

**From:** [barbara george](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 11:41:27 AM

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Aloha Chair Case and members of the Board of Land and Natural Resources,

As a Hawaii resident, I strongly support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This Board must establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris are removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Barbara George  
Haleiwa, HI

**From:** [Colleen Soares](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 11:49:16 AM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Colleen Soares  
47-678 Hui Alala St.  
Kaneohe, Hawaii 96744  
[csoares48@gmail.com](mailto:csoares48@gmail.com)



**Hawaii Cattlemen's Council, Inc.**

## **BOARD OF LAND & NATURAL RESOURCES**

**Suzanne D. Case, Chairperson**

### **Board Members:**

**Stanley H. Roehrig | Keith "Keone" Downing | James A. Gomes | Thomas Oi |  
Samuel "Ohu" Gon III | Christopher Yuen**

DATE: Friday, November 9, 2018  
TIME: 9:15 a.m.  
PLACE: Kalanimoku Building, Land Board Conference Room 132

### **Holdover of Revocable Permits S-7263, S-7264 and S-7265 to Alexander and Baldwin, Inc. and S-7266 to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.**

Chair Case and Members of the Committee:

My name is Dale Sandlin, and I am Managing Director of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc (HCC) is the Statewide umbrella organization comprised of the four county level Cattlemen's Associations. Our 150+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State and ranchers in Hawaii are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly supports** the approval for holdover for these revocable permits as it is critical to the future success of our industry on Maui and providing a necessary resource for improved pasture for raising livestock.

As Alexander & Baldwin and HC&S have ceased their sugar operations, grazed pasture for livestock production emerged as a viable option to keep the land in agriculture, provide jobs within the livestock sector and provide a stable food source for our islands. HC&S conducted a trial of developing improved pasture for livestock production and utilized a group of cattle from a local ranch to determine the land's viability for this use. In addition to planting grasses and legumes, they installed subsurface drip irrigation. This irrigation method provides for the efficient delivery of water directly to plant root systems and ensures a consistent forage source regardless of local rainfall. After better than expected gains during the trial, HC&S expanded the improved pasture acreage and have begun livestock and pasture management operations.

The availability of irrigated pasture provides ranchers with the ability to provide the necessary forage for their cattle without relying solely on the rainfall that falls only on their pastures. The ability for the existing infrastructure to continue to provide the vital resource of water to the central plain is critical for the continued success of these lands. If we expect to increase the stability of local food production, this is a major factor to reaching that goal. With Governor Ige's goal to increase agricultural production by 50%, local pasture raised beef is possibly the single biggest commodity to help reach that goal.



A long-term water rights lease approved by BLNR is wholly dependent on ensuring that Maui's Central Plain continues to receive East Maui water. The brackish wells in the Central Plain cannot provide a sustainable source for agricultural production and will not allow for the continued success of agriculture on Maui. A&B has begun the EIS process with the required studies and assessments currently underway and expect a Draft EIS early in 2018.

The water delivered from East Maui is providing public benefit, both for agricultural production and to upcountry residents and other small farmers. The holdover for these revocable permits will also provide for the continued maintenance of the overall system for water delivery. The continued maintenance of this system is critical not only for A&B's uses, but also for the critical delivery of water to more than 36,000 upcountry residents and other small farmers in Kula. Without holdover, the ditches, roads, and other components of the system will be overgrown and deteriorate causing an even greater financial burden to restore. Currently, A&B has demonstrated the ability to maintain or improve these systems over time. In cases of the cessation of large scale sugar production on other islands, the state has not been effective at transitioning the infrastructure maintenance responsibilities. The re-establishment of these systems were no longer feasible after they left private maintenance.

We respectfully ask that holdover be granted for these revocable permits. We ask that the board consider and invest in the future of agriculture on Maui by approving the holdover. The potential benefit of these lands could lead to Maui being the catalyst to improve the stability of local food production for our state and this cannot be achieved without the continued delivery of water from East Maui to the central plain. We appreciate the opportunity to testify on this important matter.



ITEM D-7

P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail [info@hfbf.org](mailto:info@hfbf.org); [www.hfbf.org](http://www.hfbf.org)

HEARING BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

Kalanimoku Building  
Land Board Conference Room 132  
1151 Punchbowl St.  
Honolulu, Hawaii 96813

November 9, 2018

ITEM D-7: Holdover of Revocable Permits to East Maui Irrigation Company, Limited, for  
Water Use on the Island of Maui

Aloha Chair Case, and Members of the Board:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

**The Hawaii Farm Bureau strongly supports approval for the holdover of revocable permits to Alexander and Baldwin and East Maui Irrigation.**

***Without water, there can be no agriculture.*** This decision is of substantial interest to agriculture statewide, as many of Hawaii's farms and ranches depend on diverted waters to grow crops and raise livestock. The future of one of the largest contiguous active agricultural lands in the State is at stake. Approval of the holdover permits will allow water to continue to irrigate approximately 30,000 acres of agricultural lands in Central Maui, as well as supply irrigation water to the small farmers of Kula, and provide domestic water for 36,000 Upcountry Maui residents.

