

COUNTYWIDE WATER AUTHORITY: BUILDING ON THE EAST MAUI RESOLUTION

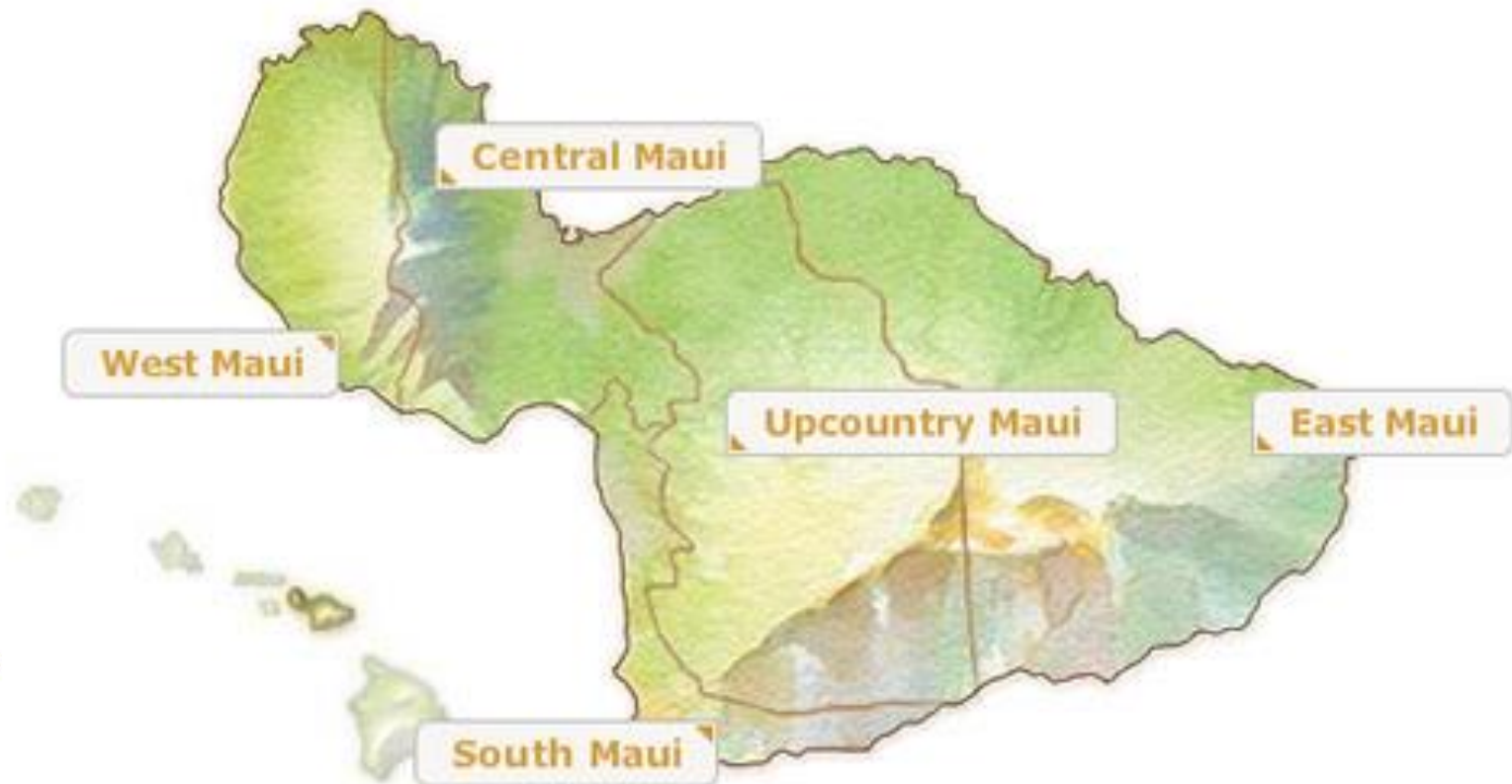
June 28, 2022 APT



LISTENING TO OUR COLLEAGUES AND OUR COMMUNITY

Countywide authority developed in response to requests by:

- ✓ Councilmembers
- ✓ Our Community
- ✓ Managing Director



AN AGENCY THAT BENEFITS EVERYONE

A tool to manage Maui's water for:

- ✓ Residents
- ✓ Farmers and ranchers
- ✓ Taro farmers & kuleana water users
- ✓ Hawaiian Homelands beneficiaries
- ✓ Our visitors



AN IDEA WHOSE TIME HAS COME



Representative Kahele sends letter to Maui County urging local control of water resources
Board of Water Supply Temporary Investigative Group recommends local control

Board of Water Supply meeting and letter recommending County immediately investigate obtaining leases

June 22: East Maui charter amendment resolution passed out of GREAT and countywide version requested

