

STATE OF HAWAI`I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawai`i 96813

December 10, 2021

Board of Land and Natural Resources
State of Hawai`i
Honolulu, Hawai`i

Hawai`i Island and Kaua`i

Holdover/Continuation of Revocable Permits for Water Use on the Islands of Hawai`i and Kaua`i. See **Exhibit A** for list of Revocable Permits.

LEGAL AUTHORITY:

Sections 171-55 and 58, Hawaii Revised Statutes (HRS), as amended.

HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject action is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, “Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing.”, Part 1, Item 44, “Permits, licenses, registrations and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.” See Exemption Notice attached.

BACKGROUND

The current submittal seeks approval for the continuation of revocable permits for water use on the islands of Hawai`i and Kauai for the year 2022 on a temporary basis that will allow the applicants to continue to work in good faith with the Department to complete the requirements of the water leasing process. Also, where appropriate, the Board is requested to impose additional conditions on the continuation of revocable permits that will serve the best interest of the State. The submittal also includes a status update and discussion of water permits/lease applications by island, including any staff recommendations to the Board.

DISCUSSION

HAWAI`I ISLAND

For the island of Hawai'i, approval is requested to continue five water permits. RP S-7463, is issued to Hawai'i Electric Light Co., Inc. (HELCO) for hydroelectric power generation purposes on the Wailuku River in South Hilo, Hawai'i. The permit requires all water used under the permit to be returned to the Wailuku River at convenient points. The hydroelectric facility and various water dispositions to allow it to operate have been in place for many decades. The remaining requirements for this water lease request are the determination of upset lease rent and the watershed management plan. In the past year, staff and HELCO has made significant progress and staff intends to bring the request for public auction for the lease before the Board in the first quarter of 2022.

The other four revocable permits are located in Ka'u, Hawai'i, and the permittees are smaller diversified agriculture users. Previously, Hawaiian Agricultural and Hutchinson Sugar Company, both subsidiaries of C. Brewer & Co., Ltd., developed a system of tunnels, flumes and ditches in Ka'u in the 1900s, using the water primarily for fluming sugarcane and for wash water in the mills. Beginning in the late 1990s, some of the tunnels and transportation systems were converted to provide water to farmsteads and diversified crop endeavors. Diversified agriculture, livestock pasturage, orchard and field crops have expanded within the Ka'u District since that time.

The five revocable permits are as follows:

1. RP S-7054 to Kapapala Ranch for watering livestock purposes.
2. RP S-7267 to Wood Valley Water & Farm Co-op for public drinking water, irrigation and watering livestock purposes.¹
3. RP S-7426 to Kuahiwi Contractors, Inc. for watering livestock purposes.
4. RP S-7432 to Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2 for irrigation and watering livestock purposes.
5. RP S-7918 to Ka'u Mahi, LLC for ancillary agricultural and irrigation purposes.

As previously directed by the Board, on July 5, 2019, Land Division staff as well as the First Deputy, Commission on Water Resource Management (CWRM) Deputy and a Board member met with the permittees to review the water leasing process, discuss the status of the water lease applications and resolve the outstanding water lease issues. Staff also had a follow up meeting on July 18, that included Department of Hawaiian Home Lands (DHHL) staff to discuss the water reservation and beneficiary consultation. DHHL beneficiary consultation was conducted on August 22, 2019. Staff also conducted site visits to the Wood Valley Water & Farm Co-op and Kuahiwi Contractors on July 18 and August 23, 2019, respectively. On January 30, 2020, staff from Land Division, Division of Forestry and Wildlife (DOFAW) and the CWRM Deputy conducted a follow up meeting with the permittees to provide progress on the leasing process including the valuation of water, the watershed management plan, and compliance with Chapter

¹ Permittee had a second water permit, RP S-7234, which they elected not to continue. The Board did not approve the holdover of this revocable permit as part of its 2018 approval.

343, HRS. Staff also conducted a follow up site visit to Kuahiwi Contractors, Inc. on that same date to gain an understanding of their operations.

