

COUNCIL OF THE COUNTY OF MAUI
WATER, INFRASTRUCTURE, AND
TRANSPORTATION COMMITTEE

June 5, 2020

Committee
Report No. 20-59

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Water, Infrastructure, and Transportation Committee, having met on May 18, 2020, makes reference to the following:

1. County Communication 20-197, from the Director of the Department of Water Supply, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS."

The purpose of the proposed bill is to amend the original 2004 intergovernmental agreement specific to the Camp Maluhia Site No. 1 Well to allow the State of Hawaii to participate in the development of site wells for Central Maui mutually designated by the State and the County, where the State will receive water allocation credits for State projects in direct proportion to its financial contribution.

2. County Communication 20-227, from Council Chair Alice L. Lee, transmitting County Communication 20-197.

Your Committee notes Section 2.20.020, Maui County Code, provides that "the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation

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upon the County or any department or agency thereof," unless authorized by ordinance.

Your Committee received information from the County Department of Water Supply and the State Department of Land and Natural Resources related to this agreement. The main purpose of the amendment is to remove a property that research has shown may not be the best location to drill the well.

Your Committee also discussed the use of State funds for this project and the allocation of water credits between the County and State. A member of your Committee stated the County has the ability to fund the project itself and, therefore, should do so. The Director of Water Supply noted they are currently in the exploratory phase of this project and, before the well is finalized, an agreement for the water source credits will come to the Council for review and approval.

Your Committee was satisfied with the explanation for the agreement provided by the Department of Water Supply.

Your Committee voted 7-1 to recommend passage of the proposed bill on first reading and filing of the communications. Committee Chair Sugimura, Vice-Chair Lee, and members Kama, Molina, Paltin, Rawlins-Fernandez, and Sinenci voted "aye." Committee member Hokama voted "no." Committee member King was excused.

Your Water, Infrastructure, and Transportation Committee RECOMMENDS the following:

1. That Bill 15 (2020), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, REGARDING THE PURCHASE OF WATER ALLOCATION

COUNCIL OF THE COUNTY OF MAUI

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CREDITS FROM THE CAMP MALUHIA SITE NO. 1 WELL
DEVELOPMENT FOR STATE PROJECTS," be PASSED ON
FIRST READING and be ORDERED TO PRINT;

2. That County Communication 20-197 be FILED; and
3. That County Communication 20-227 be FILED.

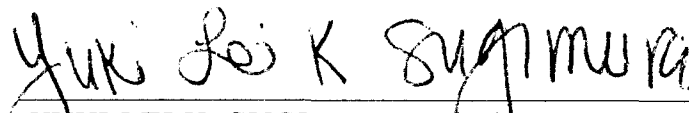
COUNCIL OF THE COUNTY OF MAUI
**WATER, INFRASTRUCTURE, AND
TRANSPORTATION COMMITTEE**

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This report is submitted in accordance with Rule 8 of the Rules of the Council.



YUKI LEI K. SUGIMURA, Chair

wit:cr:20090aa:ljcm

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO
AN AMENDMENT TO AN INTERGOVERNMENTAL AGREEMENT WITH THE
BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. An Intergovernmental Agreement Between the State of Hawaii and the County of Maui, Regarding the Purchase of Water Allocation Credits from the Camp Maluhia Site No. 1 Well Development for State Projects was entered into by and between the parties on June 30, 2004 (the "Agreement"). The parties wish the amend the Agreement.

The Agreement and Ordinance No. 3195, Bill No. 39 (2004), which authorized the Mayor to execute the Agreement, is attached hereto and incorporated herein as Exhibit "1". Ordinance No. 3195, Bill No. 39 (2004) did not specifically authorize the Mayor to execute any amendments related to the Agreement. The proposed Amendment to the Agreement is attached hereto and incorporated herein as Exhibit "2" and has the potential to place a financial obligation on the County.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the County or any department or agency thereof.

SECTION 2. Authorization. The Council of the County of Maui hereby authorizes the Mayor or his authorized representative to execute the Agreement,

all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui
2020-0071

INTER-GOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS

This Agreement, made this 30th day of June, 2004 by and between the Board of Land and Natural Resources, State of Hawaii, whose street address is 1151 Punchbowl Street, Room 130, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE", and the County of Maui, a political subdivision of the State of Hawaii, whose street address is 200 South High Street, Wailuku, Maui, Hawaii, 96793-2155, hereinafter referred to as the "COUNTY".

