19.4:** Add language to allow the removal of the Administrator “by a majority of all community regional board members with approval of the council” and to require the Administrator to have either knowledge of “or willingness to learn native Hawaiian water resource management and ahupua‘a connectivity systems.”
4. **Section 8-19.5:** Add the following new subsections:

- “3. Notwithstanding section 9-18(1), sign intergovernmental agreements and other legal instruments directly related to the acquisition or management of water collection or delivery systems.
4. Initiate condemnation proceedings directly related to the acquisition of land or interests in land related to water collection or delivery systems.”
5. **Section 8-19.5:** Add language in various subsections to require Administrator’s report to include water usage amounts, recommendation on water rates and allocations, and submittal to the mayor and council.
6. Make nonsubstantive changes to and reorder WHEREAS clauses.
7. Incorporate technical amendments to ensure internal consistency and compliance with the Maui County Guide to Legislative Drafting.

Attachment: Proposed FD1 version of Resolution 22-119, CD1.

paf:ans:22-030h

Resolution

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

WHEREAS, the County Council proposes that the question of whether the Revised Charter of the County of Maui (1983), as amended (“Charter”), should be further amended to establish the Maui County Community Water Authority and the East Maui Community Regional Board be placed on the next General Election ballot; 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, more frequent and severe drought conditions, and other environmental factors; and

WHEREAS, this increasing demand for water requires long-term, efficient, transparent, equitable, and community-oriented management of watersheds and water resources in Maui County; and

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

WHEREAS, the establishment of a Maui County Community Water Authority with community regional boards and a staff with expertise in water system operations, public financing, grant acquisition, and watershed management would ensure management of the County’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 Maui County 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 Maui County Community Water Authority would have the ability to obtain significant private, state, and federal funding not available to private, for-profit entities to manage

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and upgrade the water delivery systems and to protect local watersheds;
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 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, these License Areas also impact Upcountry Maui, where due to a lack of water availability, residents must reduce their water usage during drought periods, and farmers and ranchers are unable to farm and provide for their animals during extended drought periods; and

WHEREAS, East Maui Irrigation Company, LLC (“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, Ke‘anae, Honomanū, and Huelo License Areas”; and

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WHEREAS, on January 6, 2022, the Board of Water Supply unanimously voted to encourage the County to pursue the feasibility of acquiring the water lease 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 Hawai'i'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 lease for the County of Maui to Suzanne D. Case, Chairperson, Board of Land and Natural Resources;
3. Expressed concern with issuing long-term water leases to private, for-profit entities; and
4. Supported the Board of Water Supply's TIG 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 lease; and

WHEREAS, if the Maui County Community Water Authority were granted a lease rate at no cost or at a cost 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, and restore the watershed in the License Areas; and

WHEREAS, if the Maui County Community Water Authority completed repairs and maintenance of the system and restored and maintained 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; and

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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; 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; now, therefore,

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

1. That in accordance with Charter Section 14-1(1), it proposes that Subsection 1 of Section 8-11.2 of the Charter, pertaining to the Department of Water Supply, be amended to read as follows:

"1. [The] Except as set forth in chapter 19, the department of water supply shall manage and operate all water systems owned by the county."

2. That in accordance with Charter Section 14-1(1), it proposes that Article 8 of the Charter, pertaining to County Departments, be amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER 19
MAUI COUNTY COMMUNITY WATER AUTHORITY**

Section 8-19.1 Organization. There is a Maui County community water authority, also referred to as the "water authority," consisting of one or more community regional boards, an administrator, and necessary staff to manage water collection and delivery systems acquired, owned, or operated by the county.

Section 8-19.2 Community Regional Boards. Upon acquisition or control of a water collection and delivery system, the council shall establish a community regional

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board. Each community regional board consists of eleven members. Eight members must have experience in water resource management and watershed restoration in the applicable watershed and reside in the applicable community plan area. Of these eight members, four are appointed by the council, and four are appointed by the mayor. The three remaining members are 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 applicable community plan area or areas where water service is provided; one member with experience in water resource management who resides full-time in the applicable council residency area or areas where water service is provided; and one member who is a representative of the Hawaiian Homes Commission, and is nominated by the Department of Hawaiian Home Lands. Of the eleven members initially appointed, three are appointed for a term of five years, three are appointed to a term of four years, three will serve a term of three years, and two will serve a term of two years. Board vacancy appointments are conducted in the same manner as the initial seat appointment. The director of finance, the director of water supply, the councilmember holding the residency area seat for the applicable watershed area, and the chair of the council committee with jurisdiction over water issues are non-voting, ex-officio members of the board. The East Maui community regional board shall be concerned with the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas, with eight of its members being residents of the license areas with a minimum of two members from each license area.

Section 8-19.3 Community Regional Board Powers, Duties and Functions. Each community regional board will:

1. Review preliminary assessments, studies, and environmental reports prepared by or for the water authority.
2. Review and approve the long-range watershed management plan prepared by the administrator for the license areas or regional water system areas under County control, review the plan annually, and provide a written evaluation of each plan goal and implementation status to the administrator, mayor, and council.
3. Interview, when possible, administrator candidates and provide an evaluation to the mayor.

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4. Provide an annual evaluation of the administrator to the mayor and the council.

5. Provide written comments on the water authority's long-term capital improvement plan, annual maintenance plan, annual report, and annual operating budget, including recommendations on water rates and the water authority's federal, state, and private funding plan.