Further meetings and site visits were planned to also include the Department's contracted appraiser to assist with the valuation analysis. However, due to the onset and ongoing situation of COVID-19, no further site inspections were conducted. Since the Board has approved as amended staff's recommended guidance to appraisers to value consumptive water use at its meeting on October 22 under agenda item D-8, staff will proceed with working with the applicants to conduct future site inspections with an appraiser provided it is safe to do so.

Finally, as part of its 2020 approval, the Board authorized the adjustment of revocable permit rent to account for CPI. The 2021 revocable permit rents are as follows:

1. RP S-7054 (Kapapala Ranch)
\$42.73 per month or \$8.43 per million gallons (whichever is greater)
2. RP S-7267 (Wood Valley Water & Farm Co-op)
\$42.73 per month or \$6.90 per million gallons (whichever is greater)
3. RP S-7426 (Kuahiwi Contractors, Inc.)
\$99.12 per month
4. RP S-7432 (Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2)
\$42.73 per month or \$6.32 per million gallons (whichever is greater)
5. RP S-7463 (HELCO)
\$1,942.23 per month
6. RP S-7918 (Ka`u Mahi)
\$42.21 per month

Adjusted for CPI calculated from August 2020 to October 2021, the 2022 rents are as follows:

1. RP S-7054 (Kapapala Ranch)
\$45.47 per month or \$8.97 per million gallons (whichever is greater)
2. RP S-7267 (Wood Valley Water & Farm Co-op)
\$45.47 per month or \$7.34 per million gallons (whichever is greater)
3. RP S-7426 (Kuahiwi Contractors, Inc.)
\$105.48 per month
4. RP S-7432 (Edmund C. Olson, Trustee of the Edmund C. Olson Trust No. 2)
\$45.47 per month or \$6.73 per million gallons (whichever is greater)
5. RP S-7463 (HELCO)

\$2,066.80 per month

6. RP S-7918 (Ka`u Mahi)
\$44.92 per month

KAUA`I

The Board is requested to approve the continuation of two revocable permits. RP S-7088 to Jeffrey S. Lindner allows for the use of water from State land in Kawaihau, Kaua`i, specifically from Moloa`a Well No. 1. Portions of this water are delivered to users that cannot be accommodated by the County of Kaua`i and the Moloa`a Irrigation Cooperative (MIC), as well as used by Mr. Lindner on his private property. The MIC provides water for both irrigation and domestic use. The water system has been designated as a public water system by the Hawai`i Department of Health Safe Drinking Water Branch, requiring the water to be treated prior to reaching the MIC and other users. On March 1, 2019, staff from Land Division, DOFAW, the Attorney General and DHHL met with Mr. Lindner and conducted a site inspection. Staff understands that Mr. Lindner is currently in discussions with DHHL regarding access to water for their nearby lands.

On November 16, 2020, CWRM received a complaint from the MIC regarding a dispute with Mr. Lindner regarding the relocation of a water meter used by MIC.² MIC received federal CARES Act funds to relocate the meter and conduct additional irrigation systems upgrades. The MIC asserts that the new meter would be a key factor in identifying system losses and reducing waste. Staff consulted with CWRM, who recommended that action should be taken to address the claims of waste made in the complaint, including the relocation of the water meter. For the continuation of the permit for 2021, staff recommended that the Board require Mr. Lindner to reach an agreement with the MIC no later than March 31, 2021, to complete the water meter relocation and require Mr. Lindner to provide a written update on the status on the agreement no later than April 7, 2021. The Board rejected staff's recommendation and instead required the permittee to submit a status report in 6 months to be brought back to the Board in a public meeting. Staff did not receive the status report after six months and followed up with the permittee's attorney via email in July and October. Ultimately, the permittee's attorney informed staff that the MIC relocated the water meter without the consent of or negotiation with the permittee. Additionally, permittee's attorney has contacted staff for assistance in fulfilling the water lease requirements. Given the circumstances, staff considers the water meter issue resolved and recommends that the permit be continued accordingly.

