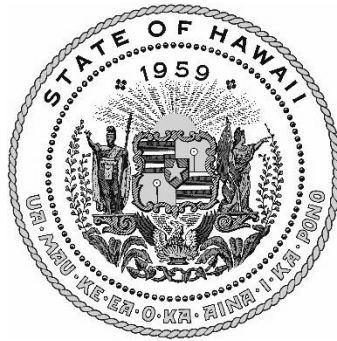


REPORT TO THE TWENTY-NINTH LEGISLATURE
STATE OF HAWAII
2017 REGULAR SESSION

RELATING TO WATER RIGHTS



Prepared by

Department of Land and Natural Resources
State of Hawaii

In response to Act 126, Session Laws of Hawaii 2016

December 2016

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PURPOSE

Act 126, Session Laws of Hawaii 2016, requires the Department of Land and Natural Resources (DLNR) to provide a report to the Legislature for the 2017 Regular Session on: (1) the status of applications to continue previously authorized dispositions of water rights; (2) actions taken on applications during the fiscal period July 1, 2016 to November 30, 2016; and (3) relevant recommendations for legislative action or appropriation.

STATUS OF APPLICATIONS

Act 126 took effect on June 27, 2016. On or about July 20, 2016, DLNR sent letters to its eleven permittees holding revocable permits for water use advising them of the enactment of the law and requesting that they submit applications for water leases by August 2016.

In response, DLNR received eight applications for water leases from seven of its current water permittees, as well as four applications from three entities that currently do not hold water permits. The three new entities are Kau Mahi, LLC, who uses water from two tunnels in Kau, Hawaii without a current disposition, Mac Farms LLC who is applying to use well water in South Kona, Hawaii, for its macadamia farm, and Moloaa Irrigation Cooperative who uses water under a revocable permit issued to Jeffrey Lindner for a water source at Kawaihau, Kauai.

Additionally, two water users on Maui had previously submitted an application for a water lease in May 2001. These users are Alexander & Baldwin, Inc. (A&B) and East Maui Irrigation Company, Limited (EMI). They are relying on their 2001 application for a water lease to replace the four revocable permits for water use previously issued to them.

Further, Kauai Island Utility Cooperative (KIUC) has two pending applications for water leases. One application (received July 20, 2001) is for an existing hydroelectric power project in Lihue, Kauai, and the other application (received September 15, 2014) is for a proposed pumped storage renewable energy project in Waimea, Kauai. KIUC is relying on its prior applications for these uses.

The prior applications of A&B, EMI and KIUC when tallied with the new applications received in August/September 2016, result in a total of 15 pending applications for water leases with the Department. Attached is a spreadsheet identifying the applicants, indicating the dates applications were received, the location of the water source including tax map key, the applicants' stated purpose for requesting a water lease, and whether the proposed water use is consumptive or non-consumptive.

ACTIONS TAKEN ON APPLICATIONS

DLNR wrote to each applicant in September 2016 advising them of the next steps needed to process their applications. Of the 15 pending applications, 13 are for consumptive uses of water, which by statute require the sale of a water lease at public auction once the necessary conditions are satisfied. DLNR and its deputy attorneys general also met with the Department of Hawaiian Home Lands (DHHL) and its deputy attorney general, the Office of Environmental Quality Control (OEQC), as well as attorneys representing three applicants to review the statutory requirements for issuing water leases. The purpose of the meetings was to ensure that the statutory requirements will be addressed to the satisfaction of all the agencies involved.

On September 15, 2016, DLNR, DHHL, OEQC and the Office of Hawaiian Affairs met with three economics professors from the University of Hawaii to discuss possible methodologies for valuing the water and assessing charges for its use.

On November 10, 2016, under agenda Item D-3, the Board of Land and Natural Resources (Board) approved the holdover of nine revocable permits for water use on the islands of Hawaii and Kauai. On December 9, 2016, under agenda Item D-11, the Board approved, as amended,¹ the holdover of the four revocable permits for water use on Maui issued to A&B and EMI. At both meetings, the Board found that the holdover of the water permits was consistent with the public trust doctrine, while the permittees follow the steps needed to secure water leases under Section, 171-58, Hawaii Revised Statutes. Those water lease applicants currently holding a revocable permit for water are identified with a revocable permit (RP) number in parentheses after their name in the list attached.

