

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 10, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

KAUAI

Issuance of Right-of-Entry Permit to Seymour Resources Hawaii, Inc. on Lands Formerly Encumbered by Revocable Permit No. S-7310 to the East Kauai Water Users' Cooperative, for Irrigation System Located on a Portion of Government Lands within the Drainage Basins of the North Fork Wailua River and Kapaa Stream, Kawaihau, Kauai, Tax Map Key: Various; and

Request Waiver of Requirement for Conducting a Level One Hazardous Waste Evaluation Prior to Termination of Revocable Permit No. S-7310 to the East Kauai Water Users' Cooperative, Former Permittees.

APPLICANT:

Seymour Resources Hawaii, Inc., a domestic profit corporation.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands within the Drainage Basins of the North Fork Wailua River and Kapaa Stream, situate at Kawaihau, Kauai, identified by Tax Map Key: Various, as shown on the attached map labeled **Exhibit A**.

AREA:

The area will include the existing irrigation water diversion and transportation infrastructure system including diversions on the Kapaa Stream and North Fork Wailua River, the Wailua and Upper Kapahi Reservoirs, and the related transmission and lateral ditch lines that were subject to former revocable permit no. S-7310.

ZONING:

State Land Use District: Agricultural, Conservation and Urban

County of Kauai CZO: Agriculture, Open and Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO
 x

CURRENT USE STATUS:

Vacant and unencumbered, formerly encumbered by RP No. S-7310.

CHARACTER OF USE:

For the operation, repair and maintenance of irrigation water diversions and transportation system limited to addressing only public health and safety issues and preserving the ability of the system to divert and transport water in the future. No diversion of water for irrigation or other commercial purposes will be allowed.

TERM OF RIGHT-OF-ENTRY:

One year from date of acceptance.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules (HAR) § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 51 that states, "Permits, licenses registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." An exemption notice is attached as **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u> x </u>	NO ____
Registered business name confirmed:	YES <u> x </u>	NO ____

Applicant in good standing confirmed: YES x NO

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Obtain written concurrence from all users of the subject land if applicable.

REMARKS:

Revocable Permit No. S-7310 was issued in 2002 to the East Kaua'i Water Users' Cooperative (EKWUC) for irrigation purposes over a system that had previously been used for sugarcane plantations. The permit restricted the use of irrigation water to those agricultural lands presently served by the system, or that had been served in the past. During the 2019 legislative session, EKWUC supported passage of Senate Bill 223 which proposed to transfer operational authority of the irrigation system to the Hawaii Department of Agriculture (DOA), as well as provide DOA with staff and funding for management of the system. The bill failed to pass out of conference committee.

As a result, EKWUC voted to not request renewal of the revocable permit. EKWUC has previously stated that they lack the resources to comply with the water lease requirements as well as serve as a long-term operator of the system. EKWUC's intent was to serve as an interim operator of the system until the system could be transferred to DOA. A letter from EKWUC explaining their decision is attached as **Exhibit C**. The Department has met with DOA to discuss long term management and operation of the system. DOA has stated firmly that without the funding and additional staff provided by the proposed legislation, they do not have the resources to assume management of the system.

Staff has met with the EKWUC management and determined the preferred course of action at this time would be to cease normal operation of the system following the expiration of the revocable permit. However, once the system reverts to the Department's jurisdiction, it will be necessary to continue minimal operation and maintenance of the system in order to address public health and safety issues as well as preserving the ability of the system to divert and transport water in the future. Staff is working with the EKWUC to develop a scope of work in order to procure an operator, as staff does not have the knowledge, expertise and ability to manage the system.

As the procurement will not be completed before the expiration of the revocable permit, staff requests the Board's approval to enter into a right of entry with Seymour Resources Hawaii Inc. (Applicant) to operate, manage and maintain the system on an interim basis. Applicant is a firm that specializes in addressing water management and irrigation system issues for agricultural operators, including water collection and storage, pumping, and water filtration and treatment. Applicant has met with EKWUC and conducted a field inspection of the irrigation system and has determined that they are able to operate and manage the system to serve the purposes noted above.