RP S-7340 was issued in 2003 to Kaua`i Island Utility Cooperative (KIUC) for water diverted from the North Fork Wailua River and the Waikoko Stream to operate two hydroelectric plants. Members of the public have written to the Department expressing their concerns with this permit. The comments appear to focus on an alleged failure by KIUC to comply with various regulatory requirements to obtain a lease of water rights, the initial approval of the permit being based on a non-consumptive use which was incorrect, such consumptive use of the water being inconsistent with the public trust, and the diversion of water by KIUC resulting in a negative

² It appears from the MIC complaint that the relocation would entail the installation of a new meter.

impact on the downstream environment. The commenters requested that the Board reconsider its approval of the permit based on their comments.

As part of its 2017 holdover approval, the Board required that:

1. KIUC shall provide to the Board within one year a proposal that involves the restoration of stream flows to the North Fork Wailua River (which could be satisfied by the adoption of interim instream flow standards).
2. Department staff work with landowners on what is expected for the watershed management plan.
3. KIUC shall consult with DHHL to honor DHHL's reservation rights under the law.

At its meeting on August 21, 2018, CWRM considered a staff recommendation to amend the IIFS for Wai'ale'ale and Waikoko streams. However, there is currently a contested case regarding the CWRM staff proposed amended IIFS. As part of its 2018 holdover approval, the Board imposed a limit on the amount of water allowed to be diverted under the revocable permit, based on the proposed amended IIFS developed by CWRM staff, as a temporary measure to restore stream flows while the parties resolve the contested case petitions and an amended IIFS can be ultimately approved by CWRM. Additionally, the Board included a condition that KIUC was to invite Earthjustice, Kia'i Wai O Wai'ale'ale, Sierra Club, Grove Farm, and the Department of Hawaiian Home Lands (together, the "Working Group"), to participate in a facilitated discussion regarding their respective positions on KIUC's request to use State water for its hydroelectricity plants in the permit area, as well as any other relevant matters they choose to discuss. The Working Group could invite other individuals or organizations to participate in the discussion. KIUC was to report back to the Board on the progress of the discussions in three months. KIUC provided a briefing to the Board at its meeting on April 26, 2019.

Based on public testimony presented at that meeting, as well as additional comments received by the Department since then, there continue to be complaints that KIUC is failing to comply with the requirements of the revocable permit. In response, staff consulted with CWRM staff and they confirmed that KIUC is compliant with the stream flow restoration requirements. Another issue that has been raised is whether KIUC is using the diverted water for reasonable and beneficial purposes. Staff understands that the entirety of the diverted water is used to power KIUC's two hydroelectric plants, consistent with the revocable permit. Moreover, KIUC states that all of the water available for diversion is needed to power the hydroelectric plants.

KIUC prepared a draft environmental assessment (EA), which was published for public review and comment on October 8, 2019 and is available through this link:

http://oeqc2.doh.hawaii.gov/Doc_Library/2019-10-08-KA-DEA-Waiahi-Hydropower-Long-Term-Water-Lease.pdf

The draft EA received voluminous comments both in support and opposition of the water lease. KIUC is working on completing the Final EA. Upon completion, the Final EA will be brought

before the Board for review and determination on acceptance. A Final EA has not yet been submitted to the Department. Staff understands that the CWRM IIFS contested case is not yet resolved, which will be integral to completing the water lease process. The continuation provides KIUC the opportunity to complete its water leasing requirements, including environmental review under Chapter 343, HRS, develop a watershed management plan, determine the DHHL water reservation, and establish the amended IIFS. The Board will ultimately determine whether the proposed water lease meets public trust requirements at the end of this process.

During the Board's consideration of this matter at its meeting on December 12, 2020, verbal requests for contested cases were made by Mr. Liko Martin, and Kia'i Wai'o Wai'ale'ale and Friends of Maha'ulepu collectively through Ms. Bridget Hammerquist. Mr. Martin also requested a contested case in testimony submitted prior to the meeting. Following an executive session, the Board voted to deny all requests for contested case and proceeded to approve as amended the continuation of the revocable permit to KIUC for one year. On December 19, 2020, the Department received two written petitions for contested case from Kia'i Wai'o Wai'ale'ale and Friends of Maha'ulepu (Petitioners) filed by Ms. Bridget Hammerquist. Mr. Martin did not submit a written petition. Staff is bringing to the Board a request to deny the contested case.