RECOMMENDATIONS FOR ACTION OR APPROPRIATION

In light of the ongoing cooperation among the various agencies involved, DLNR does not have any immediate recommendations for further legislative action or funding at this time, however, respectfully reserves the right to seek such legislation or funding in the future should a need arise.

¹ The Board amended the staff submittal by establishing a cap on the amount of water that can be diverted and imposing other restrictions on the holdover of the permits.

Applications for Water Leases Statewide as of December 2016

Item Number	Applicant Name	Date Application Received	Location	Proposed Use of Water	Consumptive or Non-consumptive
1	ALEXANDER & BALDWIN, INC. (RPs 7263, 7264 & 7265) and EAST MAUI IRRIGATION CO. LTD. (RP7266)	5/14/2001	Hana, Maui; (2) 1-1-001:044; 1-1-1:50; 2-9-14:various; 1-1-002:002; 1-2-4:5,7	Irrigation and other uses.	Consumptive
2	EAST KAUAI WATER USERS COOP. (RP7310)	8/26/2016	Kawaihau, Kauai; (4) 4-1, 2, 4, 6, 7, 8	Irrigation and other uses.	Consumptive
3	HAWAII ELECTRIC LIGHT CO., INC. (RP7463)	8/24/2016	South Hilo, Hawaii; (3) 2-6-009	Hydroelectric power generation.	Non-consumptive, except for system losses
4	KAPAPALA RANCH (RP7054)	8/29/2016	Kau, Hawaii; (3) 9-8-1:3,9,10; 9-7-1:1	Watering livestock and wildlife.	Consumptive
5	KAU MAHI, LLC	8/26/2016	Kau, Hawaii; (3) 9-7-001:001 (Moaula)	Irrigation and watering livestock.	Consumptive
6	KAU MAHI, LLC	8/26/2016	Kau, Hawaii; (3) 9-7-001:001 (Mountain House)	Irrigation and watering livestock.	Consumptive
7	KAUAI ISLAND UTILITY COOPERATIVE	9/15/2014	Waimea, Kauai; (4) 1-4-001:002, 014, & 016	Proposed pumped storage renewable energy project	Non-consumptive, except for system losses
8	KAUAI ISLAND UTILITY COOPERATIVE (RP7340)	7/20/2001	Lihue, Kauai; (4) 3-9-001:001	Hydroelectric power generation.	Consumptive. Although this is a hydroelectric project, the water is not returned to the same stream from which it is diverted.
9	KUAHIWI CONTRACTORS, INC. (RP7426)	8/3/2016	Kau, Hawaii; (3) 9-7-1:1,15	Watering livestock.	Consumptive
10	LINDER, JEFFREY S. (RP7088)	9/1/2016	Kawaihau, Kauai; (4) 4-9-001:001	County water supply and irrigation purposes.	Consumptive

Applications for Water Leases Statewide as of December 2016

11	MAC FARMS LLC (RP7360 to KAPUA ORCHARD ESTATES, LLC)	8/20/2016	South Kona, Hawaii; (3) 8-9-003:083	Irrigation for macadamia nut orchard.	Consumptive
12	MOLOAA IRRIGATION COOPERATIVE	8/26/2016	Kawaihau, Kauai; (4) 4-9-001:001	Public drinking water and irrigation.	Consumptive
13	OLSON, TRUSTEE, EDMUND C. (RP7432)	8/9/2016	Kau, Hawaii; (3) 9-6-6; 9-6-7; 9-6-8; 9-7-1	Irrigation and watering livestock.	Consumptive
14	WOOD VALLEY WATER & FARM COOPERATIVE (RP7234)	8/24/2016	Kau, Hawaii; (3) 9-7-001:001	Public drinking water, irrigation and watering livestock.	Consumptive
15	WOOD VALLEY WATER & FARM COOPERATIVE (RP7267)	8/24/2016	Kau, Hawaii; (3) 9-7-001:001	Public drinking water, irrigation and watering livestock.	Consumptive