



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
P.O. BOX 621  
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the  
COMMISSION ON WATER RESOURCE MANAGEMENT

April 16, 2009  
Honolulu, Oahu

Request for Approval to Modify Memorandum of Agreement with Central Maui Soil and Water  
Conservation District to Extend the Period of Agreement and  
Clarification of Delegation of Authority Regarding Act 238, SLH 2007, Disbursement

SUMMARY OF REQUEST:

Staff is requesting that the Commission approve the amendment of a memorandum of agreement with the Central Maui Soil and Water Conservation District to extend the period of agreement and to clarify the delegation of authority to the Chairperson to modify and amend memoranda of agreement to disburse drought mitigation funds appropriated under Act 238, Session Laws Hawaii 2007, for the purpose of completing drought mitigation projects and measures.

BACKGROUND:

The 2007 Hawaii State Legislature passed House Bill 400, HD1, SD2, CD1 (Bill), appropriating \$4,000,000 for drought mitigation projects and measures in each County of the State. The Bill also designates the Department of Land and Natural Resources (DLNR) as the expending agency. Governor Linda Lingle subsequently signed the Bill into law as Act 238 and released its funding.

In its December 19, 2007 meeting, the Commission approved the following recommendation:

*Staff recommends that the Commission delegate authority to the Chairperson to enter into memoranda of agreement with drought mitigation project sponsors to disburse drought mitigation funds appropriated under Act 238 for the purpose of completing drought mitigation projects.*

*And, to grant authority to the Chairperson to enter into these MOAs with the four (4) stipulations:*

- 1. Limited to the projects listed in Exhibit 2, with rankings notwithstanding;*
- 2. The sample MOA is a template which may be adjusted;*

3. *Each MOA is subject to the terms and conditions stipulated by the Chair and also be reviewed by the Department of Attorney General; and*
4. *Any new projects not contained in Exhibit 2, be brought back to the Commission for review and approval.*

Since this time, the Chairperson has entered into 11 memoranda of agreement and contracts for 19 Act 238 projects approved by the Commission (see Exhibit 1).

#### REQUEST TO AMEND AGREEMENT:

On June 6, 2008, the Chairperson entered into a memorandum of agreement with the Central Maui Soil and Water Conservation District (CMSWCD) for an Act 238 drought mitigation project entitled, *Planning and Engineering Study for Stormwater Reclamation in Maui County – Kula District*. In order to complete this study, CMSWCD would partner with the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), who would provide technical assistance. CMSWCD had begun the process of executing a separate cooperative reimbursable agreement with NRCS.

In October 2008, NRCS suspended all reimbursable agreements nationwide while awaiting guidance from NRCS headquarters on how to proceed with these agreements. NRCS subsequently resumed the process of executing the reimbursable agreement with CMSWCD. However, this delay has caused the project completion date to be pushed back. In order to accommodate this delay, CMSWCD has requested (see Exhibit 2) a period of agreement extension of 12 months to the memorandum of agreement between CMSWCD and the Commission.

#### CLARIFICATION OF DELEGATION OF AUTHORITY TO CHAIRPERSON:

At the December 19, 2007 meeting, the Commission delegated authority to the Chairperson to enter into memoranda of agreement, but did not specifically authorize the Chairperson to amend the executed memoranda of agreement. While we do not anticipate many requests to amend the memoranda of agreement for Act 238 disbursement, we are requesting that the Commission expand the delegation of authority to also authorize the Chairperson to amend the memoranda of agreement. This would streamline the process to complete the drought mitigation projects. The four stipulations attached to the original delegation of authority will remain in effect.

#### RECOMMENDATION:

Staff recommends the following:

1. That the Commission approve a modification of the June 6, 2008 memorandum of agreement with CMSWCD (*Planning and Engineering Study for Stormwater Reclamation in Maui County – Kula District*) extending the period of agreement to December 31, 2011; and
2. That the Commission clarify its delegation of authority to the Chairperson to include modifying and amending existing memoranda of agreement with drought mitigation project sponsors to disburse drought mitigation funds appropriated under Act 238, while complying

3. with conditions imposed in the original delegation of authority in the December 19, 2007 Commission meeting.