Staff followed up with KIUC on the current status of the diversions. Similar to what was reported in 2020, KIUC stated that no water is currently being diverted at North Fork River and Waikoko Stream due to damage to the diversions. A status update from KIUC is attached as **Exhibit B**. Even though KIUC is not currently diverting water, staff concurs with KIUC's request and recommends that the revocable permit be continued to allow KIUC to continue to conduct maintenance the ditch infrastructure and repair actions at their discretion when practicable. Furthermore, KIUC has agreed to continue paying the revocable permit rent even though no water is diverted.

As part of its approval for the continuation of the permit, the Board required KIUC to provide records to Earthjustice of the amount of power generated in 2017 through 2019. The information was provided and is attached as **Exhibit C** for the Board's review and consideration in its decision whether to continue the subject revocable permit.

Finally, as part of its 2018 approval, the Board authorized the adjustment of revocable permit rent to account for CPI. The 2021 revocable permit rents are as follows:

1. RP S-7088 (Lindner) \$329.67 per month
2. RP S-7340 (KIUC) \$4,440.14 per month

Adjusted for CPI calculated from August 2020 to October 2021, the 2022 rents are as follows:

1. RP S-7088 (Lindner) \$350.81 per month
2. RP S-7340 (KIUC) \$4,724.93 per month

Therefore, staff recommends that the Board approve the continuation of the water use revocable permits S-7088 to Jeffrey S. Lindner and S-7340 to Kaua'i Island Utility Cooperative, subject to previously approved requirements, and the additional requirements for revocable permit S-7088, at the rental amounts as noted above.

Public Trust Doctrine

Title to water resources is held in trust by the State for the benefit of its people. Pursuant to *In re Water Use Permits*, 94 Hawaii 97, 9 P.3d 409 (2000) (*Waiāhole I*), and *In re Wai'ola O Moloka'i, Inc.*, 103 Hawai'i 401, 83 P.3d 664 (2004) the Hawai'i Supreme Court has identified four public trust purposes with respect to water:

1. Maintenance of waters in their natural state;
2. Domestic water use of the general public, particularly drinking water;
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights; and
4. Reservations for Hawaiian home lands.

In addition, the Courts have indicated that the “dual mandate” of the public trust not only calls for the protection of water resources, but also requires the Board to promote the reasonable and beneficial use of water resources in order to maximize their social and economic benefits to the people of this state. *Waiāhole I*, 94 Hawai'i at 139, 141, 9 P.3d at 451, 453 (“The public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture.”). In order to satisfy its public trust obligations, the Board must balance the proposed use of water against the foregoing public trust purposes, as well as competing uses.

Of these four purposes, domestic water use is implicated in two of the current revocable permits: S-7088 to Mr. Lindner, and S-7267 to Wood Valley Water and Farm Cooperative. The remaining revocable permits are for agricultural use or hydroelectric power generation. In addition to its public trust duties, the Board also has a constitutional duty to promote diversified agriculture. With respect to the agricultural use of water, the Hawai'i Constitution provides:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Hawai'i Constitution, Article XI, Section 3.

The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.

Hawai'i Constitution, Article XI, Section 10.

In staff's view, making irrigation water available to farmers and ranchers supports the long-term viability and security of local agricultural operations and is critical to the State's compliance with the constitutional mandates of Article XI. It also allows for the local production of food, supporting the goal of food sustainability and food security for Hawai'i. It may also translate into lower prices for consumers when produce does not have to be shipped to Hawai'i from outside of the state. Any tension between identified public trust uses of water and the constitutional mandates above will be resolved in the process of issuing water leases, because Section 171-58, HRS, requires the joint development of a water reservation to support current and future DHHL homestead needs.

For the agricultural users on the island of Hawai'i, the only apparent alternative would be to leave the water in its natural state, with no diversion. However, the amount of water diverted is minimal, especially in comparison to the available amount of water. The permittees collectively use less than 1mgd, against a sustainable yield of the source aquifer at over 100mgd. Furthermore, the Ka'u permittees are diverting groundwater, not surface water. Also, the permittees are working in good faith to convert their revocable permits to long term leases. In view of these considerations, staff believes that allowing the revocable permits to continue on a temporary basis in support of the State's agricultural goals is consistent with the public trust.

