

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

November 13, 2020

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

KAUAI

Approval to Procure and Award Contract and Delegate Authority to the
Chairperson to Procure and Award Additional Contracts for the Operation and
Maintenance of the East Kauai Irrigation System to Comply with Dam Safety
Regulations and Address Public Health and Safety.

BACKGROUND

The East Kauai irrigation system was formerly under the operation and management of the East Kauai Water Users Cooperative under a revocable permit to provide water to its members for agricultural uses. The Cooperative elected to terminate the revocable permit at the end of 2019, with responsibility for the irrigation system transferring back to the State. The system consists of two reservoirs, Wailua and Upper Kapahi, and a network of ditches and intakes. Potential future actions include transferring the system to the State Department of Agriculture (DOA) or permanently decommissioning the system including removal of the two reservoirs. The Department believes transferring the system to DOA is the most appropriate resolution as the system provides water to agricultural users. Operating the system is well outside the Department's mission.

In the interim, the Department is responsible for the maintenance of the system in order to comply with State Dam Safety regulatory requirements and address public health and safety. Deferring maintenance is not an alternative as Wailua Reservoir is classified as a high hazard dam under dam safety standards, and there is development in the vicinity of both reservoirs. Failure to comply with dam safety maintenance requirements could pose a significant risk to public health and safety in the event of a structural failure. To address the regulatory and public health and safety issues, the Department sought to obtain the services of an irrigation system operator.

In order to secure the needed services through the remainder of the fiscal year 2021, staff solicited for competitive sealed bids. The lowest bidder was Seymour Resources Hawaii, Inc. (SRH) with a bid of \$103,850.00. As the contract budget was limited to \$100,000.00, SRH agreed to a lower total contract price of \$99,999.00. While preparing the contract, staff sought the required approval from the Attorney General (AG). The AG advised that Board approval would be required for this contract. Staff believed that the Board had previously delegated authority to contract to the Chairperson. After review of the prior delegations, AG opined that the delegations relied upon by staff did not apply to this contract. Therefore, as the parties has

made substantial progress through the contracting process, staff is requesting to approve the contract prior to award.

It is unknown whether the system will be transferred to DOA prior to end of the current contract. The Department understands that it may be necessary to procure and execute additional contracts to continue maintenance of the system. Therefore, the Board is also requested to delegate to the Chairperson the authority to procure and execute additional contracts for this purpose. The Department is requesting an appropriation to fund future contracts in the next legislative session to alleviate the need for the Department to use its own operating funds which are critically needed to support its core resource management and protection programs.

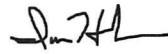
CHAPTER 343- ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources concurred by the Environmental Council and dated March 3, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 20, "Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures." See exemption declaration attached as Exhibit A.

RECOMMENDATION: That the Board:

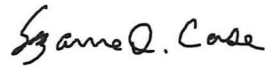
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-16, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment;
2. Authorize the Chairperson execute a contract to retain the services of an irrigation system operator and any supplemental agreements to address unforeseen conditions and to exercise options as provided in the contract for the above referenced project, subject to funding and review and approval by the Department of the Attorney General; and
3. Delegate to the Chairperson the authority to procure and execute additional contracts to retain the services of an irrigation system operator and any supplemental agreements to address unforeseen conditions and to exercise options as provided in the contract for the above referenced project, subject to funding and review and approval by the Department of the Attorney General.

Respectfully Submitted



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL



Suzanne D. Case
Chairperson

RT

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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November 13, 2020

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

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:	Approval to Procure and Award Contract and Delegate Authority to the Chairperson to Procure and Award Additional Contracts for the Operation and Maintenance of the East Kauai Irrigation System to Comply with Dam Safety Regulations and Address Public Health and Safety.
Project Location:	Kauai
Project Description:	Contract to operate and maintain the East Kauai Irrigation System to comply with Dam Safety regulations and address public health and safety.
Chap. 343 Trigger(s):	Use of State Funds
Exemption Class No. and Description:	In accordance with HAR § 11-200.1-16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on March 3, 2020, 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 20 that states, "Repair and maintenance of existing dam or reservoir structures and appurtenant features, including outlet works repair, gate replacements, ditch clearing, replacement of catwalk and access ways, spillway modifications to safely pass anticipated flood waters, and spillway reconstruction to mitigate possible failures."
Cumulative Impact of Planned Successive Actions in Same Place Significant:	None, this action applies only to maintenance of pre-existing improvements.

EXHIBIT A

**Action May Have
Significant Impact on
Particularly Sensitive
Environment:**

None.

Analysis:

This action involves the operate and maintenance of existing improvement for the limited purpose of compliance with State Dam Safety regulations and address public health and safety. There will be no more intensive use or new improvements.

Consulted Parties:

Engineering Division

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.