A right of entry is necessary to ensure continuity of oversight that will better address public health and safety concerns, as well as preserve the functionality of the system for future use. There is a concern that leaving the system unmanaged for an extended period may result in significant damage that would compromise or even negate future use. Applicant will receive no compensation from the Department for services provided under the right of entry. Staff understands that Applicant may be compensated from private entities that have an interest in the preservation of the system. Additionally, Applicant's operation of the system will be limited to meeting the objectives discussed in this submittal. Applicant will not be permitted to operate the system for the purpose of providing water to users or for any other commercial purpose. In consideration of these limitations, staff recommends that the right of entry be issued *gratis*.

Provided the Board approves the right of entry, the Department would also continue to separately pursue procurement of a contract for an interim operator. This would in turn provide an opportunity to seek funding during the 2020 legislative session for DOA to assume management of the irrigation system. As an alternative, the Department is also proceeding with contracting for studies focusing on shutting down the system should legislation fail to provide management appropriations for DOA. In the long term, if management issues cannot be resolved, the Department believes the only alternative would be to permanently shut down the system, including removal of the Wailua and Upper Kapahi reservoirs. The Department does not have the ability to replace the EKWUC as a water provider, nor is such a function within the Department's mission. However, staff is hopeful that a solution will be reached to allow for continued operation of the system under an appropriate managing agency.

Finally, condition 14 of RP No. S-7310 provides that:

“Prior to the termination of the subject permit, Permittee shall conduct a Level One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. The termination will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed.”

In a letter attached as **Exhibit D**, the EKWUC has requested a waiver from this requirement. Given the EKWUC's character of use of the irrigation system as well as observations from site inspections, staff is amenable to the request and recommends the Board grant the requested waiver.

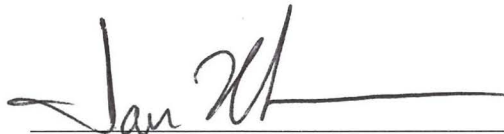
RECOMMENDATION: That the Board

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, this project will

probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

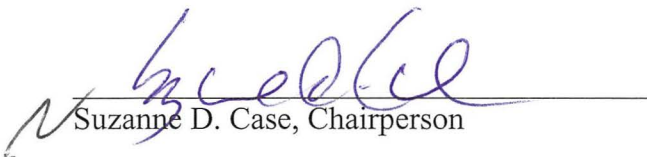
2. Authorize the issuance of a right-of-entry permit to Seymour Resources Hawaii, Inc. covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Waive the requirement of Additional Condition 14 of Revocable Permit No. S-7310 regarding the conducting of a Level One Hazardous Waste Evaluation upon cancellation of Revocable Permit No. S-7310.