The hydroelectric use of water allows utility companies to provide clean energy to domestic and commercial users. This method of energy production also supports Hawaii's Clean Energy Initiative, which sets goals for the state to achieve 100 percent clean energy by 2045 coming from locally generated renewable sources. Although hydroelectric projects are not an identified public trust use of State waters, the public trust concerns will be addressed in the processing of the water lease applications under Section 171-58, HRS.

HELCO has completed most of the water leasing requirements, including an environmental assessment with a finding of no significant impact for the project. Further, the HELCO hydroelectric project returns the diverted water to the same stream source from which it was drawn and is considered non-consumptive. For the KIUC project, as the use of water is consumptive, the competing uses would be to leave the water in its natural state, and other downstream uses. Staff does not believe that prohibiting all diversion is appropriate in consideration of the State's renewable energy goals, but rather that diversion should be allowed in an appropriate amount. As the revocable permit is subject to a diversion amount limit that would restore stream flow consistent with the CWRM staff proposed IIFS, staff believes that this condition addresses the competing uses. Staff also notes that KIUC is in the process of completing other lease requirements, and participating in a contested case regarding the IIFS. If the contested case results in a different IIFS, the allocation will be adjusted accordingly by the Board for the long-term lease. In view of these considerations, staff believes that allowing the revocable permits to continue on a temporary basis in support of the State's renewable energy goals is consistent with the public trust.

Finally, continuation of the revocable permits pursuant to staff's recommendations would be consistent with legal requirements that they be temporary and under such conditions and rent which serve the best interest of the State. All of the permittees have taken significant steps to convert their permits to long term leases, including working with the Department and DHHL regarding DHHL's water reservations, seeking or obtaining an IIFS determination from CWRM, and complying with Chapter 343, HRS, including conducting environmental studies where appropriate. Additionally, through this submittal, staff seeks to implement additional requirements where appropriate to ensure that the terms of the revocable permits serve the best interest of the State.

RECOMMENDATION: That the Board:

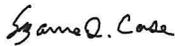
1. Find that the holdover/continuation of the revocable permits listed in Exhibit A is consistent with the public trust doctrine;
2. Declare that, after considering the potential effects of the proposed dispositions as provided by Chapter 343, HRS, and Chapter 11-200.1, HAR, these projects will probably have minimal or no significant effect on the environment and are therefore exempt from the preparation of an environmental assessment;
3. Subject to the terms and conditions noted in this submittal, approve the holdover/continuation of the revocable permits listed in Exhibit A on a month-to-month basis for another one-year period through December 31, 2022.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson *RT*

Revocable Permits for Water on Hawaii and Kauai

Permittee	Location	Proposed Use of Water	Consumptive or Non-consumptive	Notes
HAWAII ELECTRIC LIGHT CO., INC. (RP7463)	South Hilo, Hawaii; (3) 2-6-009	Hydroelectric power generation.	Non-consumptive, except for system losses	
KAPAPALA RANCH (RP7054)	Kau, Hawaii; (3) 9-8-1:3,9,10; 9-7-1:1	Watering livestock and wildlife.	Consumptive	Est. total water use from January 2021 through October 2021= 7.681 million gallons. Average of 0.0252mgd.
KUAHIWI CONTRACTORS, INC. (RP7426)	Kau, Hawaii; (3) 9-7-1:1,15	Watering livestock.	Consumptive	Est. total water use from January 2021 through August 2021 = 27.153 million gallons. Average of 0.1122mgd.
OLSON, TRUSTEE, EDMUND C. (RP7432)	Kau, Hawaii; (3) 9-6-6; 9-6-7; 9-6-8; 9-7-1	Irrigation and watering livestock.	Consumptive	Est. total water use from January 2021 through July 2021 = 415,853 gallons. Average of .001971mgd.
WOOD VALLEY WATER & FARM COOPERATIVE (RP7267)	Kau, Hawaii; (3) 9-7-001:001	Public drinking water, irrigation and watering livestock.	Consumptive	Est. total water use from January 2021 through September 2021 = 8.106 million gallons. Average of 0.0298mgd.
KAU MAHI, LLC (RP7918)	Kau, Hawaii; (3) 9-6-006:010	Ancillary agricultural and irrigation.	Consumptive	
KAUAI ISLAND UTILITY COOPERATIVE (RP7340)	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.	No diversion of water in 2021 due to damage to the ditch system.