Without holdover approval, HFB fears that agriculture in Central Maui will be just a memory. Investing in farming and ranching is a risky business, given weather, pest and market challenges. The uncertainty of whether there will be water is a show stopper. This decision is a critical step in the path to a long-term lease crucial to restoring agriculture in Central Maui.

The approval of these holdover permits is an *interim* solution and part of the larger process to allow the fair distribution of water. Currently, diverted water provides irrigation water to central Maui and to the County for Upcountry Maui use, while the rest remains in the watershed. Without the requested holdover permit approvals, Maui's communities, its farm families, its landscape, and its ability to have productive farms will be forever changed.

The lands of Central Maui, the largest farm in the State, provide a unique opportunity due to the favorable growing conditions, contiguous parcels, existing roads, and irrigation infrastructure. Maui's long and proud agricultural history as the produce and flower "breadbasket" of the State does not have to be lost. The cool weather of Upcountry Maui, coupled with deep volcanic soils have produced iconic and much sought-after crops such as the Maui Kula onion, protea, and persimmons. This heritage provides the perfect foundation for expansion into new and promising agricultural endeavors on the lands of central Maui. But without diverted stream water, this will be impossible. Farmers cannot rely upon rainfall in this area. They must irrigate but the salinity of the Central Maui brackish water wells makes farming dependent upon the East Maui stream waters for many crops.

Alexander and Baldwin has already restored water in multiple streams in East Maui and has demonstrated a willingness to work with the community to find solutions. Approval of these holdover permits will allow those who have invested in and relied upon the waters to continue to farm while sending a policy message of commitment to agriculture to those who would like to farm.

The future of farming on Maui, including the welfare of our farmers and ranchers, and the rural communities of Upcountry Maui, is at stake. Hawaii Farm Bureau respectfully requests your **strong support** in authorizing the holdover permits for Alexander and Baldwin and East Maui Irrigation on Maui. Thank you.

**Testimony before the Board of Land and Natural Resources**

**Regarding the approval of the holdover revocable water permits  
granted to A&B for irrigation and domestic use in central Maui**

**November 9, 2018**

My name is Robert Osgood

I am currently working as an agricultural consultant following 35 years as an employee of the Hawaiian Sugar Planters' Association (HSPA) and its successor, the Hawaii Agriculture Research Center (HARC). The work at HSPA and HARC included the evaluation of diversified crop possibilities as the sugar industry was downsizing from the early 1980's. The studies have been partially responsible for the diversification of Hawaii agriculture following sugarcane and pineapple. Examples are commercial seed production, coffee on all major Hawaiian Islands, forage for cattle feed, biomass energy crops, cacao, and asparagus. All these crops require irrigation where they have been placed on plantation lands, which is the subject of today's testimony.

Today, I am testifying for the approval of the holdover of revocable permits for water use on Maui by Alexander & Baldwin and East Maui Irrigation Company. These yearly permits are crucial for the continued crop diversification of the central Maui land, Upcountry land currently in production, provision of domestic water, and for production of hydro power. Commercial production of crops in central Maui is not possible without irrigation and it will be impossible for A&B to attract potential farmers without securing the permits and in the future obtaining long term leases.

The State of Hawaii has set greater food and energy self-sufficiency as goals and irrigated Maui lands are expected to be large part of plan to reach these goals. It is the A&B vision to produce bioenergy crops, provide forage for cattle to expand the island beef industry, provide irrigated pasture for grass-fed beef, and provide land to produce diversified food crops such as sweet potato.

The alternative to approving the holdover permits is to let the land go fallow, which in dry years will present an ugly brown landscape of dry guinea grass and koa haole without economic return. The former sugarcane land infrastructure will fall into disrepair including the water collection and conveying ditches and road system. This will result in a much greater fire hazard and feral animal encroachment. For the farming and residential communities of Kula uncertain water availability will have unwanted consequences.

Failure to approve the holdover permits and, in the future, to consider a long-term solution, will do considerable damage to the economy and beauty of Maui.

With these concerns, I urge the Board of Land and Natural Resources to approve the holdover permits before you.

Dr. Robert Osgood

November 9, 2018



**From:** Keoahunui Warrington  
**To:** DLNR.BLNR.Testimony  
**Subject:** Testimony on Agenda Item D-7  
**Date:** Wednesday, November 07, 2018 9:35:54 PM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Constance Keoahunui Uale Warrington

Sent from my iPhone

**Ferreira, Darlene S**

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**From:** Keoahunui Warrington <cualesmile@aol.com>  
**Sent:** Wednesday, November 07, 2018 9:36 PM  
**To:** DLNR.BLNR.Testimony  
**Subject:** Testimony on Agenda Item D-7

Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Constance Keoahunui Uale Warrington

Sent from my iPhone

DAVID Y. IGE  
Governor

DOUGLAS S. CHIN  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE BOARD OF LAND AND NATURAL RESOURCES**

November 9, 2018  
9:15 A.M.  
Kalanimoku Building  
Land Board Conference Room 132

**BOARD ITEM D-7**

Holdover of Revocable Permits S-7263 (Tax Map Key: (2) 1-1-001:044), S-7264 (Tax Map Keys: (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) and S-7265 (Tax Map Key: (2) 1-1-002: por. 002) to Alexander and Baldwin, Inc., and S-7266 (Tax Map Keys: (2) 1-2-004:005 & 007) to East Maui Irrigation Company, Limited, for Water Use on the Island of Maui.