The STATE and COUNTY, in consideration of the mutual promises hereinafter set forth, mutually agree as follows:

1. The STATE administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of the Camp Maluhia Site No. 1 Well on TMK: 3-1-01:020, Waihee, Maui, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.
2. The water allocation credit is the capacity of resource development facilities measured in gallons per day that the STATE is entitled to allocate or assign to State agencies or their tenants within the areas served by the COUNTY Central Maui Water System.
3. The STATE agrees that payment towards the development of Camp Maluhia Site No. 1 Well will not be applied towards any other STATE obligation to the COUNTY and will not relieve the STATE of its obligation, if any, to the COUNTY for transmission charges, daily storage charges, billing charge or quantity charge.
4. The development of the Camp Maluhia Site No. 1 Well shall include but not be limited to the following: planning, design, permitting and constructing (drilling and testing) of the exploratory well; planning, design, permitting and constructing (development) of the well and treatment facility (if necessary), including furnishing and installing of pump, control building and equipment, piping, electrical equipment and other related infrastructure and site improvements deemed necessary by the COUNTY for the development of the well.

5. The STATE desires to pay the COUNTY \$1,000,000.00 to contribute towards the cost related to the exploratory drilling and testing of the Camp Maluhia Site No. 1 Well pursuant to Act 259, SLH 2001, Item A-13, as amended by Act 177, SLH 2002, Item A-13.

6. The COUNTY will prepare contract plans and specifications, prepare and process an environmental assessment, Well Construction and Pump Installation Permits from the Commission on Water Resources Management (CWRM) and any other related permits, Right-of-Entry agreement(s), Well Test Report to the CWRM, and Department of Health Engineering Report for the development of the Camp Maluhia Site No. 1 Well, transmission mains and appurtenances.

7. The capacity of the source will be the total recommended aggregate yield from the Camp Maluhia Site No. 1 Well as determined by the COUNTY and agreed upon by the STATE. This aggregate yield will be based on the smaller of the following:

- a. Sustainable capacity of the wells.
- b. Design capacity of the installed pumps ($\frac{2}{3} \times \frac{2}{3} \times$ pump capacity).

8. The STATE and COUNTY agree that the cost of the water allocation credit (\$/gallon/day) will be calculated by dividing the total cost for all improvements and services listed in Item Nos. 4 and 6 by the recommended aggregate yield from the Camp Maluhia Site No. 1 Well (reference paragraph 7).

9. All development costs listed in item Nos. 4 and 6 shall be fully documented and such documentation shall be provided by the COUNTY to the STATE within 90 days from the completion or final acceptance of construction work.

10. The total gallons per day of water allocation credits from the Camp Maluhia Site No. 1 Well to be provided to the STATE will be calculated by dividing the development costs paid by the STATE by the cost of the water allocation credit (reference paragraph 8). The COUNTY reserves the right to revise the water allocation credits based on the total recommended yield (reference paragraph 7) of the wells. The COUNTY will not allocate water until the completion of all improvements and collection of all payments stipulated by this Agreement. The COUNTY reserves the rights to withhold the use of water allocation credits if its interconnected water systems are unable to accommodate the additional water demands.

11. The STATE and COUNTY agree water allocation credits (gallons per day) shall be limited to source

12. The STATE shall utilize all water allocation credits within five years from the completion date of the development of the Camp Maluhia Site No. 1 Well (reference paragraph 4). COUNTY shall notify the STATE of the completion date. By mutual consent of the STATE and COUNTY, water allocation credits may be extended beyond the duration of this Agreement. However, if the COUNTY withholds the use of water allocation credits as described in item No. 10, the time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

13. If the water allocation credits are not used by the STATE for State projects within the stipulated time, the COUNTY reserves the right to take back the unused water credits from the STATE and to pay the STATE for the unused water credits at a mutually agreeable cost. However, if the COUNTY withholds the use of water allocation credits as described in item No. 10, the stipulated time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

14. The STATE will be solely responsible to coordinate the allocation of the water allocation credits for State projects.

15. The STATE and COUNTY are authorized to enter into this Agreement.

16. This Agreement may not be altered, amended or modified except by an agreement entered into in writing and signed by both parties to this Agreement.

17. This Agreement contains all of the terms, covenants, conditions, stipulations and agreements between the STATE and COUNTY in relation to the STATE's purchase of water allocation credits from COUNTY's Camp Maluhia Site No. 1 Well. This Agreement supersedes and cancels each and every other agreement; promise and negotiation between the parties with reference to the purchase, and no party shall be bound by any inducement, statement, representation, promise or agreement not in conformity herewith.

18. This Agreement shall be binding upon the STATE and COUNTY and their respective successors and permitted assigns.

19. This Agreement is subject to the availability of funds and allotment by the Director of Finance in accordance with Chapter 37, HRS.