EXHIBIT A

Revocable Permits for Water on Hawaii and Kauai

LINDNER, JEFFREY S. (RP7088)	Kawaihau, Kauai; (4) 4-9-001:001	County water supply and irrigation purposes.	Consumptive	No reporting requirement in permit but estimated average use is 0.15mgd.
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November 19, 2021

Honorable Suzanne Case, Chair
Board of Land and Natural Resources
State of Hawai'i
P. O. Box 621
Honolulu, Hawai'i 96809

RE: Request for Renewal of Revocable Permit No. S-7340

Dear Chair Case and Board members:

Aloha and mahalo for your consideration of a renewal of Kaua'i Island Utility Cooperative's (KIUC) Revocable Permit (RP) No. 7340. By way of this letter, we are requesting renewal of this RP for an additional 12-month period to end December 31, 2022. We are also providing updates on KIUC's activities as they relate to the RP and associated lease application.

Since the last RP renewal in November 2020, KIUC has not diverted water from North Fork Wailua River or Waikoko Stream, the subject diversions in the RP referred to collectively as "Blue Hole". However, we have maintained the diversions, ditch infrastructure and gaging equipment associated with the permit as reasonably practicable given road access limitations, extreme weather events, and COVID restrictions.

As we reported last year, in June of 2019 a breach in the ditch downstream of the North Fork Wailua River and Waikoko Stream diversions and upstream of the 'Ili'ili'ula diversion occurred when a large albizia tree fell on a siphon, causing damage and leakage. KIUC closed both the North Fork Wailua and Waikoko diversions at that time and sought bids for the repair.

In August of 2019, a significant landslide occurred in the same area, destroying the siphon and resulting in a complete breach of the ditch system at that location. KIUC hired a contractor to assess to site and replace the siphon. Work commenced in November 2019; however, due to significant rain and further ground instability at the site, work was halted. Current repair estimates exceed \$1 million, which more than doubles the original cost estimates and would be in excess of funds already spent on repair efforts to date.

EXHIBIT "B"

Because of the significant estimated cost of siphon repairs, KIUC continues to take a cautious approach to the siphon project and thus can't predict when we might be in a position to divert again. However, if the RP is renewed, KIUC will have the ability to at minimum continue maintenance activities, which helps avoid or minimize further degradation of the system. Regular maintenance also helps to identify and address vandalism at the diversions and ensures that the headgates remain closed until siphon repairs can be implemented.

Over the past year we have had discussions with DLNR staff regarding the draft Environmental Assessment. We are currently undertaking some additional EA related work as requested by DLNR Land Division and DOFAW and expect to submit a revised draft in first quarter of 2022. Of note is specifically following up on public comments asserting impacts to traditional and cultural practices, and conducting additional flora fauna surveys requested by DOFAW Kaua'i.

In the meantime, by renewing the RP, the state will continue to draw income from KIUC at the current RP rate and KIUC can continue to maintain the diversions and associated ditch infrastructure even if water is not being diverted. The Waiahi hydro facilities are an important source of renewable energy generation for the island of Kaua'i as we seek to meet the state's renewable energy benchmarks and the mandate of achieving 100% renewable generation by 2045.

We would be happy to answer any questions you or the Board may have regarding the renewal of the subject RP. Mahalo for your consideration.