**Chairperson Case and Members of the Board:**

Thank you for the opportunity to testify on agenda item D-7 that requests an additional one-year holdover for four Revocable Permits issued to Alexander and Baldwin, Inc and East Maui Irrigation Company. If the request is approved, it would be the third and final holdover renewal action as provided for in Act 126, SLH 2016. The Department of Agriculture supports the approval of this request that ensures the largest contiguous area of prime agricultural lands, most of which were designated as Important Agricultural Lands in 2009, to continue having access to vital irrigation water.

We understand that Alexander and Baldwin continues to move forward in transitioning their 30,000 acres of prime agricultural land in Central Maui to agricultural uses including irrigated pasture for beef cattle, diversified crops, bio-energy crops, and a new County agricultural park. These agricultural uses, once established, will substantially move the State's goals to increase food and energy self-sufficiency.



Maintaining access to the reliable and cost-effective irrigation system is critical in this regard.

Thank you for the opportunity to provide testimony on this important request.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott E. Enright". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Scott E. Enright  
Chairperson, Board of Agriculture

**From:** [Keoahunui Warrington](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on Agenda Item D-7  
**Date:** Wednesday, November 07, 2018 9:35:54 PM

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I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Constance Keoahunui Uale Warrington

Sent from my iPhone

**From:** [kumu chang](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Monday, November 05, 2018 4:12:20 PM

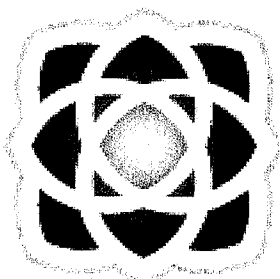
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Mahalo,

Lisa Chang  
Hau‘ula



# MAUI

CHAMBER OF COMMERCE  
VOICE OF BUSINESS

## Board of Land and Natural Resources

Re: D-7 Holdover of Revocable Permits to East Maui Irrigation Company  
For Water Use on the Island of Maui  
Friday, November 9, 2017

Dear Chairperson Case and Members of the Board,

Aloha and Mahalo for the opportunity to provide testimony on this matter.

The Chamber is in strong support of the holdover of revocable permits to Alexander & Baldwin and East Maui Irrigation.

The Chamber understands that water is important to life, industry health and growth, the environment and stream health, and new and needed developments such as affordable housing. As an organization that believes in the quadruple bottom line – economy, environment, social wellbeing, and culture – we seek to find a balance for the use of this precious resource to serve those needs. While each of those elements in the quadruple bottom line need water, the issue is transmission and priority. What we seek is a way to balance our use to support further development of agriculture, value-added manufacturing, development of affordable housing, new industries, and the environment.

There is a widespread agreement that we want to be a more sustainable island and grow more of our local produce. We are also seeing an expansion in value-added and niche manufacturing and as we grow in this area, more water will be required. Sustainability is essential and encompasses disaster recovery. Communities who have created more sustainable systems and infrastructure are better able to recover from natural and man-made disasters and local agriculture is a key part of that. We are big supporters of agriculture and keeping Maui green, including the Central Valley which is the first view our visitors see.

Further, this hearing is very important because we are talking about a key company who has done and retains the ability to do large scale agricultural production. We support their current plan. Agriculture is a risky business. Significant investment is required upfront including land preparation, irrigation systems, labor, equipment, and water, all before any profit can be made and water is needed before anything will grow. Therefore, it is essential that appropriate amounts of water be provided to this company who has historically proven their ability to farm and who is also providing water to farmers in Kula and for domestic use in Upcountry Maui.

Ultimately, A&B needs the approval of a long-term water rights lease, but there are several time consuming steps that must be completed prior to the consideration of a long-term water rights lease. We understand that A&B has made progress on some of these steps including establishing interim instream flow standards and having studies and assessments underway for an Environmental Impact Statement. While A&B is making progress toward a long term water lease, it is essential that these holdover permits be granted until these steps can be completed to allow the company to sustain and grow agricultural operations, continue to provide water to Kula farmers, and Upcountry residents, public facilities and businesses. Therefore, we ask that you approve these holdover permits. Thank you for your consideration of our request.

Sincerely,

Pamela Tumpap

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

**From:** Tony Fink  
**To:** DLNR,BLNR,Testimony  
**Subject:** East Maui stream diversions  
**Date:** Monday, November 05, 2018 5:31:39 PM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Tony Fink



**From:** [kumu chang](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Monday, November 05, 2018 4:12:20 PM

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Mahalo,

Lisa Chang  
Hau'ula

**From:** Michele A. Halligan  
**To:** DLNR.BLNR.Testimony  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 7:24:45 AM

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Aloha Chair Case and members of the Land Board,

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Mahalo,

Michele Halligan

447 Park Blvd; Ukiah, CA 95482

(former resident of Haiku and still caring about East Maui streams!)