The STATE and COUNTY also agree that the following provisions be made a part of this Agreement as general terms:

1. Indemnification. COUNTY shall indemnify, defend, and hold harmless the STATE, its officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, actions, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, or death of persons, whenever such damage, injury, loss, or death arises out of, is connected with or related to the development of Camp Maluhia Site No. 1 Well. It is understood that the State shall in no way be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of COUNTY in the development of Camp Maluhia Site No. 1 Well.

2. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.

3. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

4. Compliance with laws. COUNTY shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the development of Camp Maluhia Site No. 1 Well, now in force or which may be in force.

5. Assignments. COUNTY shall not transfer to, assign, or permit any other person to perform COUNTY 's duties, obligations, or interests under this Agreement, either voluntarily or by operation of law, without the prior written approval of the State.

6. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.

7. Partial invalidity. If any term, provision, covenant or condition of this Agreement should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

8. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.

10. No Partnership. COUNTY and the State agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.

11. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

In view of the above, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

STATE

By: 

PETER T. YOUNG

Chairperson, Board of Land and Natural Resources

Date: JUL 27 2004

COUNTY OF MAUI

By: 

ALAN M. ARAKAWA

Mayor

Date: 6/24/04

APPROVED AS TO FORM AND LEGALITY:



EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

APPROVED AS TO FORM:



Deputy Attorney General

ORDINANCE NO. 3195

BILL NO. 39 (2004)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
WITH THE BOARD OF LAND AND NATURAL RESOURCES, STATE OF HAWAII

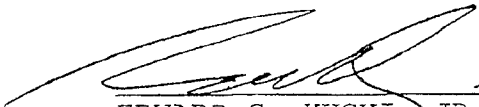
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The State of Hawaii ("State") wishes to enter into an intergovernmental agreement with the County of Maui regarding the purchase of water allocation credits from the Camp Maluhia Site No. 1 well development (the "Agreement"). Under the proposed Agreement, a draft copy of which is attached hereto as Exhibit "A", the Board of Land and Natural Resources, State of Hawaii will contribute \$1,000,000.00 towards the costs related to the exploratory drilling, testing, and development of the Camp Maluhia Site No. 1 Well (the "Project"), which well site is located in the Waihee Aquifer area. In consideration of the State's financial contribution, the State shall receive from the Department of Water Supply, County of Maui, water allocation credits (source only) in direct proportion to the total cost and expense of the completed Project.

SECTION 2. Council Authorization. Pursuant to Section 2.20.020 of the Maui County Code, the Council hereby authorizes the Mayor to execute the Agreement and all other necessary documents relating to the Agreement.

SECTION 3. Effective Date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

 5/19/04

EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui
S:\ALL\ESK\Ords\IntGovAgc\campmaluniawell.wpd

DRAFT
INTER-GOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII
AND THE MAUI COUNTY, DEPARTMENT OF WATER SUPPLY,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS.

This Agreement, made this _____ day of _____, 20__, by and between the Board of Land and Natural Resources, State of Hawaii, whose street address is 1151 Punchbowl Street, Room 130, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE", and the Department of Water Supply, County of Maui, State of Hawaii, whose street address is 200 South High Street, Wailuku, Maui, Hawaii, 96793-2155, hereinafter referred to as the "DWS".

The STATE and DWS, in consideration of the mutual promises hereinafter set forth, mutually agree as follows:

1. The STATE administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of the Camp Maluhia Site No. 1 Well on TMK: 3-1-01:020, Waihee, Maui, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.
2. The water allocation credit is the capacity of resource development facilities measured in gallons per day that the STATE is entitled to allocate or assign to State agencies or their tenants within the areas served by the DWS Central Maui Water System.
3. The STATE agrees that payment towards the development of Camp Maluhia Site No. 1 Well will not be applied towards any other STATE obligation to DWS and will not relieve the STATE of its obligation, if any, to DWS for transmission charges, daily storage charges, billing charge or quantity charge.
4. The development of the Camp Maluhia Site No. 1 Well shall include but not be limited to the following: planning, design, permitting and constructing (drilling and testing) of the exploratory well; planning, design, permitting and constructing (development) of the well and treatment facility (if necessary), including furnishing and installing of pump, control building and equipment, piping, electrical equipment and other related infrastructure and site improvements deemed necessary by the DWS for the development of the well.

5. The STATE desires to pay the DWS \$1,000,000.00 to contribute towards the cost related to the exploratory drilling and testing of the Camp Maluhia Site No. 1 Well pursuant to Act 259, SLH 2001, Item A-13, as amended by Act 177, SLH 2002, Item A-13.