June 23: Board of Water Supply votes to support East Maui resolution and puts support for countywide on future agenda to comply with sunshine law

2020

January 2022

2019

December 2021

June 2022

Ian Hirokawa, DLNR
APT Committee
County has priority over private lease applicant and intergovernmental agreement

Council Resolution passes 8-1
Letter from Chair Lee to DLNR Director Suzanne Case indicating County interest in obtaining leases and is an ideal candidate

JANUARY 7, 2022
RESO 22-4

THIS COUNCIL VOTED
8-1

- ✓ Urge Mayor to propose an intergovernmental agreement for East Maui leases
- ✓ Express concern with issuing leases to private, for-profit entities
- ✓ Send reso copy and letter to BLNR and DLNR

Resolution

No. 22-4, F01

URGING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII BOARD OF LAND AND NATURAL RESOURCES TO PROVIDE A LONG-TERM, RELIABLE, AND AFFORDABLE SOURCE OF WATER FOR COUNTY DOMESTIC AND AGRICULTURAL USE

WHEREAS, as stated in the Countywide Policy Plan, at page 70 (Exhibit "A"), an official Objective of the County of Maui is: "Improve water systems to assure access to sustainable, clean, reliable, and affordable sources of water"; and

WHEREAS, the County Water Code states: "The council acknowledges and affirms that water is a natural and cultural resource that must be protected, preserved, and managed as a public trust, and hereby establishes a policy that requires verification of a long-term, reliable supply of water before applicable subdivisions are approved"; and

WHEREAS, as stated in the Maui Island Plan, at page 6-15, "The East Maui watershed begins at the summit of Haleakalā; it is the island's largest water producer"; and

WHEREAS, the Maui Island Plan, adopted less than ten years ago, also stated, at page 4-18 (Exhibit "B"), "HC&S grows sugarcane on 37,000 acres of land in Central and East Maui, and utilizes and maintains the State's most extensive surface water system"; and

WHEREAS, HC&S ceased operations in 2017, and State and County water policies have yet to be fully transformed to make the most beneficial use of water, despite their obligation under the State Constitution to manage water resources as a public trust, as held by the Supreme Court of Hawaii in In re Water Use Permit Applications, 94 Hawaii 97 (2000), and Kauai Springs, Inc. v. Planning Commission of County of Kauai, 133 Hawaii 141 (2014); and

JANUARY 21, 2022 COUNCIL CHAIR LETTER TO SUZANNE CASE, CHAIR OF BLNR

- ✓ Expressing Council's interest in pursuing long-term East Maui leases
- ✓ Stating that the County is ideal candidate
- ✓ Urging BLNR to work with County administration

Council Chair
Alice L. Lee

Vice-Chair
Keari 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

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

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

January 21, 2022

The Honorable Suzanne D. Case, Chairperson
Board of Land and Natural Resources
151 Punchbowl Street
Honolulu, Hawaii 96813

Dear Chairperson Case:

SUBJECT: **EAST MAUI WATER LEASES** (PAF 22-013)

I write to express the Maui County Council's interest in pursuing the long-term East Maui water leases for the County of Maui.

The County of Maui would appear to be an ideal lessee for the East Maui water leases for many reasons, including those identified by the Temporary Investigative Group ("TIG") formed by the County Board of Water Supply ("BWS") to explore the feasibility of purchasing and maintaining the East Maui Irrigation water delivery system and examine other alternatives for ensuring that the people of Maui County have authority over the delivery of water.

The BWS approved, with amendments, the 85-page TIG report on December 19, 2019. The report is available online at <https://tinyurl.com/TIGreport>.

On the Council's behalf, I respectfully urge you to work with Mayor Michael P. Victorino and his Administration on executing the long-term East Maui water leases for the County of Maui.

Thank you for your consideration. Should you have any questions, please contact me, Legislative Analyst Paige Greco at (808) 270-7660, or Legislative Analyst Kasie Apo Takayama at (808) 270-7665.

Sincerely,

ALICE L. LEE, Chair
Maui County Council

WE ARE DIRECTED BY OUR ISLAND PLAN TO CONTROL OUR WATER SOURCES

Entire Community Agreed

- ✓ Maui Nui Focus Groups
- ✓ Maui GPAC
- ✓ Molokai GPAC
- ✓ Lanai GPAC
- ✓ Maui Planning Commission
- ✓ Molokai Planning Commission
- ✓ Lanai Planning Commission
- ✓ Maui County Council

WATER

As the most isolated archipelago on earth, the provision of clean and reliable sources of fresh water - vital for survival - must come from our own endeavors. Natural reservoirs of water are available to meet future demand if we, as a community, are willing to invest in the stewardship and storage of this critical resource. Balanced stewardship - respectful of the varied needs of the land, people, and future - will require much in terms of capital and human resources. To meet our water needs we will need to be creative, adapt to changing situations, develop innovative solutions to conflicting needs, and commit to our island society as a whole.