**From:** [barbara.george](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 11:41:27 AM

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Mahalo,

Barbara George  
Haleiwa, HI

**From:** Colleen Soares  
**To:** DLNR.BLNR.Testimony  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 11:49:16 AM

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Mahalo,

Colleen Soares  
47-678 Hui Alala St.  
Kaneohe, Hawaii 96744  
[csoares48@gmail.com](mailto:csoares48@gmail.com)

**The East Maui watershed is the largest single surface watershed in the State**, providing to the second largest service area on Maui. It also **services the largest contiguous agricultural area in the State of Hawaii.**

Since the closure of HC&S following the downsizing of Maui Gold, we have seen the agriculture industry on Maui further digress. Local residents working for companies servicing those operations have lost jobs; and inventory of goods are no longer readily available. Products once easily purchased off the shelf now must be ordered upon request or are simply not available. This is not unexpected, as the critical mass of agriculture that once supported such services have disappeared. In the last months, we have seen more business closures and others speaking of shutdowns. All of this puts Maui's ag at a huge disadvantage to Oahu growers. Today's decision is important as it will be a step towards bringing back that critical mass needed to ensure that agricultural production is not just about Oahu but providing capacity on neighbor islands.

The Maui County Council just approved the purchase of 262 acres of prime ag lands from A&B. It is expected to be the first phase of the expansion of the County Ag Park System. Our farmers are excited about the opportunity. However, we know its' long term success is contingent on water...the results of these hearings and the long term lease agreement are critical to the viability of ag.

We understand that today's hearing provides the means to ensure access to much needed water for the future of agriculture. Maui's agriculture has a chance to evolve, to move the needle on agricultural production in the State. We are in continued discussions with the Department of Education to provide fresh fruits and vegetables into the schools. The recent Myrtaceae rule stopping some movement of plants creates a local need. We are on the cusp of opening doors for our floricultural and nursery industry while protecting our precious watersheds. We need water for ag lands to accomplish these goals. Commercial agriculture

grows food and raises livestock so many of you sitting in this room don't need to worry where your dinner will come from.

A&B was the first landowner to voluntarily designate their lands as Important Agricultural Lands. They showed leadership and commitment. While designating lands for agricultural use for future generations, they devalued their lands. The only way these lands can be rezoned is due to governmental actions that result in loss of access to water or other events beyond the landowner or farmer's control.

The Governor, policymakers and the public all state that increased agricultural sustainability should be a goal. Putting these contiguous acres of proven productive agricultural lands at risk by removing access to water is counter to these objectives.

Some of our other farmers wanted to be here today but due to responsibilities on the farm could not be here. They are the farmers who provide to the Costcos, Safeways and Times. They count on us at Farm Bureau to speak on their behalf.

This measure merely seeks to bring Hawaii Water law into the 21<sup>st</sup> century while recognizing the need for water by agriculture. For this reason, we respectfully request your **support by passing this measure today**. Thank you.



Maui County

HEARING BEFORE THE  
BOARD OF LAND AND NATURAL RESOURCES

TESTIMONY ON

ITEM D-7: HOLDOVER OF REVOCABLE PERMITS TO ALEXANDER  
AND BALDWIN AND EAST MAUI IRRIGATION COMPANY FOR WATER  
USE ON THE ISLAND OF MAUI

November 9, 2018  
9:15 AM

Aloha Chair Case, and Members of the Board:

I am Warren Watanabe, Executive Director of the Maui County Farm Bureau. We are a County Chapter of the Hawaii Farm Bureau, representing 200 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches while ensuring the social and environmental wellbeing of the island. We appreciate the approval of the permit last year.

MCFB is again before you in **strong support** for the approval of the holdover of revocable permits to Alexander and Baldwin and East Maui Irrigation Company for water use on the island of Maui.

Maui is unique, in its' dependence on surface water sources. Much of its' water infrastructure grew out of the sugar plantations ... not by public resources. These water systems predated many of our laws. The holdover process provides a means to bring implementation of Hawaii Water Laws into the 21<sup>st</sup> Century. These matters are complex and this renewal process allows the time for evaluation and the development of the long term permit process that benefits everyone.

**From:** Paul Carter  
**To:** DLNR.BLNR.Testimony  
**Subject:** Testimony on agenda item D-7  
**Date:** Wednesday, November 07, 2018 9:53:19 AM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Dr. Paul Carter, PhD





## Hawaii Agriculture Research Center

*P.O. Box 100, Kunia, HI 96759*

*Ph: 808-621-1350*

*www.harc-hspa.com*

**Testimony Before the  
Board of Land & Natural Resources  
Kalanimoku Building  
Land Board Conference Room 132  
Friday, November 9, 2018, 9:15 A.M.**

Testimony **in support** of  
Agenda Item

D. Land division: number 7: Holdover of Revocable Permits

My name is Stephanie Whalen. I am the Executive Director of the Hawaii Agriculture Research Center (HARC). I am also the president of the Kunia Water Cooperative and the Kunia Water Association, which represents the water users in the Kunia area of Oahu.

I want to relate how difficult and time consuming it is to get large-scale agricultural lands back into production. Oahu Sugar Company closed its operation in 1995 and Del Monte Fresh produce closed in 2008. These lands had mainly been leased from Campbell. The first sale of these lands occurred in 2006 and the last in 2010. By the time of these sales the vast majority of land was overgrown with guinea grass, didn't have conservation plans in place, needed adjustment in soil pH, and lacked irrigation systems for the new diverse land owners and crops. The size of the Kunia area is only about one-third of the agricultural area in question on Maui.