6. The DWS will prepare contract plans and specifications, prepare and process an environmental assessment, Well Construction and Pump Installation Permits from the Commission on Water Resources Management (CWRM) and any other related permits, Right-of-Entry agreement(s), Well Test Report to the CWRM, and Department of Health Engineering Report for the development of the Camp Maluhia Site No. 1 Well, transmission mains and appurtenances.

7. The capacity of the source will be the total recommended aggregate yield from the Camp Maluhia Site No. 1 Well as determined by the DWS and agreed upon by the STATE. This aggregate yield will be based on the smaller of the following:

- a. Sustainable capacity of the wells.
- b. Design capacity of the installed pumps ($2/3 \times 2/3 \times$ pump capacity).

8. The STATE and DWS agree that the cost of the water allocation credit (\$/gallon/day) will be calculated by dividing the total cost for all improvements and services listed in Item Nos. 4 and 6 by the recommended aggregate yield from the Camp Maluhia Site No. 1 Well (reference paragraph 7).

9. All development costs listed in item Nos. 4 and 6 shall be fully documented and such documentation shall be provided by DWS to the STATE within 90 days from the completion or final acceptance of construction work.

10. The total gallons per day of water allocation credits from the Camp Maluhia Site No. 1 Well to be provided to the STATE will be calculated by dividing the development costs paid by the STATE by the cost of the water allocation credit (reference paragraph 8). The DWS reserves the right to revise the water allocation credits based on the total recommended yield (reference paragraph 7) of the wells. The DWS will not allocate water until the completion of all improvements and collection of all payments stipulated by this Agreement. The DWS reserves the rights to withhold the use of water allocation credits if its interconnected water systems are unable to accommodate the additional water demands.

11. The STATE and DWS agree water allocation credits (gallons per day) shall be limited to source.

12. The STATE shall utilize all water allocation credits within five years from the completion date of the development of the Camp Maluhia Site No. 1 Well (reference paragraph 4). DWS shall notify the STATE of the completion date. By mutual consent of the STATE and the DWS, water allocation credits may be extended beyond the duration of this Agreement. However, if the DWS withholds the use of water allocation credits as described in item No. 10, the time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

13. If the water allocation credits are not used by the STATE for State projects within the stipulated time, the DWS reserves the right to take back the unused water credits from the STATE and to pay the STATE for the unused water credits at a mutually agreeable cost. However, if the DWS withholds the use of water allocation credits as described in item No. 10, the stipulated time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

14. The STATE will be solely responsible to coordinate the allocation of the water allocation credits for State projects.

15. The STATE and DWS are authorized to enter into this Agreement.

16. This Agreement may not be altered, amended or modified except by an agreement entered into in writing and signed by both parties to this Agreement.

17. This Agreement contains all of the terms, covenants, conditions, stipulations and agreements between the STATE and DWS in relation to the STATE's purchase of water allocation credits from DWS' Camp Maluhia Site No. 1 Well. This Agreement supersedes and cancels each and every other agreement; promise and negotiation between the parties with reference to the purchase, and no party shall be bound by any inducement, statement, representation, promise or agreement not in conformity herewith.

18. This Agreement shall be binding upon the STATE and DWS and their respective successors and permitted assigns.

19. This Agreement is subject to the availability of funds and allotment by the Director of Finance in accordance with Chapter 37, HRS.

The STATE and DWS also agree that the following provisions be made a part of this Agreement as general terms:

1. Indemnification. DWS shall indemnify, defend, and hold harmless the STATE, its officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, actions, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, or death of persons, whenever such damage, injury, loss, or death arises out of, is connected with or related to the development of Camp Maluhia Site No. 1 Well. It is understood that the State shall in no way be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of DWS in the development of Camp Maluhia Site No. 1 Well.

2. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.

3. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of DWS, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Compliance with laws. DWS shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the development of Camp Maluhia Site No. 1 Well, now in force or which may be in force.
5. Assignments. DWS shall not transfer to, assign, or permit any other person to perform DWS' duties, obligations, or interests under this Agreement, either voluntarily or by operation of law, without the prior written approval of the State.
6. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.
7. Partial invalidity. If any term, provision, covenant or condition of this Agreement should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
8. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.
9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.
10. No Partnership. DWS and the State agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.
11. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

In view of the above, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

STATE

By: _____
PETER T. YOUNG
Chairperson, Board of Land and Natural
Resources

Date: _____

DEPARTMENT OF WATER SUPPLY

By: _____
ALAN M. ARAKAWA
Mayor
County of Maui

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

APPROVED AS TO FORM:

