



## EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

July 21, 2008

The Honorable Charmaine Tavares  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793-2155

Dear Mayor Tavares:

This responds to your letter of July 8, 2008 requesting that I consider declaring a state of emergency relating to various water and wastewater services on Molokai.

As discussed in our meeting on April 30, 2008, in the event the utilities fail to continue operating, I believe the County not only has the primary responsibility to ensure continued provision of water and wastewater services to the public, but is also best staffed, equipped and capable of doing so at the lowest cost to the residents of Molokai for the long-term. It is therefore disappointing to see that, since our meeting, the County of Maui has not taken more affirmative steps in regard to its responsibilities in this matter as I believe we both share the view that the foremost concern should be the continuation of water and wastewater service to the public.

Due to the position taken by the operator of the utilities that they are no longer financially able to cover the cost of providing service, the Public Utilities Commission (PUC) is proceeding with its docket to address the need for temporary rate relief to Molokai Public Utilities, Inc., Wai'ola O Molokai, and Mosco, Inc. to allow their continued operation in a manner that will cover the cost to provide the services. The temporary rate relief, however, is currently proposed for only a six month period, to allow time for the existing operator, the County or a third party to assume continued operation of the utilities. The PUC has already noted the County's responsibility in this matter with its letter of June 13, 2008, also quoted in its order dated June 16, 2008, indicating:

As it is the County's responsibility to ensure that its citizens have access to basic water and wastewater service, the Commission urges the County to act expeditiously to do what is necessary to acquire the water and wastewater systems. While the Commission will do all it can within its authority to seek to ensure that [sic] continued provision of water and wastewater service for as long as possible, we ask that the County be ready to take these systems over when the Utilities eventually discontinue providing service.

To assure continued and uninterrupted service, the County's preparation of contingency measures is deemed a critical step for avoiding a safety and health problem for the residents of Molokai. Crucial to this effort is gaining knowledge of the

The Honorable Charmaine Tavares  
Mayor, County of Maui  
July 21, 2008  
Page 2

condition and operation of the affected systems. I am concerned with the County's lack of progress in assessing and evaluating the utilities that you indicated, in our April 30<sup>th</sup> meeting, would occur. Statements have been made by your administration that Molokai Properties, Ltd. (MPL) has not been cooperative in providing information or access to evaluate the systems. Despite this assertion, we have received a copy of correspondence dated July 10, 2008 that was sent to you by Mr. Peter Nicholas that indicates they did not receive any direct request from the County for such information.

While the specific question of the utilities' responsibilities is being pursued, I believe the County of Maui should have stepped up to aggressively address the matter of uninterrupted water and wastewater service for the people of Molokai. Because the County of Maui has demonstrated reluctance to assume this responsibility, the state Department of Health (DOH) has today issued four separate orders to address this matter. First, the DOH has issued two orders to the utilities and Molokai Properties, Ltd. requiring, at least for the next ninety (90) days, the continued operation of the water and wastewater services they had contemplated shutting down at the end of August. Second, the DOH has issued two orders to the County of Maui, requiring that, at least for the next ninety (90) days, the County undertake all necessary steps to be prepared to provide the water and wastewater services should the utilities or Molokai Properties, Ltd. cease these operations.

The County of Maui already has all necessary authority to operate these water and wastewater systems. Hawaii Revised Statutes §46-1.5, setting out the general powers of the counties, states:

(19) Each county shall have the power to:

(A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings, and manage, regulate, and control the same;

\* \* \* \*

(23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same;

The Honorable Charmaine Tavares  
Mayor, County of Maui  
July 21, 2008  
Page 3

Hawaii Revised Statutes §54-15, which deals with county boards of water supply, also affirms that:

The board of water supply shall manage, control, and operate the waterworks of the county and all property thereof, for the purpose of supplying water to the public in the county, and shall collect, receive, expend, and account for all sums of money derived from the operation thereof and all other monies provided for the use or benefit of the waterworks and all property used for or held in connection therewith.

Further, the state's Emergency Plan for Safe Drinking Water specifically states that the county Department of Water Supply "shall have primary responsibility to take steps necessary to provide adequate supplies of safe drinking water." Hawaii Administrative Rules, §11-19-6(f)(3).

The County has at least two different funding sources to undertake these services. First, there is the Water System Development Fund for "the purpose of funding, including funding for debt service, water system improvements (or dedicated water system improvements) which are necessary to increase the service capacity or to replace existing capacity in the department's water system to serve new water consumers or additional demand by existing consumers." 3.92.020 MCC. Second, pursuant to Chapter 3.96 of the Maui County Code, the "Emergency Fund" was established for the purpose of "funding a public emergency threatening life, health, property, or economic viability of the County." It would appear that both of these funds could be accessed in this situation. Based on available information, it appears \$11.9 million is currently appropriated for the County's Emergency Fund for FY 2009. Moreover, as the Maui County Council is in session throughout the year, any other or different appropriations, if needed, could be immediately addressed by the Council.

You are correct to note that, as Governor, I have certain emergency powers that potentially could be utilized in these circumstances. Given the current situation, and the County's lack of progress in preparing for the possible operation of the systems, I am carefully considering whether the use of emergency powers may be appropriate. Importantly, please know that the exercise of such powers potentially may result in directing County agencies, officers and employees to take such action as may be necessary. Under Hawaii Revised Statutes § 128-10(5), I am authorized to "[o]rder and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for . . . health, . . . engineering, . . . other welfare, . . . water supply, . . . and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers." Please also note that should these powers be exercised, by law, "[a]ll such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request."

The Honorable Charmaine Tavares  
Mayor, County of Maui  
July 21, 2008  
Page 4

The state is prepared to assist the County to ensure continued water and wastewater services to Molokai, including submitting a request for some form of funding support at the next legislative session. However, it remains the responsibility of the Maui County government to lead the effort to address this situation. Short of the continued operation of these systems by the current or other private provider, we believe operation of the services by the County will provide the best long-term solution to assuring service to residents. Your focus on the uninterrupted continuation of utility service and a long-term solution for the residents who will be affected is most urgently needed.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE

cc: Maui County Councilmembers  
Senator J. Kalani English  
Representative Mele Carroll  
George Kaya, Governor's Liaison, Maui  
Governor's Molokai Community Advisory Council