6. Hold at least two public community meetings a year, which may be conducted as virtual meetings.

Section 8-19.4 Administrator. The administrator is appointed by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council, by a majority of all community regional board members with approval of the council, or directly by the council. The salary of the administrator is set by ordinance after a review of the salaries of water authority administrators in other jurisdictions. The administrator is the administrative head of the water authority. The administrator must meet the following minimum qualifications:

1. Experience in the management of a water system, either in public service or private business or both, including experience in one or more of the following functions:

a. Administering operations of a water purveyor, including day-to-day management 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 improvement budget.

2. As part of or in addition to the management experience, responsible budgetary and rate-setting experience.

3. Experience or education in watershed management and knowledge of or 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

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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 administrator will:

1. Manage water collection and delivery systems acquired, owned, or operated by the county.

2. Acquire and oversee State water lease agreements, which may include the Nāhiku, Ke'anae, Honomanū, and Huelo license areas.

3. Notwithstanding section 9-18(1), sign intergovernmental agreements and other legal instruments directly related to the acquisition or management of water collection or delivery systems.

4. Initiate condemnation proceedings directly related to the acquisition of land or interests in land related to water collection or delivery systems.

5. Manage the distribution of water under the control of the county, including providing water to the department of water supply.

6. Submit an annual report to the mayor and the council providing a general assessment of water collection and delivery systems under control of the County; a proposed operation, maintenance, and capital improvement plan; an overview of state, federal, or other funding available for system operation, maintenance, and capital improvements; a business model, including power generation options; an overview of State license status; and specific public trust and nonpublic trust water usage amounts for each water system including required uses based upon State regulations and judicial requirements.

7. Develop and implement a long-term capital improvement and annual maintenance plan for water collection and delivery systems.

8. Develop and implement a watershed management plan for each watershed providing water to a regional water system.

9. Seek funding for water systems operation, maintenance, and capital improvements.

10. Prepare an annual operating and capital budget for each board's review and recommendation and submit the water authority's request for an annual appropriation and

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recommendation of water rates and water allocation amounts to the mayor.

11. Prepare an annual report, including operating, maintenance, and long-term capital improvement plans and budgets; summary and status of funding sources applied for or received; board comments and recommendations; public testimony from community meetings; and other relevant information. This report shall be submitted to the mayor and council.

12. Provide administrative support to the board.

13. Perform other duties and functions as prescribed by law.

Section 8-19.6 Maui County Community Water Fund. The revenues of the water authority must be kept in a separate fund known as the Maui County community water fund and used to fulfill the powers, duties, and functions of the water authority, including operation, maintenance, and capital improvements of water collection and delivery systems under control of the county. Any unencumbered balance in this fund at the end of each fiscal year will not lapse, but remain in the fund, accumulating from year to year. The council will establish procedures for the administration and expenditure of the revenues in this fund by ordinance. In any fiscal year, the council may make appropriations to this fund.”;

3. That in accordance with Charter Section 14-1(1), it proposes that Subsection 5 of Section 6-2 of the Charter, pertaining to Appointment and Removal of Officers and Employees, be amended to read as follows:

“5. [Within] Unless otherwise provided in this chapter, within sixty [(60)] days of taking office, or within sixty [(60)] days after a vacancy is created, the mayor shall appoint the managing director, corporation counsel, prosecuting attorney, director of finance, director of public works, director of parks and recreation, planning director, director of housing and human concerns, director of water supply, director of transportation, [and] director of environmental management, director of agriculture, and the water authority administrator, with written notice of the appointment to the council. The council shall confirm or deny the appointment within sixty [(60)] days after receiving notice of the appointment by the

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mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed. The appointee shall take office upon appointment by the mayor but shall not continue in office if the council denies the appointment. If the appointment is denied by the council, the mayor shall make a new appointment within sixty [(60)] days of the council's denial, and the council shall confirm or deny within sixty [(60)] days after receiving notice of the new appointment by the mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed."

4. That material to be repealed is bracketed, and new material is underscored;
5. 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;
6. That the County Clerk prepare the necessary ballot for presentation to the voters at the next General Election;
7. 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 to establish the Maui County Community Water Authority with community regional boards to manage water collection and delivery systems acquired by the County, including State license areas in East Maui, and to pursue long-term water lease agreements with the State to provide a long-term reliable supply of water for domestic and agricultural needs?"
8. 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;
9. 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 upon certification of the vote;

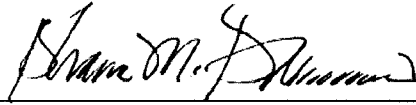
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10. That in accordance with Charter Section 14-4, the County Clerk must revise and publish in its entirety a revised Charter including amendments adopted in this Resolution and renumbering provisions and cross-references as may be necessary by the approval of the revisions or amendments, and the County Clerk must read the amendments adopted in this Resolution with any amendments adopted through the approval of any Charter Commission proposals or Council alternatives to Charter Commission proposals; and

11. That certified copies of this Resolution be transmitted to the Mayor, the Board of Water Supply, the State of Hawai'i Board of Land and Natural Resources, and the County Clerk.

paf:ans:22-030f

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Shane M. Sinenci". The signature is written in a cursive style with a large initial 'S' and a distinct 'M'.

SHANE M. SINENCI