In spite of the number of years that have passed, not all the land has come into production due to significant costs associated with the aforementioned infrastructure development needs, and in Kunia's case, the unreliability of a part of its water delivery systems. This is spanning a 20-year transition period. Water reliability and accessibility are an absolute criteria for any successful agricultural operation. I relate this because some will question the time this process is taking, notwithstanding the legal issues involved.

It is heartening that the Commission on Water Resource Management has allocated 90% of the water needs for the land designated as IAL, but without a permit to access that water that decision and the IAL designation is meaningless.

I encourage you to continue to be patient while all the critical elements of this process are settled: IIFS completed; EIS timeline established; and the pending contested case.

I urge you to hold over the revocable permits for the A&B and East Maui Irrigation Company.

Thank you for the opportunity to testify in support of Hawaii's agricultural needs.

ALAN M. ARAKAWA  
MAYOR



KEITH A. REGAN  
MANAGING DIRECTOR

## OFFICE OF THE MAYOR

Kē'ena O Ka Meia

COUNTY OF MAUI – Kalana O Maui

November 9, 2018

Ms. Suzanne D. Case, Chairperson  
Members of the Board of Land and Natural Resources  
State of Hawaii  
P.O. Box 621  
Honolulu, HI 96809

Dear Chair Case and Members of the Board of Land and Natural Resources:

RE: Item D-7. Holdover of Revocable Permits S-7263, S-7264, S-7265 and S-7266 for Water Use on the Island of Maui

Thank you for this opportunity to testify in strong support of the Board's approval of staff's recommendation for the subject agenda item regarding important water permits for the island and people of Maui.

These permits are vitally essential to the County and the broader Maui community, serving the needs of tens of thousands of Maui residents. The state's East Maui waters are the main source of drinking and irrigation water for 36,000 Upcountry Maui residents and farmers and they have enabled the naturally-arid central isthmus of Maui to support agricultural operations for over 100 years. Moving forward, these waters are extremely important to determining whether these lands will be successfully repurposed into new forms of agriculture, and sustained for the next 100 years.

Unlike Oahu, Maui remains a largely rural community whose people, economy and infrastructure have grown out of the sugar industry. While our sugar companies have closed over the years, much of the infrastructure they built still exists to serve our community. This includes roads, water systems, powerlines and the like. The EMI ditch system is crucial for Maui's future as we transition out of sugar, as it provides us flexibility and opportunities for our island, economically and socially.

While many things have changed on Maui over the course of the past century, the majority of our residents want to retain the open space and rural character of Maui, and wish to see agriculture re-established on the former sugar lands in Central Maui. Key to the success of this transition is the continued functionality of the EMI ditch system, sourced by the state water permits.

Ms. Suzanne D. Case, Chairperson  
Members of the Board of Land and Natural Resources  
November 9, 2018  
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I believe we should be encouraging and facilitating the establishment of new agricultural operations on these lands as soon as possible, as a delay in a critical mass of activity could potentially result in the deterioration of important agricultural infrastructure and the loss of skilled labor force. As a farmer myself, I can tell you that farming is not an easy business, nor an extremely profitable one. Farmers deserve all the support we can provide, if our goal is to have a strong agricultural presence on Maui. That is the vision that is embodied in the Maui Island Plan, and a vision that I support.

To that end, I am working with A&B to establish a new County agricultural park on prime former sugar lands, to serve the needs and aspirations of small farmers on Maui. My hope is that the County will also be able to provide services and other forms of support to further encourage the success of these farming operations.

In conclusion, these stream waters from state lands in East Maui are immediately essential to the health and welfare of Maui's Upcountry Maui community, as its main source of water. There is only an inadequate, small amount of well infrastructure in place to serve as back up for the residents' and farmers' needs. These East Maui waters are also important to determining our island's path forward, and whether we will be able to establish a new agricultural future for these lands at the very heart of our island. The reauthorization of these revocable permits is clearly consistent with the public interest and most importantly, in the best interest of the people of Maui.

I ask for your support of the reauthorization of these four revocable water permits; and your confirmation that they are indeed in the public trust interest, integral to sustaining Maui's immediate needs and to support its future.

Sincerely,

A handwritten signature in black ink, reading "Alan Arakawa". The signature is fluid and cursive, with the first name "Alan" and last name "Arakawa" clearly distinguishable.

ALAN M ARAKAWA  
Mayor, County of Maui

**From:** [Michele A. Halligan](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Tuesday, November 06, 2018 7:24:45 AM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Michele Halligan

447 Park Blvd; Ukiah, CA 95482

(former resident of Haiku and still caring about East Maui streams!)



OFFICE OF HAWAIIAN AFFAIRS  
Administrative Testimony

Testimony of Kamanaʻopono Crabbe, Ph.D  
Ka Pouhana, Chief Executive Officer

Board of Land & Natural Resources  
Submittal Item D-7

HOLDOVER OF REVOCABLE PERMITS S-7263 (TAX MAP KEY (2) 1-1-001:044), S-7264 (TAX MAP KEYS (2) 1-1-001:050, 2-9-014:001, 005, 011, 012 & 017) AND S-7265 (TAX MAP KEY (2) L-L-002:POR. 002) TO ALEXANDER AND BALDWIN, INC., AND S-7266 (TAX MAP KEYS (2) 1-2-004:005 & 007) TO EAST MAUI IRRIGATION COMPANY, LIMITED, FOR WATER USE ON THE ISLAND OF MAUI

November 9, 2018

9:15 a.m.