Deputy Attorney General

WE HEREBY CERTIFY that the foregoing BILL NO. 39 (2004)

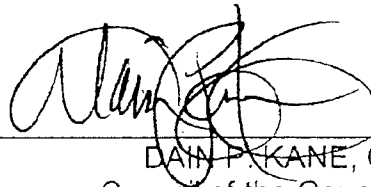
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on 18th day of June, 2004, by the following votes:

| | | | | | | | | |
|--------------------------|---------------------------------|-------------------|--------------------|--------------------|----------------------|---------------------|----------------------|-----------------|
| Dain P. KANE Chair | Robert CARROLL Vice-Chair | G. Riki HOKAMA | Jo Anne JOHNSON | Dennis A. MATEO | Michael J. MOLINA | Wayne K. NISHIKI | Joseph PONTANILLA | Charmé TAVAR |
| Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye | Aye |

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 18th day of June, 2004.

DATED AT WAILUKU, MAUI, HAWAII, this 18th day of June, 2004.

RECEIVED
2004 JUN 18 PM 1:46
OFFICE OF THE MAYOR



DAIN P. KANE, CHAIR
Council of the County of Maui



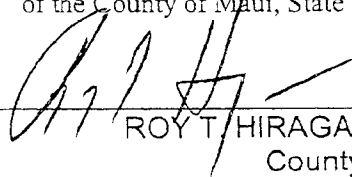
ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 21 DAY OF June, 2004.



ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said B was designated as ORDINANCE NO. 3195 of the County of Maui, State of Hawaii.



ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on May 18, 2004.
Effective date of Ordinance June 21, 2004.

RECEIVED
JUN 21 PM 2:35
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3195, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS

This Amendment to Agreement is made and entered into by and between the Board of Land and Natural Resources, State of Hawaii, whose business address is 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813, hereinafter referred to as the "STATE", and the County of Maui, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as the "COUNTY".

RECITALS

1. The STATE and the COUNTY entered into that certain Intergovernmental Agreement Between the State of Hawaii and the County of Maui Regarding the Purchase of Water Allocation Credits from the Camp Maluhia Site No. 1 Well Development for State Projects on June 30, 2004, hereinafter referred to as the "Agreement".

2. The STATE and the COUNTY desire to amend the Agreement.

NOW, THEREFORE, the STATE and the COUNTY mutually agree to amend the Agreement as follows:

1. The title of the Agreement is amended as follows:

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF
HAWAII AND THE COUNTY OF MAUI, REGARDING THE PURCHASE OF
WATER ALLOCATION CREDITS FROM SITE WELL DEVELOPMENT FOR
STATE PROJECTS

2. Paragraph 1 of the Agreement is amended to read as follows:

1. The STATE administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of Site Well(s) for Central Maui mutually designated by the STATE and the COUNTY, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.

3. All references to the "Camp Maluhia Site No. 1 Well" in the Agreement shall be replaced with the term "Site Well(s) for Central Maui mutually designated by the STATE and the COUNTY".

The entire Agreement, as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the STATE and the COUNTY execute this Amendment by their signatures on the dates below, to be effective as of the date of the last signature hereto.

Approved by the Board of Land
and Natural Resources on:

APPROVED AS TO FORM
AND LEGALITY:

Name:
Deputy Attorney General
State of Hawaii

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Date: _____

Approved by the Maui County
Council on:

REVIEWED AND APPROVED:

JEFFREY T. PEARSON, P.E.
Director
Department of Water Supply
County of Maui

APPROVED AS TO FORM
AND LEGALITY:

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

COUNTY OF MAUI

By _____
MICHAEL P. VICTORINO
Its Mayor

Date: _____

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this _____ day of _____, 20____, before me personally appeared SUZANNE D. CASE, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My Commission Expires: _____

| NOTARY PUBLIC CERTIFICATION | |
|--|-------------------------|
| Doc. Date: _____ | # Pages: _____ |
| Notary Name: _____ | Judicial Circuit: _____ |
| Doc. Description: _____ _____ _____ _____ | |
| [Stamp or Seal] | |
| Notary Signature: _____ | |
| Date: _____ | |

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this ____ day of _____, 20__, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to the Charter of the County of Maui; and the said MICHAEL P. VICTORINO acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name: _____

My commission expires: _____

| NOTARY PUBLIC CERTIFICATION | |
|-----------------------------|-------------------------|
| Doc. Date: _____ | # Pages: _____ |
| Notary Name: _____ | Judicial Circuit: _____ |
| Doc. Description: _____ | |
| _____ | |
| _____ | |
| _____ | |
| [Stamp or Seal] | |
| Notary Signature: _____ | |
| Date: _____ | |