Respectfully Submitted,

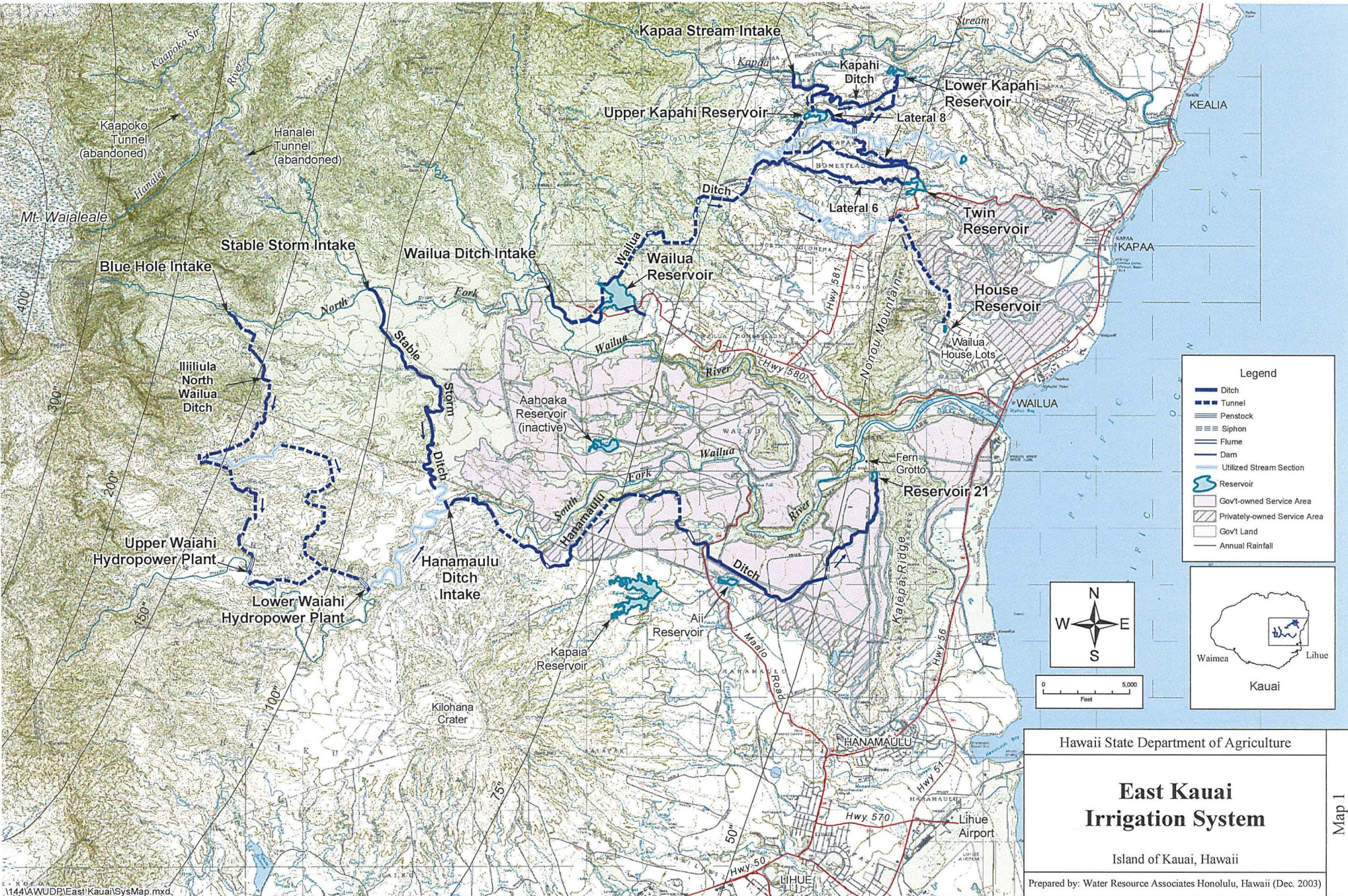


Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson



Hawaii State Department of Agriculture	
East Kauai Irrigation System	
Island of Kauai, Hawaii	
Prepared by: Water Resource Associates Honolulu, Hawaii (Dec. 2003)	

DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

January 10, 2020

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes (HRS), and Chapter 11-200.1, Hawaii Administrative Rules (HAR):

Project Title:	Issuance of Right-of-Entry Permit to Seymour Resources Hawaii, Inc. on Lands Formerly Encumbered by Revocable Permit No. S-7310 to the East Kauai Water Users' Cooperative, for Irrigation System Located on a Portion of Government Lands within the Drainage Basins of the North Fork Wailua River and Kapaa Stream, Tax Map Key: Various
Project Location:	Kawaihau, Kauai
Project Description:	Right of entry for irrigation system operation
Chap. 343 Trigger(s):	Use of State Land
Exemption Class No. and Description:	In accordance with HAR § 11-200.1-15 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing," and Item 51 that states, "Permits, license, registrations, and rights-of-entry issues by the Department that are routine in nature, involving negligible impacts beyond that previously existing."
Cumulative Impact of Planned Successive Actions in Same Place Significant?:	No, this action applies only to a pre-existing irrigation system, and activities conducted under the ROE would be reduced from its current operations.
Action May Have Significant Impact on Particularly Sensitive Environment?:	No. Action will result in less water taken from stream sources than what it currently diverted.

