



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT
June 15, 2021
Honolulu, Hawai'i

Delegation of Authority to the Deputy Director to Enter into Memoranda of Agreement and Contracts with the University of Hawai'i for the Services of Post-Juris Doctor Fellows

SUMMARY OF REQUEST

That the Commission on Water Resource Management (Commission) delegate authority to the Deputy Director to enter into memoranda of agreement (MOA) and contracts with the University of Hawai'i for the services of post-juris doctor fellows (legal fellow). This includes the proposed MOA (Exhibit 1) with the University of Hawai'i on behalf of the William S. Richardson Law School Ka Huli Ao Center for Excellence (Ka Huli Ao) in Native Hawaiian Law for the services of a legal fellow.

BACKGROUND

The State Water Code was adopted in 1987 followed by the adoption of its administrative rules 1988. Since this time, there have been several amendments to these rules for the purposes of amending instream flow standards, making water reservations, updating permit application fees, and clarifying policies for imposing penalties and fines. As the water management landscape in Hawai'i evolves there continues to be a need to review and modify the administrative rules of the State Water Code. New discoveries and issues – such as climate change, enumeration of public trust purposes, improved understanding of groundwater dependent ecosystems, and the closure of plantations – have shown the need for flexibility in water resource management.

Clarification and modification of the administrative rules are necessary to continue to refine the Commission's management of water resources across the state. Legal expertise and assistance are sometimes needed to efficiently develop and draft proposed rule amendments as well as to navigate the complex process of Hawai'i administrative rulemaking. Retaining the services of a qualified legal fellow from the University of Hawaii is a cost-effective way to acquire this assistance. Delegating authority to the Deputy Director to enter into MOA and contracts for these purposes will streamline the process for receiving this support and give some discretion to the Deputy Director and Commission staff when seeking out help for legal research or services from a legal fellow.

DESCRIPTION OF SERVICES

The proposed MOA is attached as Exhibit 1. Commission staff will provide input to Ka Huli Ao with the selection of the legal fellow. The legal fellow will assist the Commission with factual and legal research and other support on a range of water resource issues, including, for example, providing a set of amendments and compilations of the administrative rules of State Water Code. Administration and hiring process of the legal fellow will be handled by Ka Huli Ao. Office space and other administration will be shared between the Commission and Ka Huli Ao.

TIME OF PERFORMANCE

The proposed MOA period begins on the date of execution and continues for 18 months.

COST OF SERVICES

The total cost for these services is expected to be \$99,000. Funds will be provided through the Commission’s general fund or special fund.

LEGAL AUTHORITY

The authority for this MOA/collaboration is established in the Hawai‘i Water Code 174C-5(4), HRS:

(The commission) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.

ENVIRONMENTAL REVIEW

This action falls under Environmental Impact Statement Rules §11-200.1-16(a)(1), HAR, and an exemption notice is not necessary.

INSTRUMENT TO SECURE SERVICES

The proposed MOA (Exhibit 1) between the University of Hawai‘i and the Commission on Water Resource Management listing the terms and conditions of the agreement will be executed. Staff will use a contract or purchase order to secure the services of the legal fellow and encumber the funding.

RECOMMENDATIONS

Staff recommends that the Commission delegate authority to the Deputy Director to:

1. Enter into a memorandum of agreement and contract with the University of Hawai‘i on behalf of the William S. Richardson Law School Ka Huli Ao Center for Excellence in

Native Hawaiian Law for the services of a post-juris doctor fellow to assist Commission staff in legal research, drafting of administrative rules and other related activities; and

2. Enter into future MOA and contracts with the University of Hawai'i for the services of legal fellows to assist the Commission staff provided that funding is available.

The terms of this and any future MOA will be subject to the availability of funding and any associated contracts would require the approval of the Attorney General's Office. Contract execution will be done in accordance with Hawaii Revised Statutes Chapter 103D and Hawaii Administrative Rules, Chapter 3-122.

Ola i ka wai,

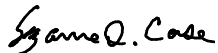


M. KALEO MANUEL
Deputy Director

Exhibits

1. Memorandum of Agreement

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson