

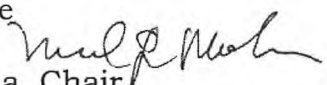
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OFFICE OF THE  
COUNTY COUNCIL

MEMO TO: GREAT-10(2) File

F R O M: Michael J. Molina, Chair   
Government, Relations, Ethics, and Transparency Committee

SUBJECT: **TRANSMITTAL OF LEGISLATIVE PROPOSAL RELATING TO  
RESOLUTION 22-119, CHARTER PROPOSAL TO ESTABLISH  
THE EAST MAUI COMMUNITY WATER AUTHORITY** (GREAT-10(2))

The attached legislative proposal pertains to Item 10(2) on the Committee's agenda.

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Attachment

# Resolution

No. \_\_\_\_\_

## 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 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 be placed on the next General Election ballot; 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, 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, due to a lack of water available for Upcountry use, 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, 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

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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; 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, Ke‘anae, 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 lease and to contact DLNR as soon as possible to determine the next steps for doing so; and

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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, 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,

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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(1), it proposes that Subsection 1 of Section 8-11.2 of the Charter, pertaining to Functions of the Department of Water Supply, be amended to read as follows:

“1. [The] Except as set forth in section 8-\_\_\_\_, 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 \_\_\_\_ EAST MAUI COMMUNITY WATER AUTHORITY**

**Section 8-\_\_\_.1 Organization.** There is an East Maui community water authority, also referred to as the “water authority,” consisting of a community board, administrator, and necessary staff to manage the use of water in accordance with State-issued licenses for East Maui: Nāhiku, Ke‘anae, Honomanū, and Huelo (“license areas”).

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**Section 8-\_\_\_\_.2 Community Board.** There shall be an eleven-member East Maui community water authority board. Eight members must: (a) have experience in water resource management and watershed restoration in the license areas; and (b) consist of an even number of residents of each of the license areas. 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 Upcountry council residency area; one member with experience in water resource management who resides full-time in the Upcountry council residency area; and one member who is a representative or beneficiary of the Hawaiian Homes Commission. 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 done 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 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-\_\_\_\_.3 Community Board Duties and Functions.**

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

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the water authority's federal, state, and private funding plan.

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

**Section 8-\_\_\_.4 Administrator.** The water authority 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 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 will be 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 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.

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### **Section 8-\_\_\_.5 Functions of the Water Authority.**

1. Acquire and oversee State water lease agreements which may include the Nāhiku, Ke‘anae, Honomanū, and Huelo license areas.
2. Manage the distribution of water in East Maui under the control of the County.
3. Submit an annual report to the mayor and the council providing a general assessment of the water collection and delivery system located in each East Maui license area 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; and an overview of state license status.
4. Develop and implement a long-term capital improvement and annual maintenance plan for the water collection and delivery system in each East Maui license area under control of the County.
5. Develop and implement a watershed management plan for the East Maui license areas under control of the County.
6. Seek funding for system operation, maintenance, and capital improvements for the management and distribution of County-controlled water in East Maui.
7. Prepare an annual operating and capital budget for the board’s review and submit the water authority’s request for an annual appropriation to the mayor.
8. 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.
9. Provide administrative support to the board.
10. Perform other duties and functions as prescribed by law.

**Section 8-\_\_\_.6 East Maui Water Fund.** The revenues of the water authority must be kept in a separate fund known as the East Maui water fund and used to fulfill the functions



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and duties of the water authority, including water system operation, maintenance, and capital improvements in the East Maui license areas 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, with material to be repealed in brackets and new material underscored:

“5. [Within] Unless otherwise provided in this charter, 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, the 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 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, 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;

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

6. 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 East Maui Community Water Authority to pursue acquiring long-term water lease agreements with the State and to manage the collection and distribution of water from East Maui license areas to provide a long-term reliable supply of water for domestic and agricultural needs?”;

7. 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;

8. 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 as of January 2, 2023;

9. 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

10. That certified copies of this Resolution be transmitted to the Mayor, the Board of Water Supply, and the County Clerk.

INTRODUCED BY:

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SHANE M. SINENCI