Respectfully submitted,



KEN C. KAWAHARA, P.E.  
Deputy Director

- Exhibit 1: Act 238 project summary  
Exhibit 2: CMSWCD request to extend period of agreement

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN  
Chairperson

Sponsoring Agency	County	Sector	Project	Cost	Instrument	Status
Kauai DOW	Kauai	Water Supply	Facility Testing, Evaluation, and Reporting: Kekaha	\$530,000	MOA	Partial completion
Kauai DOW	Kauai	Water Supply	County-wide conservation and education program	\$170,000	MOA	Partial completion
Honolulu BWS	Oahu	Env., Pub. Health & Safety	Inventory, maintain, and expand fire fighting water	\$350,000	MOA	Contractor selection
Honolulu BWS	Oahu	Water Supply	Drive By Leak Logger	\$110,000	MOA	Contractor selection
Honolulu BWS	Oahu	Water Supply	Toilet Rebate Program	\$100,000	MOA	Completed
Central Maui SWCD	Maui	Agriculture	Maui County Storm Water Capture Planning and Engineering Study (Kula)	\$200,000	MOA	Awaiting agreement with NRCS
Maui Office of Economic Development	Maui	Agriculture	Kula Agricultural Park Water System Improvements	\$800,000	MOA	Contractor selected
West Oahu SWCD	Oahu	Agriculture	Lower Kawaihoa Drought Mitigation Planning Study	\$45,000	Contract	Draft report
DHHL	Kauai	Env., Pub. Health & Safety	Maintain and expand fire breaks at Anahola	\$50,000	MOA	Project started
State CD	Hawaii	Agriculture	Improvements to Kohala Ditch Irrigation System	\$502,000	MOA	Completed
CWRM	Oahu	Water Supply	Ala Wai Boat Harbor water conservation	\$100,000	Contract	Pre-final inspection
CWRM	Oahu	ALL	Documenting agricultural and other commercial losses due	\$100,000	Contract	Project started
DOFAW	Kauai	Env., Pub. Health & Safety	Roadside fuel treatments	\$150,000	MOA	Partial completion
DOFAW	Kauai	ALL	Installation of Remote Automated Weather Stations	\$100,000	MOA	Partial completion
DOFAW	Oahu	Env., Pub. Health & Safety	Fuel hazard reduction in the wildland urban interface	\$100,000	MOA	Partial completion
DOFAW	Oahu	ALL	Installation of Remote Automated Weather Stations	\$50,000	MOA	Contractor selected
DOFAW	Hawaii	ALL	Completion of PuuWaawaa reservoir	\$250,000	Contract	Completed
DOFAW	Hawaii	Env., Pub. Health & Safety	Big Island Drought/Wildland Fire Mitigation	\$248,000	MOA	Partial completion
DOFAW	Oahu	Env., Pub. Health & Safety	Fuel Reduction Equipment Purchase	\$45,000	MOA	Completed
			G-08-314	\$4,000,000		

# EXHIBIT 1



Central Maui Soil & Water Conservation District  
c/o 77 Hookele St., Suite 202, Kahului, HI 96732

RECEIVED

09 JAN 30 4 8:17

January 28, 2009

COMMISSION ON WATER  
RESOURCE MANAGEMENT

Mr. Ken Kawahara, Deputy Director  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, HI 96809

Dear Mr. Kawahara:

Subject: Maui Drought Mitigation Project, Contract No. 57105

Due to circumstances beyond our control, Central Maui SWCD is requesting to extend the period of the Maui Drought Mitigation Project Agreement to end on December 31, 2011.

Central Maui SWCD and USDA-NRCS were about to enter into a reimbursable agreement for the storm water reclamation project. NRCS headquarters initially approved the agreement in early October 2008. A kickoff meeting for the project was scheduled for November 12, 2008 on Maui. On October 31, 2008 the NRCS - Hawaii State Office were told by its national headquarters that all reimbursable agreements were invalidated and work to cease immediately. The November 12, 2008 meeting was cancelled. Since then, we have learned that reimbursable agreements can once again be prepared. However, NRCS - Hawaii State Office are waiting for guidance from Washington.

NRCS is also facing other obstacles in preparing a new reimbursable agreement. The agency is currently being audited, and the audit required responses have caused a heavy workload. In addition to the audit response workload, the agency's contract specialist position is vacant.

Central Maui SWCD is heavily relying on technical assistance from USDA-NRCS for the planning and engineering study, and hereby ask for your approval to extend the project agreement to December 31, 2011.

Sincerely,

Doug MacCluer  
Chairman