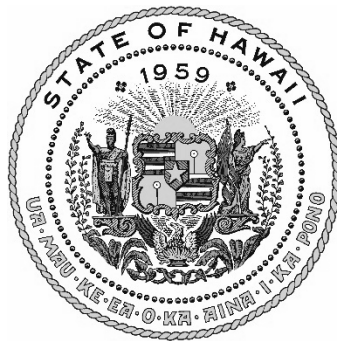


REPORT TO THE THIRTIETH LEGISLATURE
2019 REGULAR SESSION

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 2018

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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 2019 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 AGs 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.

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. In regards to the watershed management plan requirement, DLNR's Land Division and the Commission on Water Resource Management (CWRM), and the AGs are developing a cost sharing contribution as an alternative to the requirement for a lessee to develop and implement a watershed management plan. The formula for determining the appropriate cost share amount will be based on factors such as the amount of water used, amount of available water from the subject watershed, and estimated management costs. Staff intends to bring the cost formula and justification to the Board of Land and Natural Resources (Board) for review and approval in early 2019.

In regards to the A&B and EMI water lease applications, the applicants are in the process of conducting their environmental impact statement (EIS). This follows CWRM's issuance of its Findings of Fact, Conclusions of Law & Decision and Order in the contested case hearing regarding the petition to amend the interim instream flow standards for the 27 East Maui streams that were subject to the petition. Of those 27 streams, 10 were fully restored, with no diversion of water allowed. CWRM's Findings of Fact, Conclusions of Law & Decision and Order is available through the following link:

<http://files.hawaii.gov/dlnr/cwr/cch/cchma1301/CCHMA1301-20180620-CWRM.pdf>

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 CWRM) in August 2017. The Board approved the acceptance of HELCO's Final Environmental Assessment (EA) and the issuance of a Finding of No Significant Impact at its meeting on September 28, 2018. The Final EA was then published in the OEQC Environmental Notice on October 23, 2018.

DLNR is maintaining contact with the remaining Permittees to monitor their progress on their fulfilling the requirements for the water leasing process. DLNR has submitted requests to the Board for the holdover of 13 revocable permits (RP) for water use currently in place annually since the enactment of Act 126, discussing the public trust issues implicated by such a holdover.

The Board approved the holdovers of all permits in 2016, 2017 and 2018. Therefore all permits are currently in holdover until December 31, 2019. Those water lease applicants currently holding a revocable permit for water are identified with a 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 2018

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 2018

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