Best regards,

David J. Bissell
David J. Bissell (Nov 17, 2021 14:53 HST)

David Bissell
President and Chief Executive Officer

Cc: Mr. Ian Hirokawa, DLNR
Laurel Loo, Shiramizu, Loo, & Nakamura, LLP
Dawn Huff, Joule Group

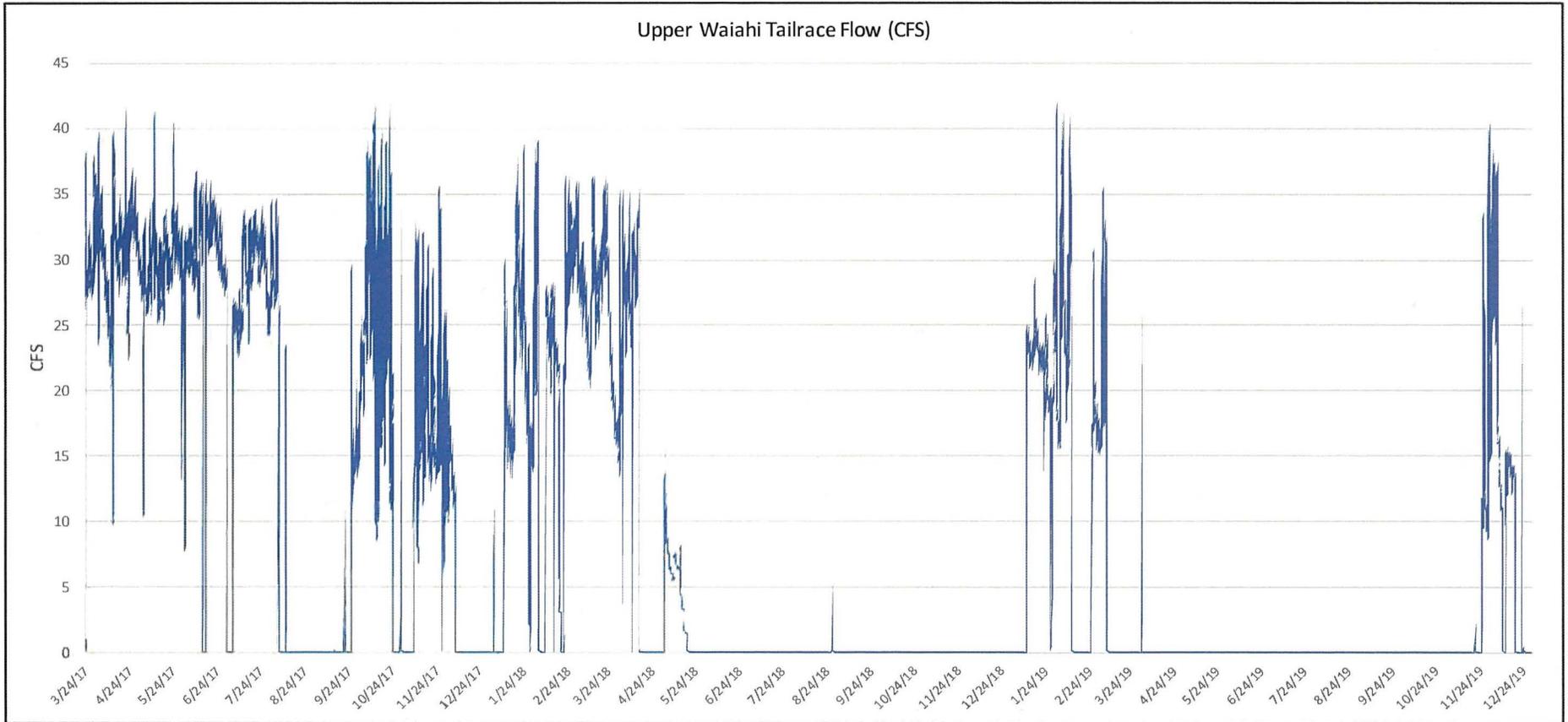
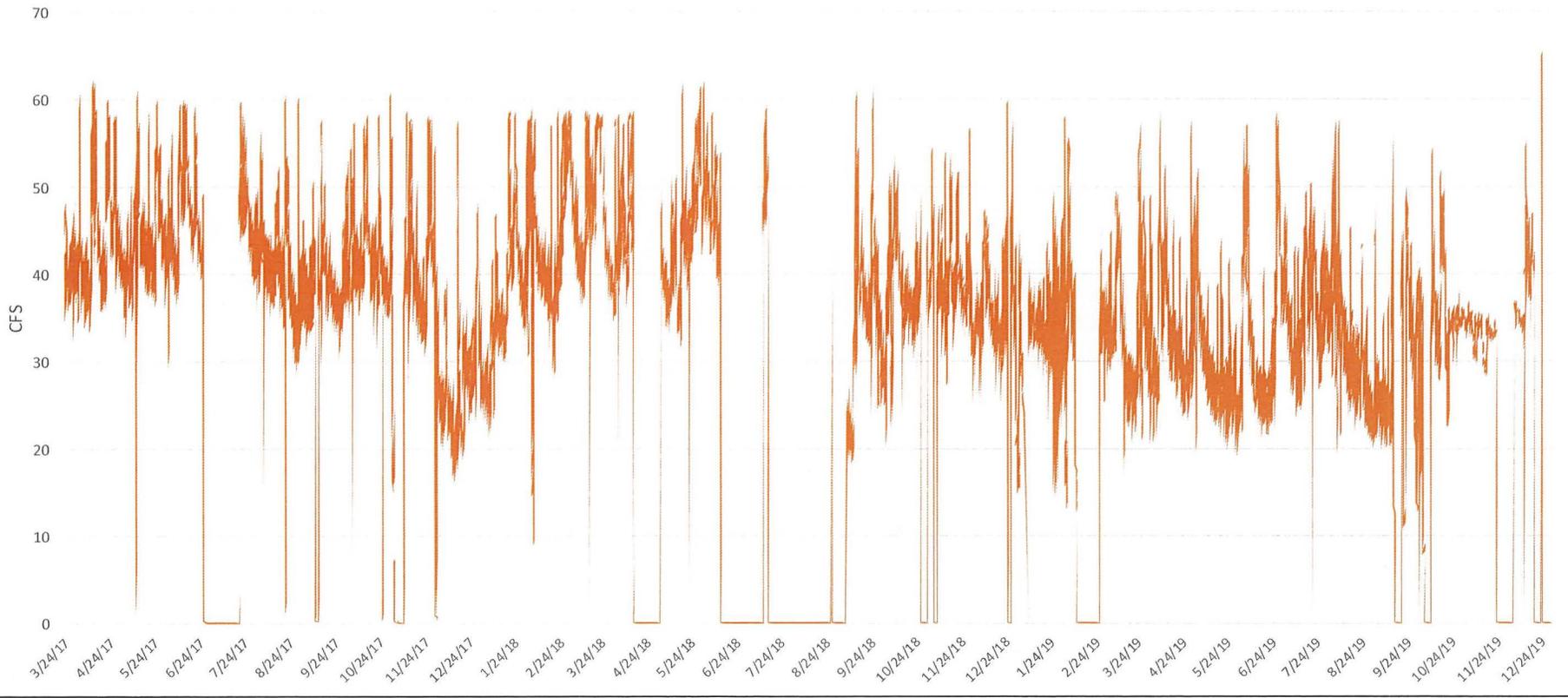