THE STATE AND OTHER COMMUNITIES ARE DOING THE SAME THING: SEEN AS CRITICAL STEP IN FOOD SECURITY

- ✓ State of Hawaii buying Wahiawa dam and irrigation system
- ✓ We heard from consultants that many other communities like Coachella, California also see the need to purchase private systems and are already doing it successfully with federal money

Hawaii's Crumbling Water Systems May Finally Be
Getting Some Badly Needed Repair Money By Thomas Heaton



The Wahiawa dam, spillway and irrigation system owned by Dole Food Company is 116 years old. Safe to say that it's seen quite a bit of wear and tear over the years.

The state is poised to buy the dam, but first it's got to pay for **\$26 million in restoration costs** that Dole says would put the company out of business.

These sorts of investments in Hawaii's water infrastructure are seen as **critical steps toward ensuring that we can produce more local food.**

COUNTYWIDE: HOW IT WORKS

NOT MANY CHANGES WERE REQUIRED

- ✓ One water authority agency managing water collection and delivery systems newly acquired or leased by the county.
- ✓ Community regional boards established for each watershed area when a new system is acquired or leased

"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.



COMMUNITY BOARDS: POWERS, DUTIES AND FUNCTIONS STAY THE SAME BUT NOW REGIONAL

- ✓ Keeps the establishment of the East Maui Community Board
- ✓ New boards established by Council upon the acquisition or lease of a system
- ✓ DHHL representative on all boards
- ✓ Clarifies that DHHL nominates their representative
 - ✓ Can be a beneficiary



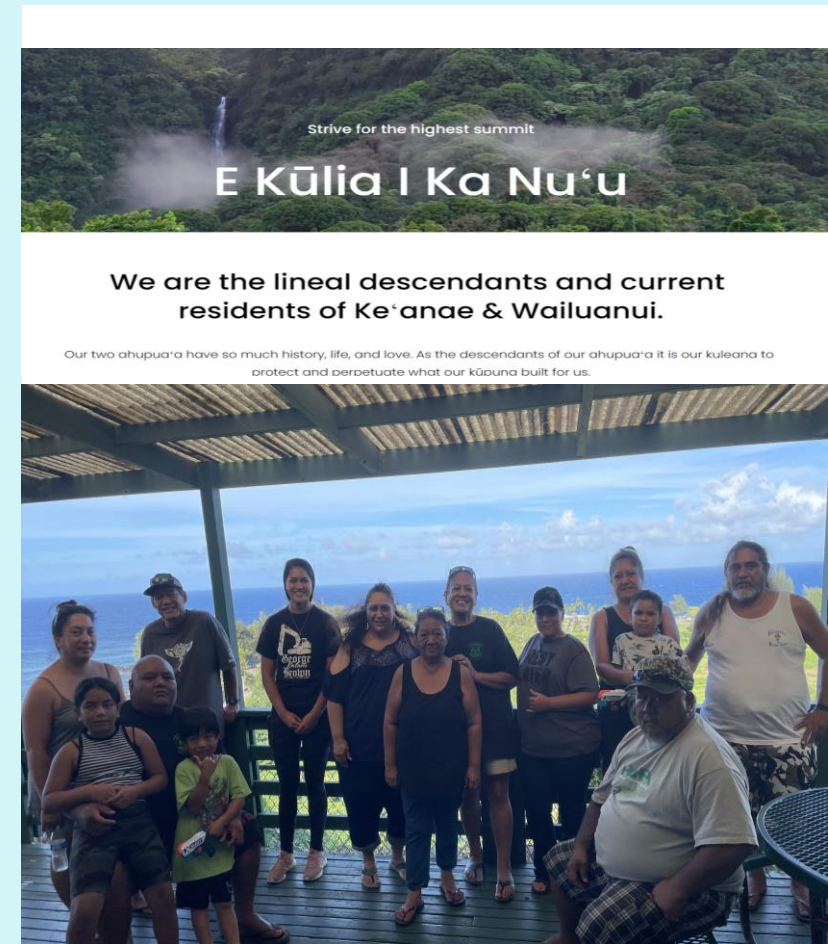
REGIONAL COMMUNITY BOARDS

TWO ADDITIONS BASED ON COMMUNITY INPUT

- ✓ Watershed management plan approval
- ✓ Conduct community meetings
- ✓ Review and comment of agency operations, maintenance, CIP plans, and rate setting recommendations
- ✓ Annual administrator performance review

In response to testimony asking for more administrator accountability to Board:

- ✓ When possible, interview and evaluate administrator candidates - ***new**
- ✓ With majority of all Board members, ability to remove administrator with Council approval – ***new**



ADMINISTRATOR POWERS, DUTIES AND FUNCTIONS STAY THE SAME

Administrator with necessary staff:

- ✓ System maintenance personnel
 - ✓ Engineering CIP planning
 - ✓ Public grants and financing
 - ✓ Watershed management
 - ✓ Local community engagement
 - ✓ Rate setting recommendations to Mayor with Council final approval in annual budget
- ❖ **Council** may want to specify staff positions as we have learned it can take up to a year to create new positions and we want to assure adequate staff



EPA awards Hawaii over \$18.6M to update water infrastructure | Water...

