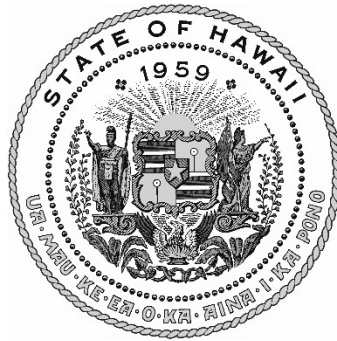


REPORT TO THE TWENTY-NINTH LEGISLATURE
2018 REGULAR SESSION

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 2017

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PURPOSE

Act 126, Session Laws of Hawaii 2016 (Act 126), requires the Department of Land and Natural Resources (DLNR) to provide annual reports to the Legislature no later than twenty days before the convening of each of the regular sessions of 2017, 2018, 2019 and 2020. This report to the 2018 Legislature covers: (1) the status of applications to continue previously authorized dispositions of water rights; (2) actions taken on applications during the fiscal years 2016-2017 and 2017-2018 (December 1, 2016 to December 8, 2017); and (3) relevant recommendations for legislative action or appropriation.

STATUS OF APPLICATIONS

Act 126 took effect on July 1, 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 DLNR. 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. No additional applications for water leases have been received since then.

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 attorney general from the Department of the Attorney 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. DLNR continues to work with Permittees at their request on such issues as compliance with Chapter 343, Hawaii Revised Statutes (HRS), and development of a watershed management plan pursuant to Section 171-58(e), HRS. Additionally, DLNR is working with DHHL to consult with their beneficiaries to develop a reservation of water rights sufficient to support current and future homestead needs, to be included in any water lease pursuant to Section 171-58(g), HRS.

A&B and EMI submitted an Environmental Impact Statement Preparation Notice for publication in the Office of Environmental Quality Control Environmental Notice on February 8, 2017, and are in the process of preparing the Environmental Impact Statement. Hawaii Electric Light Co., Inc. (HELCO) has developed a water reservation with DHHL after a beneficiary consultation meeting in Hilo attended by HELCO, DHHL, DLNR (including staff from the Commission on Water Resource Management) in August 2017. DLNR has reviewed and provided comments to a draft environmental assessment prepared by HELCO and is working with HELCO on a watershed management plan. DLNR and DHHL met with Kuahiwi Contractors, Inc. (Kuahiwi) to discuss the water leasing requirements. Furthermore, DLNR and DHHL are working with Kuahiwi to schedule an information meeting in January 2018 with other Kau water users regarding the water lease process.

DLNR submitted requests to the Board of Land and Natural Resources (Board) for the holdover of 13 revocable permits for water use currently in place in 2016 and 2017, discussing the public trust issues implicated by such a holdover. The Board approved the holdovers of all permits in both 2016 and 2017. Therefore all permits are currently in holdover until December 31, 2018. 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.

Applications for Water Leases Statewide as of December 2017

| 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 | Irrigation and watering livestock. | Consumptive |
| 6 | KAU MAHI, LLC | 8/26/2016 | Kau, Hawaii; (3) 9-7-001:001 | 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 2017

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|----|--|-----------|---|---|-------------|
| 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 |