EXHIBIT C

Lower Waiahi Tailrace Flow (CFS)



	kWh	Annual Capacity Factor
Jan-19	601,343	
Feb-19	266,215	
Mar-19	337,620	
Apr-19	296,211	
May-19	265,775	
Jun-19	301,530	
Jul-19	338,551	
Aug-19	286,703	
Sep-19	205,106	
Oct-19	266,452	
Nov-19	252,519	
Dec-19	311,693	28%

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

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: Holdover/Continuation of Revocable Permits for Water Use on the Islands of Hawai'i and Kaua'i

Project Location: Hawai'i Island and Kaua'i

Project Description: Revocable permits for interim water use.

Chap. 343 Trigger(s): Use of State Water (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 November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," and Item 44 that states, "Permits, licenses, 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 pre-existing diversions, and will not serve to authorize any new diversions of water beyond that currently occurring.

Action May Have Significant Impact on Particularly Sensitive Environment: No. Revocable permits are temporary in nature.

Analysis: The State Intermediate Court of Appeals has determined that pursuant to Section 171-55, HRS the Board may issue a temporary permit in the interim while a permittee pursues a long-term water lease. The proposed use under the revocable permits will involve negligible or no expansion or change of use beyond that previously existing.

Consulted Parties: Commission of Water Resource Management, Division of Forestry and Wildlife, Division of Aquatic Resources.

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.