Conference Room 132

The Administration of the Office of Hawaiian Affairs (OHA) urges the Board of Land and Natural Resources (BLNR) to **DEFER** any recommended “holdover” of the subject revocable permits (RPs), insofar as the current submittal fails to meet the basic requirements of the Public Trust Doctrine with respect to the applicants’ burden of proof and the BLNR’s independent and affirmative duty to protect public trust purposes of state water resources. Furthermore, while OHA appreciates the continuation of certain conditions of approval placed on last year’s “holdover,” the BLNR’s public trust and constitutional duties require far more, and OHA urges the BLNR to minimally adopt additional conditions and compliance assurance mechanisms in any future issuance of the requested holdover.

**1. The Public Trust Doctrine requires concrete information on the actual water needs of the applicants.**

**For the third year in a row, the RP permittees and holdover applicants have again failed to meet their burden of proof in demonstrating their actual need to divert water from public watershed lands in East Maui during the prospective holdover period, despite repeated concerns raised by BLNR members and OHA beneficiaries alike, and notwithstanding the clear and unambiguous requirements of the Public Trust Doctrine.**

As the Hawaiʻi Supreme Court has made abundantly clear, a “fundamental principle” of the public trust in Hawaiʻi’s water resources is the “affirmative duty”<sup>1</sup> of state and county agencies, including the BLNR, “to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.”<sup>2</sup> Such an accounting requires a careful, case-by-case balancing of competing

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<sup>1</sup> *Kauaʻi Springs, Inc. v. Planning Commission of Kauaʻi*, 133 Hawaiʻi 141 (2014) (emphasis in original) (citing *In re Water Use Permit Applications (Waiāhole I)*, 94 Hawaiʻi 97 (2000)).

<sup>2</sup> *Id.* (emphases added) (internal quotations and brackets removed).

public and private water uses; in doing so, agencies “**must apply a presumption in favor of public use, access, enjoyment, and resource protection,**” and are “**duty-bound to place the burden on the applicant [for a private water use] to justify the proposed water use in light of the trust purposes. [Applicants] must demonstrate their actual needs, and . . . the propriety of draining water from public streams to satisfy those needs.**”<sup>3</sup> As acknowledged in the submittal, even Act 126 itself recognizes the public trust duties of the BLNR, and authorizes “holdovers” of water rights only to the extent “consistent with the public trust doctrine.”<sup>4</sup>

Despite these clear Public Trust Doctrine requirements, the applicants have again failed, for the third year in a row, to carry their burden of “demonstrat[ing] their actual needs,” much less provide any substantiated justification to rebut the presumption against the authorized diversion of public trust stream water. **No information whatsoever is provided regarding how much water would actually need to be diverted for continued water service to Upcountry Maui, “fire suppression,” or to maintain the “integrity” of the EMI ditch system for as-yet undetermined future agricultural activities in Central Maui.**<sup>5</sup> While the submittal does note that A&B and EMI have diverted, on average, 20-25 million gallons of water per day (mgd) over the past year, there is no description of how this water was allocated, the specific uses it was put to, and whether such uses did in fact consume 20-25 mgd. There is no other explanation or description of the applicants’ future near-term plans, much less any accounting for how much public trust water would be necessary to satisfy such plans.

While OHA again appreciates the applicants’ claim that 20-25 mgd are diverted from East Maui, such a claim does not relieve the applicants of their clear burden of proof to demonstrate the quantities of water they actually need. Without any demonstration or accounting of A&B’s and EMI’s “actual needs” for the stream water to be diverted under the requested holdover, there is no way for the BLNR to even begin fulfilling its responsibility to “take the public trust into account” when authorizing the allocation of East Maui’s critical public trust water resources. **Pursuant to clear and unambiguous supreme court precedent, the requested holdover should therefore be deferred until such information is provided by the applicants.**

**2. The Public Trust Doctrine requires the consideration of alternative water sources available to the applicants, and an explanation of why the over 100 mgd of water that can be provided by these sources cannot meet their alleged water needs.**

On a similar note, the submittal conspicuously fails to consider the alternative water sources available to the applicants, including the **53 mgd** that A&B can already

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<sup>3</sup> *Id.* (emphasis added) (internal citations removed).

<sup>4</sup> HAW. REV. STAT. § 171-58.