ADMINISTRATOR QUALIFICATIONS

ONE SMALL CHANGE

- ✓ Water system management experience
- ✓ Budgetary and rate setting experience
- ✓ Watershed management education or experience
- ✓ Experience in or willingness to learn native Hawaiian resource management and ahupua'a connectivity systems
 - ✓ added back in from original East Maui reso
 - ✓ same language as Dept of Ag Director to provide flexibility
- ✓ Experience in community engagement and public outreach
- ✓ Bachelor's degree or equivalent experience

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

POWERS, DUTIES AND FUNCTIONS

ONE SMALL CHANGE FOR CLARITY

- ✓ Oversee acquisitions and leases and manage systems
- ✓ Negotiate, sign lease and legal agreements and initiate eminent domain proceedings
 - ✓ This mirrors the existing County eminent domain process.
 - ✓ Requirement that contracts and IGAs are approved as to form/legality by corporation counsel and certified by the director of finance as to the availability of funds. Example: federal grant money must be already received or funding is done with Council budget amendment or annual approval
 - ✓ Helps public understand agency powers
- ✓ Submit annual operation and capital budget, develop long term operations and CIP plans with budgetary appropriations approval by Council
- ✓ Recommend rate setting and allocation amounts to Mayor for Council approved annual budget
- ✓ Develop and implement watershed management plan
- ✓ Seek public, non-profit and other funding and financing
- ✓ Provide support to the Board

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

POWERS, DUTIES AND FUNCTIONS

WATER AUTHORITY SCOPE VS DWS

Current County Structure: There is no agency in charge of water acquisition. This duty to investigate system purchases and leases has fallen to our County Managing Director.

- ✓ A New Countywide Water Authority will investigate and oversee new acquisitions and leases.
 - ✓ Will create a Business model, grant overview, operational and CIP estimates brought to Council for revenue appropriations.
- ✓ Will manage new systems and sell water to the County DWS and to all other users (Mahi Pono).
 - ✓ However, the Council retains power to set all rates, during the budget process, including water rates to DWS and DWS rates to customers.

Maui News

Council to Review Proposed Purchase of Wailuku Water Co. Land



ANNUAL REPORTS: ONE SMALL ADDITION FOR CLARITY

- ✓ General assessment of water systems
- ✓ Proposed operating, maintenance and CIP plans
- ✓ Overview of state, federal or other funding available
- ✓ Overview of state license status
- ✓ Business model, including power generation options
- ✓ Each system's public trust and non-public trust water usage amounts, including required uses based on state regulations and judicial requirements **-*new**
 - ✓ Helps to understand state regulations (CWRM) & court mandated use of water
- ✓ Board comments and recommendations
- ✓ Community meeting testimony

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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

MAUI WATER FUND: NO CHANGES

- ✓ Establishes separate fund
- ✓ Agency is self sustaining
 - ✓ Rates cover annual operations and maintenance like DWS fund
 - ✓ Intent is to cover CIP with grant and public financing
 - ✓ Can only receive general county funding with Council approval

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.”;



GOOD GOVERNANCE MEANS WE NEED TO TAKE ACTION NOW

Climate change and drought and population increases:

- ✓ less water availability for residential and commercial use
- ✓ less water for agricultural use affects food security and
- ✓ economic diversification

Private systems and a major state lease are available now:

- ✓ East Maui 30-50 year lease
- ✓ Wailuku water system
- ✓ Molokai private system
- ✓ Potential West Maui private systems
- ✓ Hana Ranch private system



PRESS RELEASE

For Immediate Release

June 23, 2022

**Stage 1 water shortage declaration to take
effect June 30, 2022,
for Upcountry and West Maui
*Nonessential water use will be prohibited***

WE ARE LETTING THE VOTERS DECIDE

“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?”



BUILDING OFF EAST MAUI RESOLUTION: COUNTYWIDE ADOPTION PROCEDURES

July 1 Council meeting

- ✓ Reso 22-119 East Maui Water Authority can be amended to Countywide Authority
 - ✓ Countywide resolution posted with agenda
- ✓ Need 5 votes to adopt amendments and 6 votes for adoption of any charter amendment resolution

✓ July 15 Council meeting

- ✓ 2nd reading: Adoption of charter amendment would place water authority creation on the ballot and in the hands of our constituents

