



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

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT
September 20, 2022
Honolulu, Hawai'i

Authorize the Chairperson to Enter into a Memorandum of Understanding (MOU) with the Hawai'i Public Utilities Commission to Encourage Information Sharing and Collaboration Between the Agencies and Delegate to the Chairperson to Finalize MOU and Make Non-Substantial Edits as Appropriate

SUMMARY OF REQUEST

That the Commission on Water Resource Management (CWRM)¹ authorize the Chairperson to enter into a memorandum of understanding (MOU) with the Hawai'i Public Utilities Commission (PUC) to share information and collaborate on matters related to water resources that appear before the CWRM and PUC.

BACKGROUND

CWRM has jurisdiction and regulatory authority over water resources statewide and aims to balance the protection of water resources and public trust purposes while maximizing reasonable and beneficial uses of water (Chapter 174C, Hawai'i Revised Statutes ("HRS")). The PUC regulates 38 private water and sewage treatment facilities (among other public utilities) and oversees matters such as rate setting, change in ownership, and certificates of public convenience and necessity (Chapters 269, 269E, 271, 271G, 486H, and 486J, HRS).

CWRM and PUC staff often collaborate on questions relating to water resources. In a recent case involving a Maui public utility, CWRM and PUC staff explored the complex interaction between the agencies' respective authorities as well as possible implications to current and future water availability to the utility. In recognition of the respective regulatory responsibilities and common agency interests, as well as occasional gaps in information and understanding, there was a mutual need for a more formal arrangement of understanding between CWRM and PUC. A robust working understanding between agencies is more important given the potential

¹ Note that the convention of using "Commission" to denote the Commission on Water Resource Management is changed to "CWRM" in this submittal to be consistent with the labels and acronyms used in the proposed MOU.

implications of climate change to future water availability in Hawai‘i and incipient competition for water in places that water may become scarce.

After several meetings and exchanges of a draft MOU document, CWRM and PUC staff have agreed upon language that would benefit both agencies without placing undue burden or responsibilities upon either agency.

DESCRIPTION OF MOU

The proposed MOU is attached as Exhibit 1, which outlines areas of interest and priorities of CWRM and PUC. The MOU establishes actions to improve cooperation and collaboration between the agencies that will allow both agencies to achieve their respective regulatory responsibilities in a more efficient manner. PUC staff received approval for this MOU from the PUC. The terms of this MOU will be subject to the availability of personnel and other resources in CWRM and PUC.

MODIFICATION AND TERMINATION OF MOU

The proposed MOU period begins on the date of execution. The MOU may be modified at any time by the mutual written agreement of the parties. CWRM and the PUC may terminate the MOU upon thirty days written notice to the other. During this period, the parties shall make good-faith efforts to resolve any disagreement.

LEGAL AUTHORITY

The authority for this MOA/collaboration is established in the HRS § 174C-5 (4):

The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

(4) 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.

RECOMMENDATIONS

Staff recommends that CWRM authorize the Chairperson to enter into and finalize a Memorandum of Understanding with the PUC and make non-substantial edits as appropriate.

Ola i ka wai,



M. KALEO MANUEL
Deputy Director

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

Exhibit 1 – Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING

BETWEEN

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

AND

THE HAWAII PUBLIC UTILITIES COMMISSION

1. In recognition of the regulatory responsibilities and common interests of the Hawaii Department of Land and Natural Resources, Commission on Water Resource Management (“CWRM”) and the Hawaii Public Utilities Commission (“PUC”), the benefits to both organizations that result from sharing information about regulatory experiences and practices, CWRM and the PUC hereby declare their intent to cooperate in this Memorandum of Understanding (“MOU”).
2. This MOU identifies topics that CWRM and the PUC intend to focus on in their initial exchange of information.
3. The initial topics under this MOU of interest to the CWRM include the following areas:
 - a. Protection and prioritization of public trust uses of water by PUC, which are water in its natural state, domestic uses, water for the Department of Hawaiian Homelands, and water for the exercise of traditional and customary Native Hawaiian practice;
 - b. Consistency of public utilities’ Certificate of Public Convenience and Necessity (“CPCN”) with water use permit allocations and conditions within water management areas;
 - c. Review of CPCN of public utilities reliant on surface water within or outside of water management areas, including establishment of numeric interim instream flow standards;
 - d. Good standing and compliance of public utilities with the State Water Code, Hawaii Revised Statutes Chapter 174C, Hawaii Administrative Rules, and orders by CWRM – identify any deficiencies or outstanding notice of violations;
 - e. Proactive data sharing with PUC on water and wastewater public utilities;
 - f. Letter from PUC to CWRM Chair and delegation from CWRM to Chair or Deputy to determine how and when to engage in PUC docket as a party in water and wastewater proceedings;
 - g. Water system efficiency and conservation on both public water systems and irrigation systems including but not limited to mandatory water audits for public potable water systems, mandatory monitoring of water source, appropriate distribution systems, and gaged or metered end uses to determine economic level of loss;
 - h. The economic impact of decisions by the CWRM, including Contested Case Hearings, on public utilities and their end users.
4. The initial topics under this MOU of interest to the PUC include the following areas:
 - a. Whether the timing and volume of water utility withdrawals (surface or groundwater) is consistent with the utility’s CWRM permit (and how to review for ongoing consistency with the utility’s CWRM permit);

- b. Explore conversations about a water utility's obligation to provide service under PUC statutes/rules, as compared to the often finite or limited nature of water resources in the State;
 - c. Discuss the possibility of re-examining a water utility's current source/volume of water based on changed or changing environmental circumstances.
5. Cooperation under this MOU may include, but is not limited to, the following:
- a. Information sharing and discussion of water utility issues and topics related to regulatory practices, which can include:
 - i. Information on water/wastewater utility change of control applications, and applications for a new CPCN or CPCN transfer;
 - ii. Any documentation related to water audits ordered in the course of utility rate cases;
 - iii. Any documentation related to water conservation plans ordered during utility rate cases or other proceedings;
 - iv. Geographic Information Systems ("GIS") data of utility service areas;
 - v. Data on amounts of water withdrawn from the resource as reported to CWRM and the availability of water for the proposed action;
 - vi. Hydrologic monitoring data collected by CWRM;
 - b. Joint visits that include CWRM, PUC, and other regulatory entities;
 - c. Meetings, webinars, workshops, teleconferences and/or email exchanges;
 - d. Studies on agreed-upon topics that include the participation of experts in the industry; and
 - e. Training activities

CWRM and the PUC may decide to cooperate in other areas of mutual interest.

6. This MOU is not intended to be a binding contract enforceable in a court of law or in an administrative forum. It is intended only to establish a process for further cooperation between the governmental entities signing this document.
7. Nothing contained in this MOU requires either CWRM or the PUC to take any action that would be inconsistent with any existing or future laws, regulations, and policy directives applicable to it. Activities by CWRM and the PUC under this MOU are to be subordinate to their regulatory activities and interests and should be met depending on each entities' resources and priorities.
8. CWRM and the PUC, unless otherwise decided upon, intend to bear their own share of financial costs of participating in the activities under this MOU. All activities are subject to approval of funding by each entity involved.

9. This MOU will take effect when signed by all the parties hereto. This MOU may be modified at any time by the mutual written agreement of the parties. CWRM and the PUC may terminate the MOU upon thirty (30) days written notice to the other. During this period, the parties shall make good-faith efforts to resolve any disagreement.

Suzanne Case, Chairperson
Hawaii Department of Land and Natural Resources
Commission on Water Resource Management

Date

Leodoloff R. Asuncion, Jr., Chair
Hawaii Public Utilities Commission

Date