EXHIBIT "B"

- Analysis:** The ROE would allow minimal operation and maintenance of the system in order to address public health and safety issues as well as preserving the ability of the system to divert and transport water in the future. Therefore, the proposed use will involve no expansion or change of use beyond that previously existing.
- Consulted Parties:** Department of Agriculture
- Recommendation:** That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.



**East Kauai
Water Users' Cooperative**

4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
Phone: 808-246-6962
Fax: 808-245-3277

September 18, 2019

**To: Suzanne Case
Chairperson, Department of Land and Natural Resources**

**Re: Notice of Intention to Not Renew Revocable Permit #S-7310 for the East
Kauai Irrigation System**

Aloha, Chairperson Case:

At a meeting of the members of the East Kauai Water Users Cooperative on September 3, 2019, a formal decision was made by majority vote to not renew RP #S-7310 for the East Kauai irrigation system in the Wailua/Kapaa area. The Coop will cease to maintain the system as of December 31, 2019, at which time responsibility will revert to DLNR.

It is with great regret that we do so. However, it has become clear that there simply is no viable way forward for the operation of the system after the legislature failed last session to pass SB223 transferring operation to the Department of Agriculture. It had always been the intent of the Coop since 2001 to be an interim operator until such time as DOA could step in. It is unfortunate that a state-owned system capable of irrigating several thousand acres of agricultural land will be lost.

The system includes Wailua Reservoir, fed by a diversion on the North Fork of the Wailua River, Upper Kapahi Reservoir, fed by Kapaa Stream, and all related lateral ditches. It also includes the ditches on the ADC Kalepa lands which are fed by Hanamaulu Ditch under an agreement with Grove Farm for water delivery.

East Kauai Water Users' Cooperative

JERRY ORNELLAS
Its President

cc:
Robert Masuda, First Deputy, DLNR
Russell Tsuji, Administrator, Land
Division, DLNR
Kevin Moore, Land Division, DLNR
Ian Hirokawa, Land Division, DLNR
Wesley Matsunaga, Kauai Land
Agent, DLNR
Sandi Kato-Klukte, Chair, ADC

James Nakatani, Director, ADC
Myra Kaichi, ADC
Ron Kouchi, State Senate President
Jimmy Tokioka, Representative,
District 15
Nadine Nakamura, Representative,
District 14
Members, East Kauai Water Users
Cooperative

EXHIBIT "C"



**East Kauai
Water Users' Cooperative**

4334 Rice Street, Suite 202
Lihue, Kauai Hawaii 96766
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Fax: 808-245-3277

December 18, 2019

**Ian C. Hirokawa
Special Projects Coordinator
Department of Land and Natural Resources, Land Division
PO. Box 621
Honolulu, HI 96809**

Re: Your letter of December 9, 2019, regarding RP S-7310 termination

Aloha, Ian:

You have directed our attention to the "duties and obligations outlined in your permit regarding termination." We have read the RP and noted requirement B.14 for a Level One (1) Hazardous Waste Evaluation as the sole duty and obligation.

The Coop requests that a costly Level One Hazardous Waste Evaluation be waived. The risk of significant contamination is very low from our non-industrial operation of this pre-existing infrastructure. You and your team have recently seen Wailua and Upper Kapahi Reservoirs, which are the only two large land areas under the RP and would have noted the absence of abandoned vehicles, derelict equipment or any other kind of hazardous waste. The Coop's base yard for equipment, fuel and herbicide storage was located on private land. At no time have chemicals been put into the water. Given all these factors, we believe a hazardous waste evaluation to be unnecessary.

Sincerely,

East Kauai Water Users' Cooperative

A handwritten signature in black ink that reads "Jerry Ornellas".

JERRY ORNELLAS
Its President

EXHIBIT "D"