<sup>5</sup> Recent figures suggest that A&B delivers approximately 8.5 mgd for domestic and farming uses in Upcountry Maui—far less than the daily average of 20-25 mgd it says it used in 2018, and far less than the approximate 53 mgd it should already be able to divert from its own fee simple lands.

divert from the East Maui lands it owns in fee, or the **69-72 mgd** it can pump from its private Central Maui wells.<sup>6</sup> The issuance of any holdover should include, at minimum, an identification of such alternative sources and an explanation as to why these sources cannot be used to satisfy whatever actual water needs A&B and EMI may have. **Unless the applicants can demonstrate why their own immediately available water sources are not sufficient to meet their actual needs, the public trust presumption in favor of maintained stream flow clearly counsel against authorizing the diversion of any stream water from the public lands covered by the subject RPs.**

**Accordingly, the BLNR should not grant any RP holdover until the applicants have adequately described their own alternative water sources, and why these sources are not sufficient to meet their actual water needs.**

**3. The Public Trust Doctrine requires a proper consideration of the public trust purposes and reasonable beneficial uses potentially impacted by the authorized diversion of East Maui streams.**

The submittal additionally fails to properly evaluate and protect the public trust purposes and reasonable-beneficial uses of East Maui stream water that may be directly impacted by the requested holdover. For example, the public trust purposes of these streams include the maintenance of their waters in their natural state, which may be critical to the health of riparian and coastal ecosystems and associated flora, fauna, and traditional and customary and subsistence practices in and beyond East Maui. **However, no consideration, much less affirmative measures or conditions, has been suggested to protect the public benefits of maintained stream flow.**<sup>7</sup> While the submittal does reference the recently updated interim instream flow standards (IIFS) for approximately 27 streams covered by the subject RPs, the RPs themselves include nearly four times as many streams as those protected by these updated IIFS. Notably, nothing precludes the BLNR from strengthening its sister Commission on Water Resources Management's (CWRM's) public trust protections for the streams subject to the updated IIFS, and **nothing excuses the BLNR from upholding its affirmative public trust duties to consider and protect the public trust purpose of streams and water sources not evaluated by CWRM's IIFS determinations.**

Accordingly, by failing to consider the public trust purposes of all East Maui streams covered by the subject RPs, and by allowing the applicants to completely divert streams not subject to CWRM's updated IIFS for any "beneficial agricultural use or municipal use," the submittal's holdover recommendations would result in an abdication

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<sup>6</sup> Contested case hearings officer Dr. Larry Miike has explicitly found that A&B may be able to sustainably pump 83 mgd from its ground water wells.

<sup>7</sup> For example, the submittal fails to consider or protect mauka-makai connectivity for the streams not covered under the recently updated interim instream flow standards, nor does it evaluate or seek to mitigate potential impacts of diversion infrastructure on native species' instream migration in these streams.

of the BLNR's public trust duties and responsibilities for over a hundred streams throughout East Maui.<sup>8</sup>

**In light of the above, the BLNR should again defer granting the requested holdover, unless and until there is sufficient consideration and reasonable protection of the public trust purposes of the 100-plus streams covered by the subject RPs.**

**4. Additional conditions may be necessary to uphold the public trust and other constitutional obligations of the BLNR.**

If a holdover of the subject RPs is granted at some future point, in addition to conditions that may arise from the above considerations, OHA urges the BLNR to also include further conditions relevant to its substantive public trust and constitutional responsibilities. These include, but are not limited to:

- Provision of reasonable access for cultural practitioners to the areas covered by the subject RPs, for the exercise of Native Hawaiian traditional and customary practices;**
- Affirmative mitigation actions and compensatory investments for the impacts the applicants' diversions have had on natural and cultural resources over the RP period, including riparian and coastal subsistence resources that are the subject of Native Hawaiian traditional and customary practices;**
- Other conditions necessary to mitigate any continued impacts to traditional and customary practices and valued resources;<sup>9</sup>**
- Monthly updates on the status of conditions requiring ongoing action, including conditions for the removal of diversion infrastructure, debris, and the remediation of streams to allow for instream migration of native species;**
- Quarterly updates on the progress of the environmental impact statement for a long-term lease of the RP-covered areas, to include any preliminary findings that may inform the potential impacts of ongoing stream diversions under the subject RPs, and actions taken to minimize these impacts pending the issuance of any long-term lease; and**
- Quarterly reports on the financial gains and avoided costs<sup>10</sup> realized by the applicants in their use of public trust water resources.**

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<sup>8</sup> The Hawai'i Supreme Court recognized over a decade ago that the BLNR had "breached its duty to analyze traditional and customary native Hawaiian practices and appurtenant rights and the public trust obligations emanating from the Hawai'i Constitution," in allowing A&B and EMI to divert water from the same state lands at issue here. Maui Tomorrow v. Board of Land and Natural Resources, 131 P.3d 517 (2006). Given the instant submittal's complete lack of analysis of traditional and customary practices and any other stream-related public trust purposes, any approval of its holdover recommendation would again clearly constitute a breach of the BLNR's public trust obligations.

<sup>9</sup> See Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31 (2000).

<sup>10</sup> "Avoided costs" should include the applicants' costs of developing alternative water sources that would produce the same amount of water they divert from the state's East Maui watershed lands, minus RP holdover rent and costs of transmission.



**5. Objective monitoring and compliance mechanisms are necessary to give meaning to any holdover conditions.**

While the submittal does provide some holdover conditions that ostensibly seek to ensure that any diverted water is used responsibly and for “beneficial uses,” the lack of mechanisms for monitoring and compliance verification risks rendering such conditions practically meaningless. If a holdover is granted, OHA urges the BLNR to carefully ensure that any conditions include objective monitoring, compliance, and enforcement mechanisms as may be necessary.

For example, condition number 4 states that “there shall be no waste of water. All diverted water shall be put to beneficial agricultural use or municipal use”; condition 5 similarly requires that “any amount of water diverted under the revocable permits shall be for reasonable and beneficial use and always in compliance with the amended IIFS.” However, there is no clear indication of how these conditions will actually be monitored and enforced: there are no requirements for water meter or gauge installation and publicly-accessible, live reporting of diversion and consumption amounts; there is no condition for public or agency inspection of diversion infrastructure and consumptive uses; and there is no clear and objective description of exactly what, where, and how diverted water may be used. Such compliance mechanisms may be critical to ensuring the fulfillment of these otherwise seemingly well-intended conditions. Similarly, while condition number 7 requires that “Permittee shall provide a specific report on the progress regarding the removal of diversions and fixing of the pipe issues before the end for the holdover period,” there is no requirement for facilitated site inspections and assessments by CWRM or other resource agency staff (including Division of Aquatic Resources staff) for verification of the actual removal of diversions and adequate accommodation of instream migration by native species. Notably, despite the clear enforcement challenges identified by CWRM staff over a year ago in Nā Wai ‘Ehā, the submittal also fails to require the posting of a bond, liquidated damages clauses, or other financial assurances, should the applicants fail to comply or make adequate progress in any of its conditions.<sup>11</sup>

Accordingly, should the requested holdover of the subject RPs be granted, OHA strongly urges the BLNR to ensure that mechanisms for monitoring, compliance, and enforcement are in place, so that conditions to uphold the BLNR’s public trust responsibilities can be meaningfully upheld. These should minimally include, but not be limited to:

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<sup>11</sup> See Minutes of the Commission on Water Resources Management, Meeting of December 19, 2017, <http://files.hawaii.gov/dlnr/cwrmin/minute/2017/mn20171219.pdf> (describing CWRM staff confusion regarding the ability to impose fines for IIFS violations).

**-The installation by applicants of water gauges that can provide publicly-assessible real-time data for every stream to be diverted,<sup>12</sup> including the amount of water captured for each stream and in total;**

**-The provision of regularly-updated maps indicating the location of all existing diversions and water gauges;**

**-Access requirements for traditional and customary practitioners and stream hydrology experts to inspect installed water gauges, diversion infrastructure, stream flow impacts, the removal of irrigation infrastructure-related debris, and other relevant conditions requiring ongoing compliance;**

**-The installation of water meters to measure the amount of water consumed for each specified permitted use in Central and Upcountry Maui, and a quantified quarterly explanation of any discrepancies between the amounts of water diverted and consumed;**

**-Quarterly or semiannual agricultural production reports, including water consumption reports and projections, for diversified agriculture operations in Central Maui that are supplied with diverted water;**

**-Semiannual site inspections by Division of Aquatic Resources staff for verification of diversion removal and adequate remediation for native species' instream migration needs;**

**-Performance bonds for the failure to execute required actions within a timely manner; and**

**-Liquidated damages clauses with daily penalties for breaches of RP conditions.**

## **6. Conclusion.**

Accordingly, in summary, OHA urges the BLNR to **DEFER** granting the requested holdover of the applicants' East Maui RPs, pending the satisfaction of the following:

**-The provision of sufficient and specific evidence demonstrating the applicants' actual, current need for water, including how much water would need to be diverted for the applicants' specified off-stream uses;**

**-The provision of sufficient and specific evidence detailing the applicants' alternative sources of water, including private wells and stream water located on privately-owned watershed lands under their control, and why these alternative sources cannot be used to satisfy their actual needs; and**

**-A detailed explanation and sufficient justification to rebut the presumption in favor of public trust purposes and maintained stream flow, particularly for the dozens of East Maui streams not covered under the recent updated IIFS decision by CWRM.**

Unless and until the above considerations are met, the Public Trust Doctrine – as defined and clarified by state law and Hawai'i Supreme Court opinions – cannot be

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<sup>12</sup> Real-time measuring gauges have already been used in Nā Wai 'Ehā, and their installation may also provide critical monitoring and compliance verification tools for any long-term water lease issued for the East Maui lands currently covered under the subject RPs.

considered satisfied for the purposes of Act 126, nor for the BLNR's own constitutional mandates.

Furthermore, in addition to conditions that arise from the above considerations, any future contemplated holdover should minimally include conditions to further uphold the BLNR's public trust and affirmative constitutional obligations, in addition to mechanisms to ensure that any and all holdover conditions can be meaningfully monitored and enforced.

Mahalo nui for the opportunity to comment on this matter.

**From:** [Paul Carter](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** Testimony on agenda item D-7  
**Date:** Wednesday, November 07, 2018 9:53:19 AM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Dr. Paul Carter, PhD

**From:** [Tony Fink](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** East Maui stream diversions  
**Date:** Monday, November 05, 2018 5:31:39 PM

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Aloha Chair Case and members of the Land Board,

I support the full restoration of all taro-feeding streams in East Maui. I stand with the taro farmers, cultural practitioners, scientists, and concerned residents advocating for East Maui streams. This board should establish and enforce a timeline to ensure that the diversions from these streams are completely and permanently closed, all trash and debris is removed, and the dumping of water from one stream to another is strictly regulated to prevent flooding of downstream farms. Downstream farmers should be regularly consulted in the process to restore this stream ecosystem.

Mahalo,

Tony Fink